

ORGANIZACIÓN MUNDIAL DEL COMERCIO

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ADHESIÓN DE PANAMÁ

Comunicación de Panamá

Se ha recibido de la Misión Permanente de Panamá la siguiente comunicación.

La Misión Permanente de Panamá ante la Organización Mundial del Comercio por este medio tiene a bien remitir los siguientes documentos para información de los países Miembros que examinan la adhesión de Panamá a esta Organización:

- Resumen del Proyecto de Ley sobre defensa de la libre competencia y protección al consumidor;
 - Resumen del Proyecto de Decreto de Gabinete por el cual se establece el sistema de valoración de las mercancías a efectos aduaneros;
 - Resumen del Proyecto de Ley que reglamenta los procedimientos de licencia de importación;
 - Resumen del Proyecto de Ley por medio del cual se modifican algunos artículos del Código Fiscal y se elimina la factura consular;
 - Resumen del Proyecto de Ley sobre medidas fitosanitarias; y
 - Resumen del Proyecto de Ley sobre medidas zoosanitarias.
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A continuación se reproducen los resúmenes mencionados. (En inglés solamente)

SUMMARY OF DRAFT LAWS SUBMITTED TO THE WORKING PARTY
ON 8 FEBRUARY 1995

I. DRAFT LAW ON "DEFENSE OF FREE COMPETITION AND CONSUMER PROTECTION"

Contains provisions governing anti-dumping, countervailing measures and safeguards. This law also provides for the total abolition of price controls.

The draft Law in Defense of Free Competition is divided into eight Titles which develop the substance and process of the law.

Title I: Monopolies. This Title establishes the regulatory norms for practices which diminish, damage or impede free competition in production, distribution, and trade of goods and services. It seeks to encourage competition and eliminate and prevent monopolies and cartels. The law covers public and private sectors entities, as well as non-profits, but excludes unions and does not directly apply to patents and copyrights. It also excludes any entity or practice expressly allowed by the Constitution.

The provisions are divided between norms regulating *absolute* and *relative* monopolistic practices. The criterion for relevant markets and substantial economic power are established. Provisions are established for the submission, approval and denial of potential mergers.

Title II: Consumer Protection. This Title establishes the consumer protection norms as they relate to commercial contracts (and abuses therein), warranties, and truth in advertising norms. This includes the *absolute* and *relative* nullification of abusive clauses found in contracts.

The Title also establishes administrative procedure for reconciliation between buyers and sellers, as well as establishing legal recourse by consumers for recovering damages.

Title III: Unfair Business Practices. This Title establishes the protective norms for domestic industry and national production relative to foreign subsidies and dumping. It establishes the criterion for determining the validity of claims of unfair subsidies and dumping, the extent of any important damage, and the appropriate measures or sanctions to be taken in the event of any important damage.

The drafters of the law have taken particular caution in using GATT compliant criteria to determine the existence of dumping, the injury test, and causal link between imports and damage. *De minimis* rules and the obligation to end investigations when it has been determined that no injury has been caused are part of the draft law. Judicial procedures for remedies are also included.

Title IV: Safeguard Measures. This Title establishes the temporary protective measures for domestic industry and national production against massive imports of products resulting from unforeseen changes in world markets. It establishes the criterion for determining the validity of claims regarding the impact of sudden, massive imports on national production or domestic industry, the extent of the impact of these imports, and the appropriate temporary measures to be taken if an important impact can be proven.

Title V: Commission for Free Competition and Consumer Affairs. This Title creates a special autonomous entity, which has its own judicial standing. The Commission will organizationally be under the Commerce and Industry Ministry, and will have the role of consumer protection and consumer advocacy. The Commission will be led a three-member board, headed by a Director General named by the Executive.

Title VI: General Provisions. This Title establishes the conversion and assimilation of the Price Control Office and the Consumer Protection Division into a new entity called the Commission for Free Competition and Consumer Affairs.

Title VII: Judicial Procedure. This Title establishes the judicial procedural norms applicable to the substantive norms established in the previous Titles. It creates new courts in the Judicial branch, and introduces Anglo-American legal concepts such as the "discovery" process and "class action" suits.

Three Circuit Courts, specialized in commercial law, will be established, which will handle cases which arise under this law, as well as other commerce-related cases such as trademarks, copyrights, etc. Additionally, a Superior Court will be established to rule on appeals emanating from the lower commercial Circuit Courts.

The Court will allow oral hearings, and will establish preliminary audiences in order to simplify and streamline court processes. The Court will allow the "discovery" process, as well as "class action" suits, which are new to Panamanian legislation.

Title VIII: Rescissions. This Title rescinds many previous Cabinet Decrees (including Decree No. 15 which regulates dumping and subsidies in the present), Executive Decrees and laws pertaining to price controls and other State-sanctioned barriers to free competition, thus allowing this law to have a more substantive impact on free competition in Panama. It repeals any provision which may be contrary to this law.

II. DRAFT CABINET DECREE ON "VALUATION PROCEDURES FOR CUSTOMS PURPOSES"

The draft Cabinet Decree on Valuation Procedures for Customs Purposes is, in most cases, a literal transcription of the WTO Valuation Code. In this sense, the definition of "value" has been taken from the Agreement. It also includes the methods of valuation established in the Valuation Code ("transaction value", including identical or similar commodities, "deducted value", "constructed value", and these methods are to be used in the same prelation order established by the Code.

Article 8 establishes that: "If the value cannot be obtained through any of the above-mentioned methods, it will be determined by customs authorities, following reasonable criteria, complying with the principles and general provisions of the Agreement related to the Application of Article VII". The value will not be determined on the methods described in Article 7 of the Valuation Code.

All the elements considered in Articles 9 (to adjust the transaction value) and 10 (insurance and freight) of the Valuation Code are included in the draft Cabinet Decree.

All information obtained by customs authorities for valuation purposes is confidential and cannot be revealed unless there is a judicial order or an order from a representative of the Prosecutor's office, within a criminal procedure or during investigations, or due to expressed authorization of the owner of the information.

The draft takes the same cases of Article 15.4 to be considered transactions between related parties.

The importer can demand a written detailed explanation of which method is used to determine the customs value. This explanation must be provided by the customs authority at the time of the appraisal. If the importer does not agree with the written explanation, he can request for reconsideration

within the following five (5) days to the notification. The importer can appeal within ten (10) days from the date of the notification of the reconsideration decision.

III. DRAFT LAW ON "REGULATION OF IMPORT LICENSING PROCEDURES"

Draft law on Regulation of Import Licensing Procedures is a framework which determines the principles to regulate both automatic and non-automatic licences.

Article I. General Provisions. The definition of Import Licensing Procedures, Automatic Licences and non-automatic licences are included among these general provisions. All definitions were taken from the WTO's Licensing Agreement.

Specific obligations are established for those institutions responsible for the issuance of a licence: updated public information concerning procedures to request a licence, conditions of the applicant, and commodities subject to licensing requirements. This publication must be done, when possible, 21 days prior to the effective date of the requisite and never after that day.

No application shall be denied for minimal errors which do not alter basic data. Applicants will not need to go to more than three (3) institutions to fulfil the requirements to obtain a licence.

Article II. Automatic Licences. The Automatic Licensing Procedures will not have restrictive import effects. In this sense, all persons, enterprises or institutions with the legal requirements to import commodities subject to import licences will have the same right to request and obtain an import licence; Applications adequately presented and complete will be approved in a maximum of 10 working days.

Article III. Non-Automatic Licences. The non-automatic licences procedure will not have restrictive or distortive effects on imports other than those resulting from the establishment of the restriction. There will be no more administrative charges than those absolutely necessary to administer the measure.

When licensing requirements are not related to quantitative restrictions, the corresponding institutions will publish sufficient information on the basis for the licences' assignation.

The draft law creates the Interministerial Commission to Regulate Import Licensing Procedures. After the Commission concludes the regulatory work, each institution will administer its corresponding licences, according to the principles established in this framework law.

IV. DRAFT LAW BY WHICH "SOME ARTICLES OF THE FISCAL CODE ARE BEING MODIFIED"

This bill draft provides for the elimination of the Consular invoice and establishes a services fee which is fully GATT compliant. It has recently been approved by the Cabinet and was presented to the National Assembly as Draft Law No. 9 of 18 February 1995.

"Every person sending merchandise from abroad to the Republic, by other means than mail, will also provide the following documents:

1. Commercial Invoice
2. Bill of landing, airway bill or cargo manifest, and
3. The licence, in case of restricted imports.

Shippers of "champagne" type wine must present also a certificate of origin, issued by the competent authority of the production site".

It also eliminates the ad valorem fee charged on each declaration, and replaces it for a fixed rate of B 70.00 (T.A.S.A. - Customs Services Fee) related to the costs of the services rendered. Declarations containing imports for a total c.i.f. value under FIVE HUNDRED DOLLARS (B 500.00) are exempt from this fee.

If the consignee is unable to present the commercial invoice or the bill of landing, or both, with the information and formalities established by law, or if he does not have them, he will express so in the customs declaration. In this case, the consignee will constitute guarantee for the amount determined by the regulations, to cover the import duty and ulterior presentation of the documents.

The consignee will lose the guarantee if documents are not presented within the established period.

Commodities imported by mail require a commercial invoice duly legalized.

Commodities imported by mail are subject, besides the import duty and other customs charges, to the fees and postal surcharges determined by the regulations related to International Conventions.

V. DRAFT LAW FOR PHYTOSANITARY MEASURES

Phytosanitary protection measures are established.

TITLE I:

CHAPTER I. Develops its principles: To prevent the import, establishment and dissemination of pests of quarantine relevance.

Also, to prevent health and environmental contamination caused by the wrong use of pesticides.

CHAPTER II. Develops its objectives: To empower the National Phytosanitary Directorate to regulate and enforce all pest prophylaxes and control.

CHAPTER III. Establishes definitions. It establishes the meaning of terms and expressions used in this law.

CHAPTER IV. Competence matters. The National Phytosanitary Directorate is empowered to adopt all technical, administrative and legal measures to develop its functions.

CHAPTER V. Revenues. The Directorate's revenues system to cover administrative costs for executing and improving phytosanitary measures is established.

CHAPTER VI. The National Consulting Council for Phytosanitary Measures is established. This is a consultative and advisor national organism, integrated by governmental and non-governmental institutions related with phytosanitary measures.

TITLE II:

CHAPTER I. Vegetables' transshipment, imports and exports regulations are established.

CHAPTER II. Inspection and quarantine aspects are regulated.

CHAPTER III. Control on raw material, and phytosanitary activities and services.

CHAPTER IV. Establishes aspects related to phytosanitary approval, certification and verification.

TITLE III:

CHAPTER I. Establishes rules related to infringements, sanctions, environmental crimes and appeals.

VI. DRAFT LAW FOR ZOOSANITARY MEASURES

This draft law develops rules for veterinary services linked to animal production within the country.

The scope of application is linked to animal health to assure efficiency in production; to avoid disease transmission in the cohabitation of humans and animals (**zoonosis**) and to guarantee the absence of diseases in animal trade, its products and sub-products.

To achieve these objectives, the law establishes:

- All the legal framework to prevent the entrance of diseases and pests; this is quarantine;
- sanitary education of producers and consumers, so that producers achieve good levels of production and consumers acquire healthy products;
- disease eradication campaigns, to avoid mortality and low production;
- the special regime to limit development of species susceptible to the Foot and Mouth Disease in the Province of Darien is maintained. This is complemented by the existence of a high security lab for vesicular diagnosis to all countries in Central America. This system of surveillance and Foot and Mouth Disease prevention has benefitted all North America;
- the draft law develops the humanitarian treatment of animals and environmental potentiality;
- the system of accreditation and approval of veterinaries is established;
- regarding animal trade, specifically animal imports and its products and sub-products imports, general rules scientifically supported are established, with the sole purpose of facilitating trade without endangering domestic production;
- pharmaceutical, biological and chemical products for veterinary use, as well as animal consumption food is regulated;
- citizens have the right to express disagreement and to lodge a complaint against infractors of zoosanitary laws and regulations;
- sanctions for infringement of the law are established, as well as the right for reconsideration.