

WORLD TRADE ORGANIZATION

RESTRICTED

WT/ACC/PAN/5

19 June 1995

(95-1632)

Original: English/
Spanish

ACCESSION OF PANAMA

Communication from Panama

The following communication has been received from the Permanent Mission of Panama.

The Permanent Mission of Panama to the WTO has the honour to submit to you the following documents in the context of Panama's accession to the World Trade Organization:

- Panama's reply to the questions submitted by Members;
 - Charts on Panama's Current Products under Non-Tariff Measures;
 - Panama's Regime on Intellectual Property;
 - Project Law on Valuation.
- _____

The texts of the above-mentioned documents are reproduced hereunder.

PROCESS OF ACCESSION OF PANAMA TO GATT/WTO

Response to Questions

Question

Could you distinguish for us the difference in the various terms used to describe the draft legislation you have given us?

Reply

In order to clarify this matter we are defining the following terms:

- (1) Draft Project of Law: Preliminary piece of legislation in charge of technicians or specialists in specific subjects, which is the basis for the elaboration of legislation. It applies to the individual or overall work developed over a certain topic and is used for a project of law.
- (2) Project of Law: Refers to a legislative initiative proceeding from the Executive Branch. The Cabinet approves the project, and sends it to the Legislative Assembly. In order to become a law, it should be passed in first, second and third debate in the Legislative Assembly.
- (3) Draft Cabinet Decree: Is a project of decree which is presented by a member or members of Cabinet in order to be approved by the Cabinet Council. As soon as Cabinet Council approves the Draft Decree, it becomes a Cabinet Decree.

Concerning tariff bindings on mixed tariffs

Question

We understand from statements made at the Working Party meeting in Geneva earlier this month that Panama is prepared to convert its tariffs to single ad valorem rates and bind these rates. Is this correct?

Reply

Yes, Panama will bind tariffs at single ad valorem rates.

Question

We are reviewing your chart on ITBM application, and we appreciate Panama's assurances that this value-added type tax is equally applied or exempted from both domestic and imported articles.

What sort of products are exempted?

Reply

A response to this question was given to the US Question No. 117 in the document L/7426: "Please report to the Working Party the exemptions list to this tax listed in paragraphs 7 and 8 of Article 1507(V) of the Fiscal Code", which we transcribe below:

Paragraph 7 indicates that the following are not subject to the tax:

- (a) Transfers of goods *mortis causa*, free charge, or by deed between living persons already subject to inheritance and gift tax;
- (b) transfers in connection with marriage settlements, and contribution or separation of conjugal property;
- (c) expropriation and sale by the State, except those made by State industrial and commercial companies;
- (d) sale of property under any ordinary or special proceedings for the separation of property;
- (e) transfers of negotiable instruments and securities in general.

Paragraph 9 indicates that the following are exempt from the tax:

- (a) Sales of agricultural, poultry, cattle and other similar products, in the natural state or subjected only to a fattening, butchering or subjected only to a chilling or freezing process, made by the producers;
- (b) sales of fisherman's products, in the natural state or subjected only to a chilling or freezing process, made by the producers;
- (c) exports and re-exports;
- (d) transfers made to the Panama Canal Commission or to the United States Armed Forces, as defined by the Panama Canal Treaty of 7 September 1977 and its related agreements;
- (e) transfers of tangible personal property which take place in the free zones legally authorized in the Republic of Panama;
- (f) operations involving tangible personal property located in customs areas and warehouses where ownership is transferred through the endorsement of documents;
- (g) transfers of soft drinks already subjected to the Soft Drinks Tax;
- (h) imports and transfers of oils, lubricants and related products specified in the following subdivisions of the Tariff: 313-01-01, 313-01-01A, 313-01-01B, 313-01-01C, 313-01-02, 313-01-03, 313-01-04, 131-01-05, 313-02-00, 313-03-01, 313-03-02, 313-03-99, 313-04-01, 313-04-02, 313-09-00, 314-01-00, 314-02-00;
- (i) imports and transfers of food products;
- (j) imports and transfers of medicinal and pharmaceutical products specified in Group 541 of the Tariff;

(k) imports and transfers of the following products:

- (1) Manufactured fertilizers of tariff subdivisions: 271-01-00; 271-02-00; 271-03-00; 271-04-00; 561-01-00; 561-02-00; 561-03-00, and 561-09-00;
- (2) insecticides, fungicides, herbicides, disinfectants and the like, used in agriculture and animal husbandry, of Tariff Subdivisions: 599-02-01 and 599-02-02;
- (3) all seeds used in agriculture;
- (4) barbed wire specified in Tariff Subdivision 699-05-01;
- (5) hand tools used in agriculture, such as machetes, grub hoes, hoes, shovel-hoes, and goads.

Question

We believe, however, that the revenue stamp tax and the anti-tuberculosis fight tax are charges applied to imports exclusively. How does Panama intend to approach these charges in the context of its WTO obligations?

Reply

At the moment of accession, Panama will eliminate the Domestic Consumption Stamp, the Anti-Tuberculosis Fight Tax and all other surcharges currently applied only to imports, as stated in the draft law, by which "Some Articles of the Fiscal Code are being Modified". A copy of this draft law, has already been handed to the USG.

Question

We remain interested in (a) a list of all taxes and charge applied to imports, and (b) a list of those applied only to imports with their respective levels of application.

Reply

(a) The list of all taxes and charges applied to imports are:

- The import tax,
- Stamps and fees related with the processing of import documents:
 - Stamp on each bag or package (Bulto), two cents (0.02 cts.) per package;
 - Peace and Social Security Stamp, twenty cents (0.20 cts.) per customs declaration-assessment document;
 - Consular Administrative Fee (TCAC), calculated on the free-on-board (f.o.b.) value according to the following schedule:

Up to \$100	Exempt
\$101 - \$1,000	\$10
\$1,001 - \$5,000	\$20

\$5,001 - \$10,000	\$30
\$10,001 - \$50,000	\$40
\$50,001 - 100,000	\$50
Over \$100,000	\$75

- Fiscal stamp, \$1.00 per customs declaration-assessment document.
- Tax on the transfer of tangible personal property (ITBM), 5 per cent over c.i.f. plus other taxes and stamps.

The above-mentioned refer to all kinds of imports, with the exception of the imports of spirits, which are currently charged with the following additional taxes:

<u>Name</u>	<u>Tariff</u>
(a) Anti-Tuberculosis Fight Stamp	0.06 cts. - 0.21 cts. per litre.
(b) Stamps and fees related with the processing of import documents:	
- Peace and Social Security Stamp	0.02 cts. per bottle.
(c) Domestic Consumption Stamps: These stamps are levied according to the level of content of the bottle or container. (The beer and some wines are exempted.)	
- containers with capacity equal or less than 100 c.c.	Will pay twenty cents (0.20 cts.) stamps.
- containers with capacity greater than 100 c.c. or less and equal to 900 c.c.	Will pay two dollars and fifty cents (\$2.50) on stamps.
- containers with capacities superior to 900 c.c. but inferior or equal to 1,800 c.c.	Will pay three dollars and fifty cents (\$3.50).
- containers with capacity superior to 1,800 c.c.	Will carry stamps for a value of four dollars and fifty cents (\$4.50).
(d) ITBM tax on spirits - 10 per cent	

Question

We would also appreciate a description of how domestic taxes are applied to domestic as well as imported goods, including the same information that is provided in the chart provided on imports.

Reply

The only domestic tax which is applied to all imports as well, is the Tax on the Transfer of Tangible Personal Property (ITBM).

As explained to US Question No. 116 in document L/7426, the Transfer of Personal Property Tax is based upon value added, and therefore applies to the transfer of tangible property in the Republic of Panama by sale, exchange, payment, contribution, assignment or any other act, contract or agreement which involves or is for the purpose of transferring title in the goods, regardless of their origin, that is, it applies to imported and to domestic goods.

Concerning customs fees and consular invoice charges and surcharges

Question

We understand that Panama indicated at its Working Party that it is prepared to eliminate the Consular Administrative Cost Fees (TCCA) and other consular surcharges upon accession.

Does this include elimination of the customs surcharges and other currently applied service fees as well?

Reply

Yes.

Question

Does Panama intend to apply or to retain other charges for customs processing to replace these fees other than the \$70 administrative charge? If so, please describe them.

Reply

No, Panama does not intend to retain other charges for customs processing.

Question

Does it actually cost \$70 to process each import entry? Would this include the letters and parcels sent via private air delivery services?

Reply

- (a) The Ministry of the Treasury has estimated the cost of \$75 to process each import entry. The cost of this service includes the handling of merchandise and the paper work involved.
- (b) All import transactions valued at \$1,000 or less will be exempted from the customs service fee. Letters and parcels sent via private air delivery services would be exempted.

Note: The Project of Law which eliminates the TCCA, and other consular and customs charges has been passed in second debate in the Legislative Assembly. The administrative charge of \$70 has been established at \$75 and the exemption value of imports to this charge has been agreed at \$1,000 and below.

Question

Is it Panama's intent to apply this fee to all import transactions valued at \$500 or above? If so, this seems rather a large burden for lower-valued imports. Would Panama consider increasing the minimum value of imports subject to the charge?

Reply

The Project of Law in this matter has been passed in second debate in the Legislative Assembly. The minimum value of imports subject to the charge has been increased to \$1,000.

Question

To what extent are customs service fees such as this one included in the taxable base of imports?

Reply

This custom service fee will not be included in the taxable base of imports.

Concerning Panama's system of import permits, licences, quotas, and prohibitions

Question

We understand that Panama has changed its non-tariff measures in force since tabling its lists for the April Working Party. We need an updated list of all products, whether or not agricultural, subject to import bans, prior authorizations or permits and other quantitative restrictions.

Reply

We are enclosing a copy of the updated information on non-tariff measures in force.

Question

We seek Panama's justification under WTO provisions for each of these measures or a timeframe, where appropriate, for their elimination prior to Panama's accession to the WTO.

Reply

All the measures which are not compliant with WTO will be eliminated upon accession (through implementing legislation) and the remaining justifiable restrictions will be administered in accordance with WTO's Agreement on Import Licensing Procedures.

Question

In addition, all remaining restrictions, whether justified or stated for elimination, must be applied in accordance with the Agreement on Import Licensing Procedures, e.g.:

- they should be published;
- the criteria for their application should be published;
- unnecessary permit requirements, i.e., those not needed for specific purpose, should be eliminated;
- the number of approval points should be reduced to one, or at most two; and

- **a central point should be established where traders can obtain information concerning their application.**

Reply

We take note of your observations and assure you that we will comply with WTO Agreement on Import Licensing Procedures.

Question

We are particularly interested in the requirements you have reported for wireless telecommunications imports.

Could you indicate what criteria are applied by the Ministry of Government and Justice to authorize the importation of this equipment?

Reply

The Ministry of Government and Justice applies technical criteria in order to determine whether the equipment can interfere with other equipments which are authorized to operate in a specific frequency, to guarantee national security and for statistical reasons. Information about this topic has been answered in the "Answers to the questionnaire on import licensing procedures", pages 22, 23 and 24.

Question

Are these criteria published? Please outline the steps that must be taken to import such equipment?

Reply

Importers can request authorization to import wireless telecommunication equipment at the Ministry of Government and Justice, presenting a list of the equipment and its technical features. Upon approval of the Ministry of Government and Justice, this Ministry seals the customs declaration assessment document. This seal will allow the import of the equipment through customs.

Question

Are cellular telephones and other forms of mobile communication equipment covered by these requirements?

Reply

At the present time, Panama does not have cellular telephony. Cellular telephones and other forms of mobile communication equipment would be covered by these requirements.

Concerning subsidies, and the application of safeguard, anti-dumping and countervailing measures

Question

In addition, we remain concerned about how Panama intends to address the export subsidies provided for in Law 3 of 1986 and Law 25 of 30 November 1992.

These do not appear to us to be consistent with the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement).

Is it your view that the draft legislation you gave us will adequately address these issues?

Reply

Yes.

Question

We remain interested in working with Panama on notification of its industrial subsidy measures for phased elimination as provided for in Article 28 of the Agreement on Subsidies and Countervailing Measures.

Comment: Panama is making a detailed assessment of the industrial incentives currently granted in order to determine whether they are notifiable or not, and if it is the case, which would be subject to a phase out period.

Concerning State enterprises

Question

We understand that Panama will submit written responses to the questions we tabled at the February Working Party concerning notification of State enterprises under Article XVII. We look forward to that information and additional material on Panama's privatizations.

Our principal concern in pressing for more information in this sector is that Panama's State-owned enterprises employ commercial considerations and operate consistent with WTO obligations in trade matters.

Reply

(1) Panama will submit the notification regarding State enterprises under the Understanding on the Interpretation of Article XVII of the GATT 1994. The notification will include the following enterprises:

<u>Corporation</u>	<u>Product</u>
- Corporación Azucarera La Victoria (CALV)	Sugar cane
- Cemento Bayano	Cement
- Autoridad Portuaria Nacional (APN)	Port services
- Instituto de Seguro Agropecuario (ISA)	Insurance of farming products
- Instituto Nacional de Telecomunicaciones (INTEL)	Phone services
- Instituto de Recursos Hidráulicos y Electrificación (IRHE)	Electricity services
- Instituto de Acueductos y Alcantarillados Nacionales (IDAAN)	Drinking water supply

<u>Corporation</u>	<u>Product</u>
- Dirección Metropolitana de Aseo	Garbage collection
- Dirección de Aeronautica Civil	Air transportation administration
- Administración de la Zona Libre de Colón	Warehouse renting
- Petroterminal de Panamá	Petroleum transshipment
- Ferrocarril de Panamá	Railway transportation
- Bingos Nacionales	Games of chance
- Casinos Nacionales	Games of chance
- Lotería Nacional de Beneficencia	Games of chance
- Hipódromo Presidente Remón	Games of chance
- Banco Nacional de Panamá	Banking services
- Caja de Ahorros	Banking services
- Banco de Desarrollo Agropecuario	Banking services to promote farming
- Banco Hipotecario Nacional	Banking services to promote construction of social housing
- Corporación para el Desarrollo	Farming development
- Centro de Convenciones ATLAPA	Services of renting premises for conventions

(2) Concerning the privatization process, progress has been made in the following enterprises (for detailed reference of the commercial activities developed by these, see page 121 of document L/7426:

<u>Empresa Estatal de Cemento Bayano:</u>	Privatized
<u>Ferrocarril de Panama:</u>	Preliminary studies for privatization are being made.
<u>Corporacion de Desarrollo Integral de Bayano:</u>	Real property is being sold.
<u>ATLAPA:</u>	Privatization modality has not been determined yet.
<u>Corporacion Azucarera La Victoria:</u>	Privatization modality under study in the Ministry of Economics
<u>Generacion de Engeria Eléctrica:</u>	Law 9 of February 1995 granted authority to the Institute of Electrical Resources to give private concessions for the generation of electricity.
<u>Corredor Norte:</u>	Administrative concession granted to a private foreign enterprise.
<u>Drinking water services:</u>	Definition of the modality of privatization will be determined shortly.
<u>Cellular Channel:</u>	The law to privatize Band A of Cellular Telephony is being revised to proceed with the public bidding.

Concerning the State monopoly of the Institute of the Agricultural Market (AMI) in the import and export of agricultural products

Question

Panama has indicated that new legislation will fully reform the agricultural system and AMI's role in it, e.g., eliminate quantitative restrictions, the 4 per cent AMI fee, and AMI's role in granting import permits and setting quotas.

Do we have a copy of that draft legislation in the recent documentation provided?

Reply

Yes, we referred to the draft Law on Import Licensing Procedures.

Question

What will AMI do after reform?

Reply

The Ministry of Agriculture is currently undergoing a study to transform AMI.

Concerning customs valuation

Question

Panama stated in the Working Party that it will eliminate all minimum import prices, i.e., from rice, corn, sorghum, steel, and poultry, and that a new draft decree on customs procedures has been approved by the cabinet and will be implemented within one year.

Reply

There seems to be a misunderstanding regarding our statement at the last Working Party. What we stated was that we have elaborated a draft decree on customs procedures which fully complies with GATT/WTO requirements, and that we would need time and international assistance in order to apply these measures. Panama will eliminate currently applied minimum prices.

Question

Can we see that draft decree?

Reply

We are enclosing another copy of the draft decree on customs procedures, which we also faxed to you in the first week in May.

Question

Does the information provided us last week reflect these proposed changes? If not, will the response to the questionnaire be revised?

Reply

The questionnaire reflects the proposed changes of the new draft decree on customs procedures.

Question

Will the "database" of average import prices used as a point of reference for assessing the accuracy of invoice values also be abolished?

Reply

The "database" of average import prices used as a point of reference for assessing the accuracy of invoice values will not be abolished. As we stated before, this system is used in a random fashion and in no way is a de facto minimum valuation scheme.

We understand that the United States Customs has recently installed a similar system, which is utilized by customs officials as an initial point for doubting about the invoice value.

Question

We would appreciate information on Panama's intention to eliminate the exemption of Panamanian insurance from c.i.f. import valuation.

Reply

Panama has no intention to eliminate the exemption of Panamanian insurance from c.i.f. import valuation.

Concerning price controls

We understand that it is Panama's intent to abolish its current controls on the 36 products listed in Chart 2 of the Annexes provided for in the April Working Party.

Will this be done prior to accession?

Reply

The elimination of price controls is a component of Panama's economic policy and the Cabinet has approved the draft legislation that eliminate prices controls. The draft legislation is now subject to approval by the National Assembly. Therefore, we cannot assure that the elimination of price controls will be accomplished prior to Panama's accession to the GATT/WTO.

Concerning application of Panama's trade regime in the Colon Free Zone

Question

We understand that, at least week's Working Party meeting, Panama confirmed that it exercises sovereignty over the CFZ and is prepared to apply WTO obligations within its boundaries.

Panama stated earlier, however, in L/7426/Add.2, that it currently exercises no customs control within the CFZ, and that certain aspects of the trade regime are enforced only upon complaint.

If this is so, how can Panama enforce the provision of the WTO on goods manufactured in the CFZ, e.g., the Agreements on TRIPs and Subsidies?

Reply

Panamanian authorities have full power to enforce legislation throughout the Republic, including the CFZ.

Question

To what extent will Panama's commitments on trade in services extend to operations in the CFZ?

Reply

They will be fully applicable as far as the operation is permitted within the CFZ.

Concerning the WTO Agreement on TRIMs

Question

Does Panama intend to notify any trade-related investment measures for elimination under the terms of the TRIMs Agreement? If so, please share the list with us prior to accession.

Reply

No.

Tariff Items Subject to Non-Tariff Measures
In Force in January 1995

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
A. Headings subject to quotas							
1	04.01.01.00	0401.10.00	- Of a fat content, by weight, not exceeding 1%	0.20	kg.		3.5
2	04.01.01.00	0401.20.00	- Of a fat content , by weight, exceeding 1% but not exceeding 6%	0.20	kg.		3.5
3	04.01.01.00	0401.30.10	- Milk	0.20	kg.		3.5
4		0402.10.20	- Other	1.25	kg.		7.5
5	04.01.01.00	0404.90.90	-- Other	0.20	kg.		3.5
6	04.01.03.00	0403.90.12	--- Buttermilk	0.20	kg.	3.5	20.0
7	04.01.03.00	0403.90.19	--- Other	0.20	kg.	3.5	20.0
8	04.01.03.00	0403.90.90	-- Other	0.15	kg.	7.5	15.0
9	04.02.01.02	0402.91.91	- Other. Evaporated, of a fat content, by weight, not exceeding 1%	0.25	kg.		7.5
10	04.02.01.02	04.02.99.91	- Other: Evaporated, of a fat content, by weight, not exceeding 1%	0.25	kg.		7.5
11	04.02.01.03	0402.91.92	- Evaporated, of a fat content, by weight, exceeding 1.5%	2.00	kg.	7.5	173.0
12	04.02.01.03	0402.99.92	- Evaporated, of a fat content, by weight, exceeding 1.5%	2.00	kg.	7.5	173.0
13	04.02.01.03	0404.90.20	-- Other, containing added sugar or other sweetening matter	2.00	kg.	7.5	173.0

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
14	04.02.02.03	0403.90.29	--- Other	2.00	kg.	7.5	173.0
15	04.02.02.99	0402.91.99	- Other				77.0
16	04.02.02.99	0402.99.99	- Other				77.0
17	04.02.03.99	0402.10.99	- Other	1.25	kg.		7.5
18	04.02.03.99	0402.21.90	- Other	1.25	kg.	7.5	
19	04.02.03.99	0402.29.90	- Other (milk in powder, of a fat content, by weight, not exceeding 1.5%, containing added ...)	1.25	kg.	7.5	
20	04.02.03.99	0403.90.22	--- In powder, granules or other solid forms, in containers of a capacity of more than ... of a fat content, by weight, not exceeding 1.5%	1.25	kg.	7.5	
21	04.02.03.99	0403.90.23	--- In powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5%	1.25	kg.		
22	04.02.03.99	0404.90.10	-- In powder, granules or other solid forms, whether or not containing added sugar or other sweetening matter	1.25	kg.	7.5	7.5
23	04.02.04.00	0403.90.24	--- Buttermilk				60.0
24	04.03.01.00	0405.00.10	- Butter	1.75	kg.	7.5	80.0
25	04.03.02.00	0405.00.02	- Butter oil	1.75	kg.	7.5	80.0
26	04.04.01.01	0406.30.20	- Processed cheese, not grated or powdered	1.2	kg.	3.5	38.5
27	04.04.01.03	0406.90.20	-- Muenster	1.65	kg.	3.5	60.0
28	04.04.01.04	0406.10.10	-- Mozzarella	1.65	kg.	3.5	60.0

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
29	04.04.01.99	0406.10.90	-- Other	0.50	kg.	3.5	50.0
30	04.04.01.99	0406.20.90	-- Other	0.5	kg.	3.5	50.0
31	04.04.01.99	0406.40.00	- Blue veined cheese	0.5	kg.	3.5	50.0
32	04.04.01.99	0406.90.90	-- Other	0.5	kg.	3.5	50.0
33	04.04.02.00	0403.90.13	--- Curd	0.10	kg.	3.5	
34	04.04.02.00	0406.20.10	-- For industrial use	0.1	kg.		3.5
35	04.04.02.00	0406.90.11	--- For industrial use, unseparated, in containers of 20.0 kg. or more	0.10	kg.	3.5	3.5
36		0406.90.19	--- Other	1.65	kg.	3.5	60.0
37	15.02.01.00	1502.00.10	- Fats of bovine cattle	0.30	kg.	7.50	57.5
38	15.03.01.00	1503.00.40	- Oleo-oil	1.27	kg.	7.50	87.5
39	15.07.01.01	1515.21.00	-- Crude oil	0.30	kg.		7.5
40	15.07.01.02	1507.10.00	- Crude oil, whether or not degummed	0.30	kg.		7.5
41	15.07.01.03	1513.11.00	-- Crude oil	0.30	kg.		7.5
42	15.07.01.99	1508.10.00	- Crude oil	0.30	kg.	7.50	35.0
43	15.07.01.99	1511.10.00	- Crude oil	0.30	kg.	7.50	35.0
44	15.07.01.99	1512.11.00	-- Crude oils	0.30	kg.	7.50	35.0
45	15.07.01.99	1512.21.00	-- Crude oil, whether or not gossypol has been removed	0.30	kg.	7.50	35.0

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
46	15.07.01.99	1513.21.00	-- Crude oils	0.30	kg.	7.50	35.0
47		1513.29.00	-- Other		kg.	7.50	35.0
48	15.07.01.99	1514.10.00	Crude oils	0.30	kg.	7.50	35.0
49	15.07.01.99	1515.11.00	-- Crude oil	0.30	kg.	7.50	35.0
50	15.07.01.99	1515.30.10	-- Crude oil	0.30	kg.	7.50	35.0
51	15.07.01.99	1515.40.10	-- Crude oil	0.30	kg.	7.50	35.0
52	15.07.01.99	1515.50.10	-- Crude oil	0.30	kg.	7.50	35.0
53	15.07.01.99	1515.90.11	--- Crude	0.30	kg.	7.50	35.0
54	15.07.01.99	1515.90.90	-- Other	0.30	kg.	7.50	35.0
55	15.07.02.99	1507.90.00	- Other	0.30	kg.	7.50	35.0
56	15.07.02.99	1508.90.00	- Other	0.30	kg.	7.50	35.0
57	15.07.02.99	1511.90.00	Other	0.30	kg.	7.50	35.0
58	15.07.02.99	1512.19.00	-- Other	0.30	kg.	7.50	35.0
59	15.07.02.99	1512.29.00	-- Other	0.30	kg.	7.50	35.0
60	15.07.02.99	1513.19.00	-- Other	0.30	kg.		7.5
61	15.07.02.99	1514.90.00	- Other	0.30	kg.	7.50	35.0
62	15.07.02.99	1515.29.00	-- Other	0.30	kg.		7.5
63	15.07.02.99	1515.50.90	-- Other	0.30	kg.	7.50	35.0

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
64	15.07.02.99	1515.90.19	--- Other	0.30	kg.	7.50	35.0
65	1513.01.00	1517.10.00	- Margarine, excluding liquid margarine	0.30	kg.	7.50	30.0
66	15.13.80.00	1517.90.10	-- Mixtures of vegetable oils	0.30	kg.	7.50	35.0
67	15.13.80.00	1517.90.90	-- Other	0.30	kg.	7.50	35.0
68	17.01.01.00	1701.11.00	-- Cane sugar	1.80	kg.		7.5
69	17.01.01.00	1701.12.00	-- Beet sugar	1.80	kg.		7.5
70	17.01.02.99	1701.91.90	--- Other	1.80	kg.		7.5
71	17.01.02.99	1701.99.90	--- Other	1.80	kg.		7.5
72	21.06.01.00	2102.20.00	- Inactive yeasts; other single cell microorganisms, dead	0.10	kg.	7.50	25.0
73	21.06.80.00	2102.10.00	- Active yeasts				60.0
74	21.07.80.99	2106.10.90	-- Other	0.15	kg.	7.50	15.0
75	23.01.01.02	2301.20.00	- Flours, meals and pellets of fish or of crustaceans, molluscs or other aquatic invertebrates	0.20	kg.	7.5	
76	25.01.01.01	2501.00.10	- Salt, unrefined	0.20	kg.	7.5	
77	25.01.01.01	2501.00.20	- Pure sodium chloride (analytical grade)	0.20	kg.	7.5	
78	25.01.01.02	2501.00.91	-- Prepared for animal feeding stuffs (salt)	0.20	kg.	7.5	50.0
79	25.01.80.00	2501.00.30	- Table salt	0.20	kg.	7.5	
80	25.01.80.00	2501.00.99	-- Other (salt)	0.20	kg.	7.5	12.5

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
B. Tariff headings subject to prior licensing							
81	02.05.01.02	0209.00.12	- Pig fat				60.0
82	02.05.01.02	0209.00.13	- Poultry fat				60.0
83	02.05.01.02	0209.00.19	- Other				60.0
84	02.06.80.01	0210.90.29	- Other	0.05	kg.	7.5	14.5
85	07.02.20.00	0710.40.10	-- Corn on the cob				25.0
86		1102.20.10	-- Pregelatinized	0.10	kg.	7.5	15.0
87	07.02.20.00	2008.99.11	---- Frozen corn on the cob				25.0
88	07.02.21.00	2008.99.19	---- Other				20.0
89	11.01.80.03	1102.20.90	-- Other	0.50	kg.	7.5	107.5
90	15.01.01.00	1501.00.10	- Lard and other pig fat	0.30	kg.	7.50	40.0
91	15.01.02.00	1501.00.20	- Poultry fat	0.30	kg.	7.50	35.0
92	15.06.00.00	1506.00.00	Other animal fats and oils and their fractions, whether or not refined, but not chemically modified	0.30	kg.	7.50	50.0
93	15.07.02.02	1515.19.00	-- Other	0.03	kg.	7.50	10.0
94	15.07.02.03	1515.30.90	-- Other	0.30	kg.	7.50	35.0
95	15.07.02.04	1515.40.90	-- Other	0.02	kg.	7.50	10.0
96	15.08.01.00	1518.00.12	-- Linseed	0.03	kg.	7.50	10.0

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
97	15.08.80.00	1518.00.19	-- Other				27.5
98	15.08.80.00	1518.00.99	-- Other				27.5
99	15.12.01.00	1516.20.20	-- Hydrogenated castor oil				20.0
100	15.12.80.00	1516.10.00	- Animal fats and oils and their fractions	0.30	kg.	7.50	20.0
101	15.12.80.00	1516.20.90	-- Other	0.30	kg.	7.50	20.0
102	21.02.80.99	2102.30.00	- Prepared baking powders				60.0
103	21.07.80.07	2103.90.31	--- Mixed seasonings for industrial use for sausage-making	17.50			
104	21.07.80.07	2106.10.20	-- Preparations for sausages				17.5
C. Tariff headings subject to reference prices							
105	02.02.01.03	02.07.10.10	-- Fowls of the species gallus domesticus (not cut in pieces, fresh or chilled)				60.00
106		02.07.21.00	-- Fowls of the species gallus domesticus (not cut in pieces, frozen)				60.00
107	02.02.01.04	02.07.39.11	---- Fowls of the species gallus domesticus (cuts excluding offal)				60.00
108		02.07.41.10	--- Cuts (whether or not boned) of fowls of the species gallus domesticus, frozen				60.00
109	10.05.02.00	10.05.90.90	-- Other (maize)				40.00
110	10.06.01.99	10.06.10.90	-- Other (rice)				90.00

No.	CCCN	HS heading	Description	Customs Tariff			
				Specific	Unit	Additional	Ad valorem
111	10.06.02.00	10.06.30.00	- Semi-milled or wholly milled rice, whether or not polished or glazed				90.00
112		10.06.40.00	- Broken rice				90.00
113	10.07.03.00	10.07.00.90	- Other (sorghum)				40.00
114	11.02.02.03	11.04.23.20	-- Other, sliced or broken (maize)				40.00
115	73.10.02.03	72.14.20.10	-- Corrugated iron bars and rods for reinforcing concrete				40.00

Note: Imports of all agricultural products are subject to approval by the Ministry of Agricultural Development.

REPUBLIC OF PANAMA

Accession to GATT/WTO

Intellectual Property Regime

The Government of Panama is submitting the following information on its Intellectual Property Regime.

1. GENERAL

(a) Evolution of intellectual property regime

The Republic of Panama has a long history of legislative protection of intellectual property rights. Since 1916, through the dispositions of the Administrative Code, the Government validates and protects these rights.

Copyright

Through Law 1 of 16 August 1916 the Administrative Code of the Republic of Panama was approved, in which Book V, Title IV, the "Literary and Artistic Property" was regulated (Articles 1889-1966).¹ This was the first copyright law of the Republic.

Article 40 of the first Constitution of the Republic, adopted in 1904, established:

"Article 40: Every author or inventor will enjoy the exclusive property of his work or invention for the time and under the conditions determined by law".

The Construction of 1972, as modified in 1978 and 1983, in force, establishes in its Article 49:

"Article 49: Every author, artist or inventor enjoys the exclusive property of his work or invention during the time and under the conditions determined by law".

Law 15 of 8 August of 1994 is the new Copyright Law. This Law represents a concrete result of the process of modernization under which Panamanian legislation on intellectual property is being reviewed.

Industrial property

The Administrative Code (Articles 2005-2035), Executive Decree 1 of 3 March of 1939 and the General Inter-American Convention on Trademarks and Commercial Protection, regulate jointly industrial property.

¹Copyright dispositions contained in Title V, Book IV of the Administrative Code were subrogated by Law 15 of 8 August of 1994 (Copyright Law).

- (b) Responsible agencies for policy formulation and implementation.
 - (b)(1) Copyright, and related rights, is competence of the General Directorate of Copyright, of the Ministry of Education.
 - (b)(2) The competent authority for industrial property matters is the General Directorate for Industrial Property Registry, of the Ministry of Commerce and Industries.
- (c) Membership of international intellectual property conventions and of regional or bilateral agreements.

Panama is a party to the following conventions regarding intellectual property:

- (1) Convention Establishing the World Intellectual Property Organization;
 - (2) General Inter-American Convention on Trademarks and Commercial Protection;
 - (3) Convention on Literary and Artistic Property (Buenos Aires, 1910);
 - (4) Inter-American Convention on Rights of Authors of Literary, Scientific, and Artistic Works (Washington, 1946);
 - (5) Universal Copyright Convention (Geneva, 1952);
 - (6) Universal Copyright Convention (Paris, 1971);
 - (7) Inter-American Convention on Protection of Performers, Producers of Phonogrammes, and Broadcasting Organizations;
 - (8) Convention for the Protection of Producers of Phonogramme Against Unauthorized Duplication of their Phonogrammes;
 - (9) Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite.
2. SUBSTANTIVE STANDARDS OF PROTECTION, INCLUDING PROCEDURES FOR THE ACQUISITION AND MAINTENANCE OF INTELLECTUAL PROPERTY RIGHTS

II. COPYRIGHT

Regime in force

The legislation in force in the Republic of Panama regarding copyrights is Law 15 of 8 August 1994, by which the Copyright and Related Rights Law is approved. This Law is a recent effort of the Government of Panama to modernize its legislation, since most previous legislation was basically included in the Administrative Code dated 1916.

Law 15 includes specific regulation of audiovisual work, computer programmes, architectural work, press articles, moral rights, patrimonial rights, several kind of contracts, mandatory licensing, regulation of related rights, etc.

There is a special chapter related to the infringement of the law, which includes administrative and judicial sanctions.

SUMMARY OF LAW 15 OF 8 AUGUST 1994

Title I

General Dispositions

Protection of author's rights over their literary, didactic, scientific or artistic work is recognized. Definitions of author, competent authority, artist, copy, editor, phonogrammes, work, computer programmes and other terms are included.

Title II

Subject

The author (co-authors). Works created for other natural or juridical persons are considered.

Title III

Object

Object of Copyright Law is the work as a result of the intellectual creation. An enumeration of works specially considered is included. Translations, adaptations and compilations are also object of protection.

Title IV

Special Dispositions for Certain Works

CHAPTER I: AUDIOVISUAL WORKS. Who are considered co-authors. Moral rights belong to the director, unless there is another contract between co-authors. In general, co-authors establish the rights. The Law determines the rights when there is no pre-established arrangement.

CHAPTER II: COMPUTER PROGRAMMES. Presumption of who is the producer of the computer programme. Effects of the contract between the producer and the author of the programme.

CHAPTER III: ARCHITECTURAL WORKS. Rights of the author regarding modification of the work. If he does not agree with the modifications he can reject paternity of the work.

CHAPTER IV: PLASTIC WORK. Effects of the contract where property of the object containing the plastic work is transferred. Dispositions in case of resale.

CHAPTER V: JOURNAL ARTICLES. Cession of articles to be published in newspapers, magazines or other media, unless otherwise established, is considered to give to the owner or editor the right to publish it only once. Other dispositions.

Title V

GENERAL DISPOSITIONS. Original ownership of a work includes patrimonial and moral rights. These rights are independent of the property of the object in which the work is incorporated. Copyright on translations.

MORAL RIGHTS. Include: right of disclosure; right of authorship; right of integrity; right of access; right to revoke cession or to remove the work from commerce.

PATRIMONIAL RIGHTS. Include specially: right of modification, public communication (the law establishes what are public communication acts), reproduction, distribution and each of them is independent from the other.

Title VI

DURATION. Patrimonial rights last during the life of the author and fifty (50) years after his death. It is transferred by inheritance according to dispositions of the Civil Code.

LIMITS. What are considered licit communications without author's authorization or remuneration.

Title VII

Transferral of Rights

Modes to transfer patrimonial rights. Contracts of edition. Contract of Representation and Music Performance. Phonographic inclusion. Mandatory Licensing.

Title VIII

Related Rights

The recognition of protection on related rights does not affect protection of copyrights of scientific, literary or artistic work. Dispositions on exclusive rights of artists, interpreters and performers.

Producers of phonogrammes have the exclusive right to authorize or not the reproduction of his phonogrammes.

Broadcasting entities have exclusive rights to authorize or not the establishment, reproduction and retransmissions of its transmissions by any means or procedures. Protection granted to broadcasting entities is for fifty (50) years.

Title IX

Collective Associations

Collective associations are established to represent their associates and defend their rights, including those affiliated to similar foreign associations. They require government authorization and will be fiscalized as the regulation establishes.

Title X

Registry of Copyright and Related Rights

The Copyright and Related Rights Registry Office, attached to the General Directorate of Copyright, will be in charge of the applications for inscription of the works, acts and contracts related to the rights recognized by the law.

The General Directorate of Copyright will regulate the requisites and formalities for the inscription of the works and other acts that must be registered, according to their nature.

The authors, editors, artists, producers or expositors of the works and productions protected by this law, will deposit in the Registrar Office copies of the work or production in those terms determined by the General Directorate of Copyrights.

Formalities established in precedent Articles have only declaratory character, to give juridical security to the owners, and do not create rights. Therefore, the omission of registration or deposit will not prejudice the enjoyment or exercise of the rights recognized by this law.

Title XI

General Directorate of Copyright

The General Directorate will develop registration, deposit, surveillance and inspection functions in the administrative area.

In arbitration cases submitted to the Directorate, the procedures established in the Judicial Code will be applied.

Title XII

Actions and Proceedings

(See 3. Enforcement, below).

Title XIII

Scope of Application of the Law

Article 127. This Law applies to the works when the author, or at least one of the co-authors, is Panamanian or is domiciled in the Republic; or if, notwithstanding with the nationality or domicile of the author, the works were published in Panama, for the first time, or published in Panama within thirty (30) days following the first publication.

Works of art permanently incorporated to real estate located in Panama are equivalent to published works.

Stateless refugees and those with controvertible nationality are equivalent to the nationals of the country where they are domiciled.

Article 128. Works not included in the above Article will be protected according to international conventions to which the Republic is a party or will be in the future.

If there is no applicable convention, such works will enjoy the protection established in this law, if the author's country of origin grants equivalent protection to Panamanian authors.

Article 129. Interpretations or artistic performances, phonographic productions and broadcasting emissions protected by Title VIII are subject to this law, if the right owner is Panamanian or is domiciled in the Republic; or if, notwithstanding the nationality or domicile of the right owner, these interpretations, productions or emissions were made in Panama, or published in Panama for the first time or within thirty (30) days following the first publication.

Dispositions of Article 127 and Article 128 are applicable to foreign productions and other related rights recognized by this law.

Title XIV

Final Dispositions

II. Industrial Property

Regime in force

Industrial property is regulated by the Administrative Code and Executive Decree No. 1 of 3 March of 1939. The Government has recognized the obsolescence of this legislation. Therefore, a project of law has been approved by the Cabinet and should be approved by the Legislative Assembly in the following months. In that respect, the preamble of the draft establishes:

- The Administrative Code and the Executive Decree regulating patents, trademarks and tradenames are dispositions from the beginning of our Republican history. These dispositions are imprecise regarding the concepts of patents, trademarks, and do not regulate services marks nor utility models, industrial designs, collective marks, or licences of use for trademarks or patents.
- There is no clear regulation for unduly use of industrial property rights and there is a discriminatory regulation for protection of applications made by foreigners. Registry for foreign trademarks and patent applications are conditioned to requisites contrary to international covenants, to which Panama will not be able to adhere unless there is a change in its policy.
- Countries, due to telecommunications advances, trade and technological exchange, demand industrial property legislation that fully develops all possible kinds of trademark's registry, patents, utility models, industrial designs, as well as simple registration procedures, licences, and severe sanctions for the infringement of rights of the owners of industrial property rights.

Bearing in mind the process of modification of the present regime, the following summary is provided:

Trademarks and tradenames

Trademarks and tradenames may be protected whether the owners are nationals or foreigners. Period of registration is 10 years, but registration can be renewed indefinitely for equal periods if application for renewal is filed within one month before or after expiration of term.

Applications for registration may be filed by owner personally or through a duly authorized attorney at law, must be written on stamped paper and must be accompanied by: (1) document setting forth distinctive signs constituting trademark or tradename, process or article to which same refers and place where same is manufactured; (2) receipt showing payment of government fees and cost of publication of application in Industrial Property Bulletin; (3) six copies or facsimiles and drawing thereof signed by attorney; (4) one electrotpe of mark; (5) in case of foreign trademark, certified copies or application and certificate issued in country of origin; (6) where application is through an attorney at law, proper power of attorney. Two documents last mentioned must be authenticated by Panamanian consular or diplomatic representative. All documents must be in Spanish language or, in foreign language, proper translation must be made by public translator.

Goods or services pertaining to different classes cannot be included in same application. It is necessary to file as many applications as classes to be protected with mark. Marks covering services are registered as service marks.

There are administrative procedures (Trials for Opposition to the Registration of Trademarks), civil procedures and penal procedures. There are processes for the annulment of registries and concession procedures in which registration requests are published for the benefit of third parties.

Patents

Patents are granted to inventors, whether nationals or foreigners, by letters of patent (patente de invención) issued by the Executive Power of the Republic, (Administrative Code, Articles 1987-2004). The term is for 20 years. In case of a foreign patent, no Panamanian patent may be granted for a term exceeding 15 years, and in no event may the term extend beyond the duration of the original patent. Extension or renewal may be granted where original patent was not for full term, provided this is, in opinion of the Executive Power, justified by the importance of the improvement. Extension or renewal may be applied for at any time up to one month after expiration of original term.

Application may be filed by interested party personally or through a duly registered attorney at law, must be on stamped paper and must be accompanied by: (1) duplicate detailed explanation of invention-specifications; (2) drawing for same; (3) receipt covering payment of taxes for term of patent; (4) if possible, a model. Documents in foreign language must be translated into Spanish.

The protection of Industrial Property in Panama includes the sanctions established in Chapter VI (Crimes against the rights of others) and Title XII (Crimes against the national economy) of the Penal Code.

Project of law on industrial property regime

Project Law by which "Industrial Property is regulated" is ready to be presented to the National Assembly for its approval. This project includes WTO Regulations Concerning Intellectual Property Matters established in the TRIPs Agreement. It is a comprehensive document regulating patents, utility models, trademarks, industrial designs, registration and cancellation procedures, notifications, administrative resources, etc.

The Project is the result of comprehensive research and international consultation, including specialists of the World Intellectual Property Organization (WIPO).

Project of law on industrial property

Project of Law on Industrial Property is the result of consultation of several international regulations, including TRIPs.

Lack of regulation of important industrial property aspects has been solved, including clear and expedite procedures for registration, administrative procedures and sanctions.

The scheme of the draft law is as follows:

Trademarks, including services marks. Chapter V regulates all aspects of trademarks.

Geographical indications, including applications of origin. This subject is covered by Title IV, Chapter VI.

Industrial designs. Chapter III develops all aspects of industrial designs, including protection and registration procedures.

Patents. Title II regulates patents and utility models, including procedures, transmission of rights, nullification and cancellation.

Undisclosed information, including trade secrets and test data. Title IV regulates industrial secrets.

A draft Law on the PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, of 20 March 1883 revised in Brussels on 14 December 1900, in Washington on 2 June 1911, in the Hague on 6 November 1925, in London on 2 June 1934, in Lisbon on 31 October 1958, and in Stockholm on 14 June 1967, is under discussion.

3. ENFORCEMENT

4.1 Copyright and related rights

(a) Civil judicial procedures and remedies

Title XII, Chapter I of Law 15 develops Civil Actions and Procedures.

Civil actions based on this law will be developed and decided on summary process, according to dispositions of the Judicial Code.

(b) Provisional measures

Provisional measures include a judicial order to suspend the illegal activity without prejudice of requesting compensation for material and moral damages.

The plaintiff can also request the cautelar measures established in the Judicial Code and the "urgent" cautelar measures established in the Law (seizure of the income derived from the illegal activity; seizure of the goods illegally produced and of the equipment used to produce them; suspension of the reproduction, communication or distribution activity).

(c) Administrative procedures and remedies

Administrative procedures and remedies are competence of Directorate General of Copyright. The violations of Law 15, or its regulation, that are not considered a crime will be sanctioned by this authority. There is a process of notification to the transgressor, so that he can present evidence for his defence within the next 15 days.

The Directorate General of Copyright will proceed to suspend any public communication of the works, interpretation or productions protected by the law, when the responsible does not prove his condition of licensee or cessionary of the right.

Decisions of the Directorate General may be reconsidered by the Director General and appealed to the Minister of Education.

(d) Criminal procedures

Law 15 of 1994 - Copyright Law - establishes penal sanctions (Title XII, Chapter II, Infringement and Sanctions), which are subject to criminal procedures.

Prison sanctions go from 30 days to 4 years. These sanctions may be improved in one third in some cases. Additional pecuniary sanctions can be established by the judicial authority.

4.2 Industrial property

(a) Civil judicial procedures and remedies

There are administrative procedures (Trials for Opposition to the Registration of Trademarks), civil procedures and penal procedures. There are processes for the annulment of registries and concession procedures in which registration requests are published for the benefit of third parties.

(b) Criminal procedures

The protection of Industrial Property in Panama includes the sanctions established in Chapter IV (Crimes against the rights of others) and Title XII (Crimes against the national economy) of the Penal Code.

Project of law on industrial property

Specific administrative and civil procedures are established for each category of right, including action's prescription, administrative remedies during the process of registration, opposition to the registration and annulment.

Administrative procedures are the responsibility of the General Directorate for Industrial Property Registry.

CONSEJO DE GABINETE
DECRETO DE GABINETE N°
(DE_____ DE_____ DE 1994)

"Por el cual se establece el sistema de valoración de las mercancías a efectos aduaneros"

EL CONSEJO DE GABINETE,

CONSIDERANDO:

Que la República de Panamá ha solicitado su incorporación al Acuerdo General sobre Aranceles Aduaneros y Comercio, conocido por las siglas GATT;

Que, para ello, resulta necesario adoptar las reglas que, en materia de valoración de la mercancía a efectos tributarios, ha adoptado el GATT, conforme éstas se encuentran vigentes, en texto acordado en la Ronda Uruguay;

Que es competencia constitucional del Consejo de Gabinete fijar y modificar el arancel de importación, tasas u otras disposiciones concernientes al régimen de aduanas, de conformidad con el numeral 7° del artículo 195 de la Constitución Política;

Que el expresado precepto constitucional señala que el Consejo de Gabinete, al ejercer tal atribución, debe ajustarse a las leyes cuadro que la Asamblea Legislativa adopte, al amparo del ordinal 11 del artículo 153 de la Constitución Política y, en su ausencia, podrá ejercer tales atribuciones mediante Decreto, que deberá remitir a la Asamblea Legislativa;

Que la Asamblea Legislativa aún no ha expedido una ley cuadro en materia arancelaria, por lo que procede la expedición de este Decreto, que introduzca, en el ordenamiento aduanero, las reglas de valoración de las mercancías vigentes en la actualidad en el GATT.

DECRETA:

Artículo 1: La base imponible del impuesto de importación será el valor que, a efectos aduaneros, tenga la mercancía, de acuerdo a la definición de valor del Acuerdo General sobre Aranceles Aduaneros y Comercio (GATT).

Artículo 2: El valor en aduana de las mercancías importadas será, en primera instancia, el valor de transacción, esto es, el precio realmente pagado o por pagar por las mercancías cuando éstas se venden para su exportación al país de importación en facturas expedidas con no más de noventa días con anterioridad a la presentación de la declaración aduanera, ajustado de conformidad con el artículo 9, siempre que concurren las siguientes circunstancias:

- a) que no existan restricciones a la cesión o utilización de las mercancías por el comprador, con excepción de las que impongan el ordenamiento jurídico o las autoridades aduaneras, limiten el territorio geográfico donde puedan venderse las mercancías o no afecten sensiblemente el valor de las mercancías;
- b) que la venta o el precio no dependan de ninguna condición o contraprestación cuyo valor no pueda determinarse con relación a las mercancías a valorar;

- c) que no revierta directa ni indirectamente al vendedor parte alguna del producto de la reventa o de cualquier cesión o utilización ulteriores de las mercancías por el comprador, a menos que pueda efectuarse el debido ajuste de conformidad con lo dispuesto en el artículo 9; y,
- d) que no exista una vinculación entre el comprador y el vendedor o que, en caso de existir, el valor de transacción sea aceptable a efectos aduaneros, en virtud de lo dispuesto en el siguiente artículo.

Artículo 3: Al determinar si el valor de transacción es aceptable a los efectos del artículo anterior, el hecho de que exista una vinculación entre el comprador y el vendedor no constituirá por sí mismo un motivo suficiente para considerar inaceptable el valor de transacción a efectos de la valoración aduanera. En tal caso se examinarán las circunstancias de la venta y se aceptará el valor de transacción siempre que la vinculación no haya influido en el precio. Si, por la información obtenida por el importador o de otra fuente, la Administración Aduanera tiene razones para creer que la vinculación ha influido en el precio, comunicará estas razones al importador y le dará oportunidad en el procedimiento de determinación para formular las alegaciones y argumentaciones que considere pertinentes. Si el importador lo pide, las razones se le comunicarán por escrito.

En una venta entre personas vinculadas, se aceptará el valor de transacción y se valorarán las mercancías de conformidad con el artículo anterior cuando el importador demuestre que dicho valor se aproxima significativamente a alguno de los precios o valores que se señalan a continuación, vigentes en ese momento:

- a) el valor de transacción en las ventas de mercancías idénticas o similares efectuadas a compradores no vinculados con el vendedor, para la exportación a Panamá;
- b) el valor en aduana de mercancías idénticas o similares, determinado con arreglo a lo dispuesto en el artículo 4;
- c) el valor en aduana de mercancías idénticas o similares, determinado con arreglo a lo dispuesto en el artículo 5;
- d) el valor de transacción en las ventas a compradores no vinculados con el vendedor, para la exportación a Panamá, de mercancías que sean idénticas a las importadas procedentes de un país distinto, siempre que no exista vinculación entre los vendedores en las dos transacciones que se comparen.

Al aplicarle los criterios señalados en los literales anteriores, deberán tenerse en cuenta las diferencias demostradas de nivel comercial y de cantidad, los elementos enumerados en el artículo 9 y los costos que soporte el vendedor en las ventas a compradores no vinculados con él, y que no soporte en las ventas a compradores con los que tiene vinculación.

Los criterios antes indicados se utilizarán por iniciativa del importador y con fines de comparación. No podrán establecerse valores de sustitución con base en los criterios antes mencionados.

Artículo 4: Si el valor en aduana no pudiese determinarse con arreglo a lo dispuesto en los dos artículos anteriores, el valor en aduana será el valor de transacción de mercancías idénticas vendidas para la exportación a Panamá y exportadas en el mismo momento que las mercancías objeto de la valoración, o en un momento aproximado.

Al aplicar el presente artículo, el valor en aduana se determinará utilizando el valor de transacción de mercancías idénticas vendidas al mismo nivel comercial y sensiblemente en las mismas cantidades que las mercancías objeto de la valoración. Cuando no exista tal venta, se utilizará el valor de transacción de mercancías idénticas vendidas a nivel comercial diferente o en cantidades diferentes, ajustado para tener en cuenta las diferencias atribuibles al nivel comercial o a la cantidad, siempre que estos ajustes puedan hacerse sobre la base de datos comprobados que demuestren claramente que aquéllos son razonables y exactos, tanto si suponen un aumento como una disminución del valor.

Cuando los costos y gastos enunciados en el artículo 9 estén incluidos en el valor de transacción, se efectuará un ajuste de dicho valor para tener en cuenta las diferencias apreciables de esos costos y gastos entre las mercancías importadas y las mercancías idénticas consideradas que resulten de diferencias de distancia y de forma de transporte.

Si al aplicar el presente artículo se dispone de más de un valor de transacción de mercancías idénticas, para determinar el valor en aduana se utilizará el valor de transacción más bajo.

Artículo 5: Si el valor en aduana de las mercancías importadas no puede determinarse con arreglo a lo dispuesto en los artículos anteriores, el valor en aduana será el valor de transacción de mercancías similares vendidas para la exportación a Panamá y exportadas en el mismo momento que las mercancías objeto de valoración, o en un momento aproximado. El valor en aduana se determinará utilizando el valor de transacción de mercancías similares vendidas al mismo nivel comercial y sensiblemente en las mismas cantidades que las mercancías objeto de la valoración. Cuando no exista tal venta, se utilizará el valor de transacción de mercancías similares vendidas a un nivel comercial diferente o en cantidades diferentes, ajustado para tener en cuenta las diferencias en dicho nivel comercial o de cantidades, siempre que estos ajustes puedan hacerse sobre la base de datos comprobados que demuestren claramente que aquéllos son razonables y exactos.

Cuando los costos y gastos enunciados en el artículo 9 estén incluidos en el valor de transacción, se efectuará un ajuste de dicho valor para tener en cuenta las diferencias apreciables de esos costos y gastos entre las mercancías importadas y las mercancías similares consideradas que resulten de diferencias de distancia y de forma de transporte.

Si al aplicar este artículo se dispone de más de un valor de transacción de mercancías similares, para determinar el valor en aduana de las mercancías importadas se utilizará el valor de transacción más bajo.

Artículo 6: Si el valor en aduana no pudiese hacerse conforme al método establecido en los artículos anteriores, se hará sobre las siguientes bases:

1. Si las mercancías importadas, u otras idénticas o similares importadas se venden en Panamá en el mismo estado en que son importadas, el valor en aduana se basará en el precio unitario a que se venda en esas condiciones la mayor cantidad total de las mercancías importadas o de otras mercancías importadas que sean idénticas o similares a ellas, en el momento de la importación de las mercancías objeto de la valoración, a personas que no estén vinculadas con aquellas a las que comprenden dichas mercancías, con las siguientes deducciones:

- a) las comisiones pagadas o convenidas usualmente, o los suplementos por beneficios y gastos generales cargados habitualmente, en relación con las ventas en Panamá de mercancías de la misma especie o clase;
- b) los gastos habituales de transporte y de seguros, así como los gastos conexos en que se incurra en Panamá;

- c) cuando proceda, los costos y gastos a que se refiere el artículo 9; y,
- d) los derechos de aduana y otros gravámenes pagaderos en Panamá por la importación o venta de las mercancías.

2. Si en el momento de la importación de las mercancías a valorar o en un momento aproximado, no se venden las mercancías importadas, ni mercancías idénticas o similares importadas, el valor se determinará con base en lo dispuesto en el numeral 1 de este artículo, sobre la base del precio unitario de mercancías idénticas o similares importadas en el mismo estado en que son importadas, en la fecha más próxima después de la importación de las mercancías objeto de la valoración pero antes de pasados noventa días de dicha importación.

3. Si ni las mercancías importadas ni otras mercancías que sean idénticas o similares a ellas, se venden en el país de importación en el mismo estado en que son importadas, y si el importador lo pide, el valor en aduana se determinará sobre la base del precio unitario a que se venda la mayor cantidad total de las mercancías importadas, después de su transformación, a personas en Panamá que no tengan vinculación con aquellos de quienes compran las mercancías, teniendo debidamente en cuenta el valor añadido en esa transformación y las deducciones previstas en el numeral 1 de este artículo.

Artículo 7: Si no fuese posible obtener el valor con arreglo a los métodos establecidos en los artículos precedentes, el valor se basará en un valor reconstruido. Dicho valor será el obtenido mediante la suma de los siguientes elementos:

- a) el costo o valor de los materiales y de la fabricación u otras operaciones efectuadas para producir las mercancías importadas;
- b) una cantidad por concepto de beneficios y gastos generales igual a la que suele añadirse tratándose de ventas de mercancías de la misma especie o clase que las mercancías objeto de la valoración efectuadas por productores del país de exportación en operaciones de exportación a Panamá;
- c) el costo o valor de todos los demás gastos que deban tenerse en cuenta para aplicar la opción de valoración en virtud de lo dispuesto por el artículo 10.

La Dirección General de Aduanas no podrá solicitar o exigir a una persona no residente en su propio territorio que exhiba, para su examen, un documento de contabilidad o de otro tipo, o que permita el acceso a ellos, con el fin de determinar un valor reconstruido. Sin embargo, la información proporcionada por el productor de las mercancías a objeto de determinar el valor en aduana con arreglo a las disposiciones de este artículo podrá ser verificada en otro país por las autoridades del país de importación, con la conformidad del productor y siempre que se notifique con suficiente antelación al gobierno del país de que se trate y que éste no tenga nada que objetar contra la investigación.

Artículo 8: Si el valor en aduana no pudiese obtenerse por ninguno de los métodos establecidos en los artículos que anteceden, será fijado por las autoridades aduaneras, según criterios razonables, compatibles con los principios y las disposiciones generales del Acuerdo relativo a la Aplicación del Artículo VII del GATT.

No obstante, las autoridades aduaneras no podrán basarse en:

- a) el precio de venta en Panamá de mercancías producidas localmente;

- b) un sistema que prevea la aceptación, a efectos de valoración en aduana, del más alto entre los valores posibles;
- c) el precio de mercancías en el mercado local del país exportador;
- d) un costo de producción distinto de los valores reconstruidos que se hayan determinado para mercancías idénticas o similares de conformidad con lo dispuesto en el artículo anterior;
- e) el precio de mercancías vendidas para exportación a un país distinto del país de importación;
- f) valores en aduana mínimos;
- g) valores arbitrarios, ficticios o irreales.

Si así lo solicita, el importador será informado por escrito del valor en aduana determinado de acuerdo con lo dispuesto en el presente artículo y del método utilizado a ese efecto.

Artículo 9: Para determinar el valor en aduana de conformidad con lo dispuesto en el artículo 2, se añadirán al precio pagado o por pagar por las mercancías importadas los siguientes elementos:

- a) las comisiones y gastos de corretaje, salvo las comisiones de compra, el costo de envases o embalajes que formen un todo con las mercancías de que se trate y los gastos de embalaje, tanto en materiales como en mano de obra;
- b) el valor, debidamente repartido, de los bienes y servicios que se indican a continuación, siempre que el comprador, de manera directa o indirecta, los haya suministrado gratuitamente o a precios reducidos para que se utilicen en la producción y venta para la exportación de las mercancías importadas y en la medida en que dicho valor no esté incluido en el precio realmente pagado o por pagar;
 - i) los materiales, piezas y elementos, partes y artículo análogos utilizados para la producción de las mercancías importadas;
 - ii) las herramientas, matrices, moldes y elementos análogos utilizados para la producción de las mercancías importadas;
 - iii) los materiales consumidos en la producción de las mercancías importadas;
 - iv) ingeniería, creación y perfeccionamiento, trabajos artísticos, diseños y planos, y croquis realizados fuera del país de importación y necesarios para la producción de las mercancías importadas;
- c) los cánones y derechos de licencia relacionados con las mercancías objeto de la valoración que el comprador tenga que pagar directa o indirectamente como condición de venta de dichas mercancías, en la medida en que los mencionados cánones y derechos no estén incluidos en el precio realmente pagado o por pagar;
- d) el valor de cualquier parte del producto de la reventa, cesión o utilización posterior de las mercancías importadas que revierta directa o indirectamente al vendedor.

Artículo 10: Se incluirán en el valor en aduanas los siguientes elementos:

- a) los gastos de transporte de las mercancías importadas hasta el puerto o lugar de la importación;
- b) los gastos de carga, descarga y manipulación ocasionados por el transporte de las mercancías importadas hasta el puerto o lugar de importación; y,
- c) el costo del seguro.

Artículo 11: Toda información que obtengan las autoridades aduaneras para la valoración de las mercancías será confidencial, y no podrá ser revelada salvo mediante orden judicial o de un agente del Ministerio Público, dentro de un proceso penal o de investigaciones sumariales, o por autorización expresa del propietario de la información.

Todo importador podrá acogerse a lo dispuesto en el Decreto de Gabinete N° 30 de 22 de octubre de 1994, en el que se establece el sistema de despacho de mercancías con pago garantizado.

Artículo 12: A los efectos de este artículo, se entenderá que existe vinculación entre las personas, solamente en los siguientes casos:

- a) si una de ellas ocupa cargos de responsabilidad o dirección en una empresa de la otra;
- b) si están legalmente reconocidos como asociadas en negocios;
- c) si están en relación de empleador y trabajador;
- d) si una persona tiene, directa o indirectamente, la propiedad, el control o la posesión del 5 por ciento o más de las acciones o títulos en circulación y con derecho a voto en ambas;
- e) si una de ellas controla directa o indirectamente a la otra;
- f) si ambas personas están controladas directa o indirectamente por una tercera;
- g) si ambas conjuntamente controlan directa o indirectamente a una tercera persona;
- h) si son de una misma familia, en el cuarto grado de consanguinidad o segundo de afinidad.

Artículo 13: El importador podrá exigir, para hacer valer sus derechos ante las autoridades aduaneras, una explicación pormenorizada, por escrito, del método utilizado para la determinación del valor en aduana, que se le deberá suministrar por la autoridad aduanera al momento de fijar el valor en aduana, y conjuntamente con el acto que lo fija.

El importador, si no está de acuerdo con lo determinado por la Aduana en el escrito, tendrá derecho al recurso de reconsideración dentro de los cinco días siguientes a la notificación del mismo. El importador podrá interponer el recurso de apelación dentro de los 10 días contados a partir de la notificación de la resolución que falla la reconsideración.

Artículo 14: Subróguese el literal b) del artículo primero del Decreto Ley 25 de 23 de septiembre de 1957, modificado por los Decretos 54 y 55 de 12 y 26 de junio de 1985 respectivamente, en lo que al sistema de valor de Bruselas se refiere.

Artículo 15: Remítase copia autenticada del presente Decreto a la Asamblea Legislativa, en cumplimiento del numeral 7° del artículo 195 de la Constitución Política.

Artículo 16: Este Decreto comenzará a regir a partir de su promulgación.

COMUNÍQUESE Y PUBLÍQUESE.

Dado en la ciudad de Panamá a los _____ días del mes de _____ de mil novecientos noventa y cuatro.

ERNESTO PÉREZ BALLADARES
Presidente de la República

RAÚL MONTENEGRO DIVIAZO
Ministro de Gobierno y Justicia