

SUBSIDIES

New and Full Notification Pursuant to Article XVI:1 of the
GATT 1994 and Article 25 of the SCM Agreement

PANAMA

The following communication, dated 30 June 2003, has been received from the Permanent Mission of Panama.

The Republic of Panama is submitting the attached notification pursuant to the provisions on full notifications in Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures.

In accordance with Article 25.7 of the SCM Agreement, it should be recognized that this notification of measures does not prejudice either their legal status under the GATT 1994 and the SCM Agreement, the effects under the SCM Agreement or the nature of the measures themselves.

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I. GRANTING OF TAX CREDIT CERTIFICATES (CAT)

1. Description of the subsidy

The Tax Credit Certificate (CAT) is a subsidy to which all enterprises exporting non-traditional goods wholly or partially produced or processed in Panama.

The CAT is a tax credit consisting of a registered, transferable, non-interest bearing document (bond) payable to the Ministry of the Economy and Finance, with a maturity period of nine months. It is issued in the national currency and used to pay income tax, dividend tax, supplementary tax, property tax, import tax and the tax on the transfer of tangible personal property (ITBM).

In order to be eligible for the CAT, the enterprise exporting non-traditional goods must show a minimum share of 20 per cent in national content and national value added. As a rule, the higher the national content, the higher the amount of the CAT, per unit of non-traditional product exported.

2. Period of notification

2001 and 2002.

3. Objective of the programme

The basic objective of the programme is to promote non-traditional exports of goods wholly or partly produced or processed in Panama with a view to contributing to the country's development.

4. Background and authority

See paragraph A.4 of the last notification (doc. G/SCM/N/71/PAN). The corresponding legislation can be found in doc. G/SCM/Q3/PAN/13. In addition, under the procedure for programme extensions, within the framework of the SCM Committee, the following law has been published: Law No. 62 of 26 December 2002 "Amending articles of Law 23 of 1997 and Law 28 of 1995 extending the scope of production tax incentives, and Article 376 A of the Penal Code"¹, with a view to extending the programme until 31 December 2005.

5. Form of subsidy

Tax credit in the form of a certificate used for the payment of national and import taxes. This credit amounts to 15 per cent of the national value added of the exported goods.

6. Beneficiaries and mechanism

All natural and legal persons exporting *non-traditional goods* who, on request and following a study are found to meet the national value added requirements laid down by law (a minimum of 20 per cent for persons established in the metropolitan region and a minimum of 10 per cent for persons located outside the metropolitan region).²

¹ Official Gazette No. 24.709 of 30 December 2002. The text of Law No. 62 of 26 December 2002 is attached to this notification.

² This percentage of national value added is calculated on the basis of production or manufacturing costs of the exported product. The production cost is equivalent to the sales cost minus profits, provided they do not exceed 12 per cent of the capital invested in the production of the product to be exported.

7. Estimated amount of the subsidy

According to the information provided by the Directorate of Foreign Trade Services of the Vice-Ministry of Foreign Trade based on resolutions issued during the past two years for which information is available, the total value of CATs granted was US\$32,010,748 in 2001 and US\$23,720,180 in 2002.

8. Duration of the subsidy

The programme is scheduled to last until 31 December 2005.³

9. Statistical data permitting an assessment of the trade effects of the subsidy

Table 1
Value of CAT Resolutions and Export Value, by Beneficiary Sector

	2002		2001	
	CAT	F.O.B. EXPORT VALUE (thousands of US\$)	CAT	F.O.B. EXPORT VALUE
TOTAL	<u>23,770.20</u>	<u>192,490.20</u>	<u>32,010.70</u>	<u>227,549.10</u>

Source: National Directorate of Foreign Trade Services, VICOMEX, MICI.

II. EXEMPTIONS GRANTED TO ENTERPRISES LOCATED IN THE EXPORT PROCESSING ZONES

1. Description of the programme

The Export Processing Zones (EPZs) are tax free areas – in other words, enterprises established in the EPZs as well as any activity, operation, transaction, processing and transfer of movable and immovable property, purchase and import of construction materials and equipment, raw materials, equipment, machinery, tools, accessories, inputs and any goods or services required for the operations of such enterprises within the EPZ, are 100 per cent free of national direct and indirect taxes, contributions, duties and levies.

The capital of companies established in the EPZs is also free of direct or indirect national taxes, including patent or licence taxes.

Moreover, a special migration regime has been established for foreigners whose companies are located within the EPZs, provided the amount invested exceeds US\$250,000. Foreign investors (with spouses and minor children) are entitled to apply for a permanent residence visa as investors, and foreigners (with spouses and minor children) hired by companies located within the EPZs as managerial staff, executives, experts or technicians may apply for temporary residence visas valid for the duration of their contract, subject to the laws laid down in the Labour Code of the Republic of Panama. Foreigners (with spouses and minor children) wishing to carry out transactions with companies established in the EPZs may apply for a resident business visa valid for one year. Other special labour provisions have been developed for enterprises covered by the special EPZ regime.

³ In accordance with Articles 3 and 4 of Law No. 62 of 26 December 2002.

2. Period of notification

2001 and 2002.

3. Objective of the programme

- (a) To create a special, integrated and simplified regime for the establishment and operation of EPZs with a view to contributing to the country's development by generating employment and foreign exchange.
- (b) To enable Panama to be incorporated in the global economy by promoting exports of goods and services, encouraging investment creation and stimulating scientific, technological, economic, cultural, educational and social development in the country.

4. Background and authority

See paragraph B.4 of the last notification (doc. G/SCM/N/71/PAN).

5. Form of subsidy

The subsidy granted under this programme is based on complete exemption from national direct and indirect taxes, contributions, duties and levies for the enterprises established in the EPZs as well as for any activity operation, transaction, processing and transfer of movable and immovable property, purchase and import of construction materials and equipment, raw materials, equipment, machinery, tools, accessories, inputs and any goods or services required for the operations of such companies within the EPZ.

6. Beneficiaries and mechanism

All natural and legal persons, whether nationals or foreigners, engaged in the production of goods and services either as manufacturing, assembly and processing enterprises for finished and semi-finished goods or as services export or general service enterprises, may obtain a licence to set up their operations in an export processing zone.

Sales of raw materials, semi-finished goods and packaging supplied by domestic companies to the industries located within the export processing zones are considered to be exports, but are not eligible for the Tax Credit Certificate (CAT). Nor may enterprises or industries established in the export processing zones opt for or benefit from CATs.

To obtain the mentioned licence, the enterprise must submit to the Technical Secretariat of the National Commission on Export Processing Zones of the Ministry of Trade and Industry: a formal application, a certificate of authorization for the processing zone, certification of the capital invested, a project study for the planned project and documents certifying the applicant's standing. Once these requirements have been met, the National Commission on Export Processing Zones grants the licence and registers it in the official register of the export processing zones.

7. Estimated amount of the subsidy

No estimate available.

8. Duration of the subsidy

Not specified in Law No. 25 of 1992.

9. Statistical data permitting an assessment of the trade effects of the subsidy

Table 2
PANAMA: Value of Exports from the Processing Zones, 1997-2001

Year	No. of Enterprises	Exports	
		Net Weight (t)	F.O.B. Value (millions of US\$)
1997	19	1,886.4	19.3
1998	22	3,606.4	25.7
1999	39	2,968.8	20.5
2000	48	10,322.9	26.0
2001 ^(P)	57	23,853.8	52.1

^(P) Preliminary figures

Source: Auditor General of the Republic and National Directorate of Foreign Trade Services, VICOMEX, MICI.

Table 3
PANAMA: Existing Processing Zones and Number of Enterprises
Registered¹ as of 20 June 2003

PROCESSING ZONE	No. of Enterprises Registered
ZONA PROCESADORA DE EXPORTACIÓN ALBROOK, S.A	6
COROZAL PROCESSING FREE ZONE CORP.	9
ZONA PROCESADORA ESTATAL DAVIS	18
ZONA PROCESADORA DE ISLA MARGARITA	10
ZONA PROCESADORA PANEXPORT	26
ZONA PROCESADORA PROINEXPORT, S.A	2
ZONA PROCESADORA SCHLOBHOM	2
ZONA PROCESADORA TELEPUERTO PANAMA S.A.	1
ZONA DE TECNOLOGÍA Y TELECOMUNICACIONES, S.A.	0
TECHNOLOGY DEVELOPMENT CENTER INC	0
Total	74

¹Law No. 25 of 30 November 1992.

Source: National Directorate of Foreign Trade Services, VICOMEX.

III. EXEMPTIONS GRANTED TO ENTERPRISES INCLUDED IN THE OFFICIAL INDUSTRY REGISTER

1. Description of the subsidy

The programme establishes three categories of registers on the basis of which enterprises may avail themselves of different incentives and benefits. Each enterprise must register in one of these categories.

(a) Enterprises wholly engaged in export production

These companies enjoy the following tax incentives:

- (i) Full exemption from taxes on introduction, contributions, levies and customs duties and fees, along with the tax on the transfer of tangible property applied to imports of machinery, equipment and spare parts used in the production process, excluding construction materials, vehicles, furniture, office supplies and any other inputs not used in the production process;
- (ii) full exemption from income tax on profits, with the exception of mining industries or those using the country's natural resources;
- (iii) full exemption from export taxes;
- (iv) full exemption from sales tax;
- (v) full exemption from production taxes;
- (vi) full exemption from taxes on the enterprises' capital or assets, except licence and immovable property taxes;
- (vii) creation of special funding programmes on a preferential basis compared to what is normally available on the market.

(b) Enterprises partially engaged in export production

These companies enjoy the following tax incentives:

- (i) Full exemption from income tax on profits obtained from production for export, with the exception of mining industries or those using the country's natural resources;
- (ii) full exemption from export taxes;
- (iii) full exemption from export sales tax;
- (iv) full exemption from export production tax;
- (v) creation of special funding programmes on a preferential basis compared to what is normally available on the market;
- (vi) deduction from the taxable income of fixed costs such as interests, depreciation and maintenance, provided total export sales do not exceed 20 per cent of the total value of sales.

(c) Enterprises engaged in production for the domestic market

These companies enjoy the following tax incentives:

- (i) 100 per cent exemption, during the first five (5) years of validity of Law No. 3 of 1986, from taxes on introduction, contributions, levies and customs duties and fees on imports of raw materials, semi-finished or intermediate products, inputs, spare parts for machinery and equipment, containers and packaging entering into the composition or the production process, on which they shall pay only the ITBM;

- (ii) from the sixth year onwards, companies may import the goods described above by paying an import tax equivalent to three per cent (3%) of the c.i.f. value of the foreign inputs, plus the ITBM;
- (iii) exemption from income tax on net profits reinvested in the expansion of their production capacity or in producing new articles, applicable to the portion of that reinvestment in excess of twenty per cent (20%) of taxable income in the tax year concerned;
- (iv) special carry-over regime for losses;
- (v) special depreciation formula;
- (vi) application of an import tax of three per cent (3%) of the c.i.f. value on the introduction of machinery and equipment used in the production process, with the additional payment of the ITBM.

2. Period of notification

2001 and 2002.

3. Objective of the programme

The basic objective of the programme is to provide the stimulation needed to promote industrial activity and exports, which are important to the achievement of progress and the development of the country's economy.

4. Background and authority

The legal instruments regulating the Official Industry Register programme are listed in the last notification (doc. G/SCM/N/71/PAN).

5. Form of subsidy

Tax exemptions according to the category in which each particular enterprise is registered, as described in part III.1 above (Description of the subsidy).

6. Beneficiaries and mechanism

All companies engaged in industrial manufacturing or assembly activities in the territory of Panama are eligible for this programme. Manufacturing industries are those engaged in processing raw materials and semi-finished goods and producing goods. Assembly industries are those engaged in the production of finished goods by putting together inputs and semi-finished parts. They include small and medium industrial enterprises which meet the above requirements.

The enterprises concerned by the programme must be registered in the Official Industry Register. Registration is subject to a decision by the Ministry of Trade and Industry, and entitles the enterprise to the benefits and incentives provided for under the programme in accordance with the category selected from the date on which the decision is issued and for the period of validity of the registration.

Enterprises benefiting from total exemption from income tax on profits generated by export activities are not eligible for the Tax Credit Certificate (CAT) incentive.

7. Estimated amount of the subsidy

Table 5
Value of Tax Incentives Granted under the Official Industry
Register (1999-2001) (Millions of US\$)

Type of benefit	YEAR		
	1999	2000	2001
Import tax exemption or rebate	23.7	27.3	22.2
Income tax exemption or rebate for reinvestment	14.6	15.2	11.3
Other incentives*	6.4	7.4	6.6

*Exemption from income tax only.

Source: Fiscal Studies Department, Directorate-General of Revenue, Ministry of the Economy and Finance.

8. Duration of the subsidy

The duration is dependent on the expiry date of the official registration of an enterprise in a particular branch of economic activity under the Uniform Industrial Classification (CIU), subject to the exceptions below:⁴

- (a) For companies engaged entirely in export production, the following benefits are to be eliminated in accordance with Decision of 22 November 2002 "Official Industry Register" of the SCM Committee (doc. G/SCM/84):
 - (i) Full exemption from income tax on profits (Article 6(b) of Law No. 3 of 1986);
 - (ii) full exemption from taxes on the enterprises' capital or assets (Article 6(e) of Law No. 3 of 1986);
 - (iii) creation of special funding programmes on a preferential basis compared to what is normally available on the market (Article 14(d) of Law No. 3 of 1986).
- (b) For companies partially engaged in export production, the following benefits are to be eliminated in accordance with Decision of 22 November 2002 "Official Industry Register" of the SCM Committee (doc. G/SCM/84):
 - (i) Full exemption from income tax on profits for export (Article 12 of Law No. 3 of 1986 pursuant to Article 6(b) of the same Law);
 - (ii) creation of special funding programmes on a preferential basis compared to what is normally available on the market (Article 14(d) of Law No. 3 of 1986);

⁴ Official Gazette No. 24,798 of 12 May 2003, Resolution No. 32 of the Ministry of Trade and Industry of 31 December 2002. The text of the Resolution is attached to this notification.

- (iii) deduction from the taxable income of taxable fixed costs (such as interests, depreciation, maintenance, etc.) for enterprises partially engaged in export production (Article 12, paragraph, of Law No. 3 of 1986).

9. Statistical data permitting an assessment of the trade effects of the subsidy

No statistical information available to assess the trade effects of the programme.

ANNEX 1

LEGISLATIVE ASSEMBLY

LAW NO. 62

(26 December 2002)

**Amending Articles of Law 23 of 1997 and Law 28 of 1995 Extending the Scope of Production
Tax Incentives, and Article 376 A of the Penal Code**

THE LEGISLATIVE ASSEMBLY

HEREBY DECREES:

Article 1. Paragraph 11 of Article 78 of Law 23 of 1997 is hereby amended and paragraphs 13 and 14 added, as follows:

Article 78: The following shall be considered offences under this section:

11. Importing animals or products or by-products of animal origin representing a zoosanitary risk and originating in or coming from areas, countries or regions affected by exotic diseases, without the appropriate phytozoosanitary import licence, preceded by a corresponding risk assessment based on the standards and guidelines laid down in the International Zoosanitary Code of the International Office of Epizootics (IOE) and the Codex Alimentarius.
12. Fraudulently obtaining or issuing a phytozoosanitary licence for importing animals or products or by-products of animal origin from areas, countries or regions affected by exotic diseases.
13. Importing used equipment and machinery, without complying with the phytozoosanitary requirements laid down by the Executive Directorate for Agricultural Quarantine of the Ministry of Agricultural Development.

Article 2. Paragraph 3 of Article 79 of Law 23 of 1997 shall read as follows:

Article 79. The offences mentioned in the previous article shall be sanctioned as follows:

3. In the cases envisaged in paragraphs 11, 13 and 14 of the previous article, the penalty shall be a fine of not less than 500,000 balboas (**B 500,000.00**) and not more than 2 million balboas (**B 2,000,000.00**).

In the cases envisaged in paragraph 12 of the previous article, the penalty shall be a fine of not less than 250,000 balboas (**B 250,000.00**) and not more than 1 million balboas (**B 1,000,000.00**).

Article 3. The second paragraph of Article 13 of Law 28 of 1995 shall read as follows:

Article 13. ...

From 1 January 2003 until 31 December 2005, exporters of non-traditional goods shall still be entitled to apply for Tax Credit Certificates, but the value of the CATs shall be reduced to 15 per cent (15 %) of the national value added of the exported goods.

Article 4. Article 28 of the Law of 1995 shall read as follows:

Article 28. Laws No. 108 of 1974, No. 2 of 1991, No. 4 of 1993 and No. 12 of 1993 are hereby repealed as of 31 December 2005.

Article 5. Article 376 A of the Penal Code shall read as follows:

Article 376 A. Whoever, other than in the cases specified in the previous article, introduces into the country animals or products or by-products of animal origin or any goods of agricultural origin representing a zoosanitary risk and originating in or coming from areas, countries or regions affected by exotic diseases, without the appropriate phytozoosanitary import licence, preceded by a corresponding risk assessment based on the standards and guidelines laid down by the International Office of Epizootics (IOE) and the Codex Alimentarius, as well as used equipment or machinery that has been employed in agricultural activities, without complying with the requirements laid down by the Executive Directorate for Agricultural Quarantine of the Ministry of Agricultural Development, shall be liable to imprisonment for a term of 5 to 8 years and a 200 to 350 day fine.

Article 6. This Law amends paragraph 11 and adds paragraphs 13 and 14 to Article 78 and amends paragraph 3 of Article 79 of Law 23 of 15 July 1997, as amended by Law 44 of 1 August 2001; amends Articles 13 and 28 of Law 28 of 20 June 1995, as well as Article 376 A of the Penal Code, and repeals, as from 31 December 2005, Law 108 of 1974, Law 2 of 1991, Law 4 of 1993 and Law 12 of 1993.

Article 7. This Law shall enter into effect upon enactment.

FOR COMMUNICATION AND IMPLEMENTATION

Approved at third hearing, in the Palacio Justo Arosemena, Panama City, on 16 December 2002.

Jorge Ricardo Fabrega
General Secretary

Carlos R. Alvarado A.
President

**NATIONAL EXECUTIVE ORGAN – PRESIDENCY OF THE REPUBLIC – PANAMA,
REPUBLIC OF PANAMA, 26 DECEMBER 2002**

Mireya Moscoso
President of the Republic

Norberto Delgado Duran
Minister of the Economy and Finance

MINISTRY OF TRADE AND INDUSTRY

RESOLUTION NO. 32

(31 December 2002)

THE MINISTRY OF TRADE AND INDUSTRY
in application of its legal powers,

WHEREAS:

The Panamanian State has approved Law No. 23 of 15 July 1997, the Protocol of Accession of the Republic of Panama to the World Trade Organization (WTO).

As part of the commitments undertaken on accession, the Republic of Panama agreed progressively to eliminate all measures corresponding to the definition of prohibited subsidy in Article 3 of the WTO Agreement on Subsidies and Countervailing Measures, including prohibited subsidies covered by Law No. 3 of 20 March 1986.

The Ministry of Trade and Industry, by virtue of these commitments, began *ex officio* issuing resolutions annulling export subsidies granted through the Official National Industry Registry.

At the WTO's Fourth Ministerial Conference, the Committee on Subsidies and Countervailing Measures approved procedures for extensions under Article 27.4 of the Agreement on Subsidies and Countervailing Measures for certain developing country Members.

In view of the above, the Panamanian State requested the WTO Committee on Subsidies and Countervailing Measures for an extension of the export subsidies.

On 22 November 2002, the Committee granted the Republic of Panama an extension for export subsidies under Article 27.4 of the WTO Agreement on Subsidies and Countervailing Measures relating to the transition period for the elimination of such subsidies.

The extension was granted up to 31 December 2003, but may be continued, on the basis of the procedures approved at the Fourth Ministerial Conference, through the end of calendar year 2007 subject to annual review by the Committee, which will examine the fulfilment of the obligations assumed by the Panamanian State.

Taking into consideration the Committee's Decision, it is appropriate to amend all the resolutions issued *ex officio* annulling prohibited subsidies as from 1 January 2003.

HEREBY RESOLVES:

ARTICLE ONE: **TO AMEND** all the resolutions annulling prohibited subsidies as from 1 January 2003 in order to extend the validity of those subsidies up to 31 December 2003.

ARTICLE TWO: **TO INFORM** those concerned that the extension may be continued up to the end of calendar year 2007, on the basis of the procedures approved at the WTO's Fourth Ministerial Conference, subject to annual review by the Committee, which will examine the fulfilment of the obligations assumed by the Panamanian State.

ARTICLE THREE: **TO FORWARD** this Resolution to the Auditor General of the Republic for signature.

ARTICLE FOUR: **TO FORWARD** a certified copy of this Resolution to the Ministry of the Economy and Finance.

LEGAL BASIS: Law No. 23 of 15 July 1997, Law No. 38 of 31 July 2000, Decision of 22 November 2002 of the Committee on Subsidies and Countervailing Measures.

Done in the Province of Panama, Republic of Panama, on 31 December 2002.

FOR IMPLEMENTATION AND PUBLICATION

JOAQUIN E. JÁCOME DIEZ
Ministry of Trade and Industry

SIGNATURE:
ALVIN WEEDEN GAMBOA
AUDITOR GENERAL OF THE REPUBLIC
