
III. TRADE POLICIES, BY MEASURE

(1) OVERVIEW

1. In recent years Panama has been modernizing its customs system through measures such as computerization and improvements in risk management and smuggling controls. Since January 1997, Panama has applied the WTO Customs Valuation Agreement.

2. Tariffs are the main instrument of border protection and all the duties applied are *ad valorem*. In 2007, the simple average of the MFN tariff rates applied was 8.5 per cent; the equivalent averages for agricultural (WTO product definition) and non-agricultural products were 15.1 and 7.3 per cent, respectively. The tariff structure is complicated, with 37 different tariff rates, and characterized by marked negative escalation between the first phase of processing and the semi-processed product. Panama has bound its entire tariff universe, thereby giving its trade regime greater predictability, although the effect is somewhat reduced by the difference of approximately 15.2 percentage points between the bound and applied average tariffs.

3. At the beginning of 2007, Panama was applying preferential tariffs to imports from nine trading partners, provided that they complied with the origin criteria. Panama has notified the WTO that it has no non-preferential rules of origin.

4. Apart from customs duties, imports are subject to an Administrative Charge for Customs Services, the Tax on the Transfer of Movable Property and Services (ITBMS), the Selective Consumption Tax (ISC), and the Consumption Tax on Fuels Derived from Petroleum. Imports receive national treatment in the application of internal taxes, with the exception of certain spirits which pay a lower ISC if domestically produced.

5. Since joining the WTO, Panama has notified only one dumping investigation, which did not result in the imposition of duties. Moreover, in October 2006 Panama notified a safeguards investigation which resulted in the imposition of a provisional measure. In mid-2007 the final determination was still pending.

6. Panama imposes import prohibitions and restrictions for sanitary and phytosanitary, health and safety reasons. Panama has maintained an active programme of implementation of sanitary and phytosanitary measures. Since joining the WTO in 1997, Panama has made 48 notifications under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures, of which a little over half affected imports of live animals, meat and by-products. Moreover, Panama has notified 34 technical regulations, most of which relate to food technology.

7. There is a ban on the exportation, but not on the production for domestic consumption, of wood in the form of logs and sawn blocks from natural forests. The exportation of some marine products and nonferrous scrap is subject to special procedures. Panama levies a tax on exports of certain processed woods. Exports are exempt from internal taxes.

8. Panama has notified the WTO that it granted subsidies to agricultural exports between 1997 and 2003 (last year notified). In mid-2007, Panama was maintaining several general export incentive programmes including: the Tax Credit Certificate (CAT), the Export Processing Zone (EPZ) Programme, the Official National Industry Register (ROIN), and the Colon Free Zone (ZLC). Panama has notified the WTO that the first three of these programmes grant export subsidies. The CAT grants a tax credit to companies exporting non-traditional products produced or processed wholly or partially in Panama. The EPZs grant labour and migration incentives and exemption from taxes provided that a minimum value added is achieved. The ZLC regime provides similar benefits.

Under the ROIN, companies that export their entire output are exempted from tariffs, income tax, and various internal taxes and, moreover, may benefit from preferential financing programmes.

9. In 2005, the tax benefits granted amounted to US\$40 million for ROIN and US\$31 million in the case of CAT. There is no information concerning the tax benefits granted to the EPZs or the ZLC. The exports originating in the EPZs were relatively modest, equivalent to 1 per cent of total exports in 2005. The exports supported by the CAT programme appear to be more substantial. Re-exports from the ZLC represent a little over three quarters of total Panamanian merchandise exports. This Zone operates mainly as a logistical and global goods distribution centre.

10. ROIN also offers incentives to companies that produce only for the domestic market, such as reduced import tariffs and some degree of income tax exemption. Moreover, Panama operates incentive schemes for micro and small businesses and for R&D, as well as for specific sectors such as agriculture, forestry, mining and tourism (see chapter IV). The number and complexity of the incentive programmes in force raise questions as to their effectiveness as a development tool, especially in the context of the persistent public sector deficit (see chapter I). It would therefore be advisable to assess the costs and benefits of these programmes and the advantages of rationalizing them.

11. Recent reforms appear to have provided Panama with a relatively well-developed legal framework in the area of competition. However, in specific sectors, including some agricultural markets protected by high tariffs, the level of competition appears to be limited. In practice, price controls are not applied in the case of goods, although the legislation permits their use in certain circumstances.

12. Panama has notified the WTO that it has no state trading enterprises within the meaning of Article XVII of the GATT. In the 1990s, Panama had a very ambitious privatization process, but in recent years, with the decline in state involvement in production, this has almost come to a halt. The cost and number of the formalities involved in establishing new enterprises in Panama have traditionally been low.

13. Panama is not a party to the WTO's Plurilateral Agreement on Government Procurement, but it is in process of acceding to that Agreement and is participating in the WTO Working Group on Transparency in Government Procurement. Under the new regulatory framework introduced in 2006 foreign bids receive national treatment. Panama Canal purchases are subject to a separate regime.

14. As part of its preparations for joining the WTO, Panama amended its industrial property and copyright legislation to adapt it to the TRIPS Agreement, but it has not adopted any specific legislation concerning layout-designs.

(2) MEASURES DIRECTLY AFFECTING IMPORTS

(i) Procedures, documentation and registration

15. The Directorate-General of Customs (DGA), under the Ministry of the Economy and Finance (MEF), is the institution responsible for supervising and controlling the passage of goods across the national borders, collecting the taxes levied exclusively on those goods, preventing and repressing customs offences, and administering customs procedures. Panama is a member of the World Customs Organization.

16. Panama's customs regime is based on Law No. 16 of 29 August 1979 and Law No. 41 of 1 July 1996, which in their turn are based on the Revised Kyoto Convention. The customs import procedures are laid down in Cabinet Decree No. 41 of 11 December 2002. The Customs Penal Regime was established by Law No. 30 of 8 November 1984. In mid-2006, the Government prepared draft Law No. 042-06 for the purpose, among other things, of creating a new customs authority with institutional and financial autonomy, modernizing the customs legislation, introducing advance rulings and fighting corruption.¹

17. Panama has participated as an observer in the meetings to prepare the new Central American customs code. However, even though Panama has an interest in the process of coordination of the customs legislations of the Central American countries, its legislation has not been harmonized with the Central American provisions.²

18. As a general rule, the importation of goods requires the intervention of a customs broker. If the c.i.f. value does not exceed B 500.00³, the use of a broker is optional. Moreover, the intervention of a customs broker is not required in the case of entry declarations for free zones established in the country. Customs brokers must be accredited by the MEF. This involves obtaining a licence, for which the applicant must possess Panamanian nationality and hold a diploma in Customs Administration or the equivalent.⁴

19. By Cabinet Decree No. 3 of 7 February 2001, Panama adopted the Integrated Foreign Trade System (SICE) as the Internet-based computer system compulsorily applicable to all customs procedures and purposes requiring a declaration. The authorities have noted that 100 per cent of customs import formalities are completed through the SICE. The declarations are registered in the SICE and can be consulted and corrected by the users who prepare them. Customs brokers, and other customs intermediaries, must complete a user activation application to obtain access to the SICE.

20. For goods to enter Panama, or be unloaded at a Panamanian port, the carrier must transmit electronically through the SICE, before they arrive at the port or at the time of unloading, an international cargo manifest with details of the bills of lading covering the cargo being shipped to Panama. If the cargo is consolidated, the bulk-breaker must sort out the different bills of lading so that the customs broker can complete a separate pre-declaration for each. The broker prepares a pre-declaration (preliminary customs declaration) based on the presentation of the following documents: the original commercial invoice⁵; the bill of lading (for example, the waybill for the various modes of transport)⁶; the certificate of origin, where necessary (see section 2(iii) below); and, where importation is restricted, the appropriate permit (see section 2(vi) below).⁷ The SICE automatically analyses the pre-declaration and informs the broker if any other prior authorization or import licence is required, indicating the permitting body to which application should be made. The broker must

¹ Draft Law No. 042-06 can be consulted on the web site of the Directorate-General of Customs (www.aduanas.gob.pa).

² Panama forms part of the Central American Integration System, but not of the Central American Economic Integration Secretariat.

³ 1.00 balboa is the equivalent of 1.00 US dollar.

⁴ Chapter II of Cabinet Decree No. 41 of 11 December 2002.

⁵ The commercial invoice must contain at least the following information: address of the individual or firm selling the goods; date of sale; name of the buyer in Panama and of the consignee; description, quantity, weight and/or volume; and the price of the goods, total and subtotal.

⁶ The bill of lading must contain at least the following information: the names of the shipper, the consignee, the vessel, the port or place of departure, and the port of unloading; the destination of the goods; the mark, number, quantity, weight and description of the packages; and the agreed value of the freight.

⁷ See: <http://www.mef.gob.pa/Direccion%20de%20Aduanas/Contenido/Documentos%20para%20la%20Importacion-3.asp>.

apply for the permit through the SICE itself, which blocks the registration of the final declaration until all the necessary authorizations have been obtained.

21. If the customs broker or the importer is unable to produce the commercial invoice and/or any other of the documents required, security corresponding to the import duties and taxes payable must be lodged. The security will be forfeited if the missing documents are not produced within the period laid down in Cabinet Decree No. 41 of 11 December 2002.

22. In addition to implementing the SICE, the Government has developed other customs modernization projects, such as, for example, a technical assistance project for the implementation of a risk management and goods inspection programme.⁸ Although the Office of Risk Analysis has already been formally established, its regulations are still in the process of internal discussion within the DGA. The traffic light system has not been implemented either, but the draft law provides for the installation of a system for analysing the data declared for inconsistency, using statistical or customs warning indicators. The authorities have stated that, in mid-2007, Panama was continuing to carry out documentary checks on all imports.

23. Goods imported by post require the duly certified commercial invoice as the shipping document; in post offices where there is an Internet connection declarations can be made in a simplified electronic format. Imports with a value of less than B 100.00 are exempt from duty. Imports whose c.i.f. value does not exceed B 500.00 do not require the intervention of a customs broker and benefit from a simplified procedure requiring the use of a Letter Parcel Form, which can be issued ex officio by the customs officials attached to the Postal Service. Parcels that exceed the limit are subject to the general customs procedures and formalities.

24. There is an accelerated customs clearance system for express consignments used for the simplified importation of goods via courier operators. On the basis of the express consignment manifest pre-registered in the SICE, a legally authorized person (courier) can obtain the immediate release of certain goods without further processing.⁹

25. The authorities have indicated that, provided the prior authorizations required by the different competent authorities have been duly obtained, the average time needed for imports to clear customs is less than six hours, irrespective of the import procedure used.

26. Under the Canal Neutrality Treaty, the transit of goods via the Panama Canal has become a sort of international easement, with national security controls but no controls by customs for customs purposes. This transit operation does not generate any customs formalities.

⁸ The project has the support of the Government of Canada, the Inter-American Development Bank and the International Tax Administration Centre. Available for consultation at: <http://www.mef.gob.pa/Direccion%20de%20Aduanas/Contenido/Proyecto%20de%20modernizacion-1.asp>.

⁹ Materials and objects not considered to be goods (human corpses, postal items, business papers), documents in general (excluding computer software), small items of a domestic nature (occasional imports, of a non-commercial nature, consisting of small consignments of goods with a value of not more than B 50.00, samples of no commercial value, and non-commercial periodicals).

27. The Panamanian customs authority has powers to inspect and/or detain goods in transit, including through the Canal, if it suspects (generally as a result of a complaint) that the goods infringe intellectual property rights or constitute illicit substances.¹⁰

28. The free zone territories, including the Colon Free Zone (ZLC), are not regarded as being part of Panama's customs territory and have a separate customs regime. Therefore, goods entering these territories are not treated as imports for customs purposes. For all goods entering the ZLC (see section 4(iii)) it is necessary to produce a so-called Commercial Movement Form, duly signed or authorized by the Trade Department of the ZLC. To obtain authorization a duly attested copy of the commercial invoice and a copy of the bill of lading (for example, the waybill for the corresponding mode of transport) are required.

29. The customs administrative process provides for recourse, in the first instance, to the Regional Administrator and, in the second instance, to the MEF's Tariff Commission in the event of disagreement as to the classification or customs value of goods, or to the DGA's own Appeals Commission in cases relating to other infringements, including those with criminal implications.¹¹ However, judicial remedies are not being used in Appeals Commission cases since they are no longer authorized by the Supreme Court of Justice. During the administrative process, the goods are detained by the DGA, unless security equivalent to the difference in tax that might be payable is provided.

30. Temporary or outright imports of acknowledged urgency or covered by a special import regime (for example, a partial or total relief regime) can make use of a system for providing security. The security ensures the payment of the duties and taxes resulting from multiple imports (general) or a single customs operation (specific). As security the DGA will accept insurance policies, bank guarantees, bonds, cash, etc.¹²

31. Panama has been combating smuggling through the Customs Investigation Department established by Executive Decree No. 155 of 3 August 1995. The regulations for suppressing smuggling are laid down in Law No. 30 of 8 November 1984, as amended by Law No. 28 of 27 June 2001. The products most likely to be smuggled are cigarettes and spirits.

32. According to the World Customs Organization, although Panama is imposing exemplary sanctions on officials found to have been involved in corrupt activities, the problems of corruption in the customs administration remain severe.¹³ The authorities have pointed out that the Customs Investigation Department is carrying out regular training and goods traffic monitoring and inspection programmes for the purpose of reducing the number of customs offences and corruption levels.

(ii) Customs valuation

33. The Directorate-General of Customs is responsible for issuing and applying the regulations on customs valuation.

¹⁰ The customs authorities with jurisdiction to order these inspections are the Regional Customs Administrator of the transit zone and the Director-General of Customs. Available for consultation at: http://www.mef.gob.pa/Direccion%20de%20Aduanas/Contenido/regimen_transito_aduanero-6.asp.

¹¹ WCO (2006).

¹² Chapter IV of Cabinet Decree No. 41 of 11 December 2002.

¹³ WCO (2006).

34. Since January 1997, Panama has applied the WTO Customs Valuation Agreement (CAVA) in full, under Cabinet Decree No. 26 of 1 August 1996, as regulated by Resolution No. 704-04-017 of 10 January 1997, Resolution No. 704-04-019 of 10 January 1997, Resolution No. 704-04-532 of 17 September 1997 and Resolution No. 7804-04-528 of 10 October 1997. Moreover, the WTO Customs Valuation Code, together with its Annexes I, II and III, forms an integral part of Law No. 23 of 15 July 1997 to adopt the Marrakesh Agreement establishing the WTO.

35. In Panama, in accordance with the provisions of the ACV, the customs value of imported goods is *a priori* the transaction value. The authorities have indicated that in practice the transaction value is applied in approximately 90 per cent of cases. In determining alternative values Panama is also guided by the provisions of the CAVA.

36. In 1998 Panama replied¹⁴ to the check-list of issues concerning the implementation and administration of the CAVA. Among other things, Panama noted that Article 5 of Cabinet Decree No. 26 of 1996 provides for the reversal of the order of application of the valuation methods described in Articles 5 and 6 of the CAVA, provided that the Customs Administration accepts the request of the interested party for that order to be reversed. With reference to Article 11 of the CAVA, Panama also noted that the importer has the right to challenge the decision, without penalty, within three working days of the customs duties being calculated. He may also appeal to the DGA within five working days following notification of the first-instance decision.¹⁵

37. In 1998, Panama notified¹⁶ that the Decision of the Committee on Customs Valuation on the Valuation of Carrier Media Bearing Software for Data-Processing Equipment had been applied by Panama since 20 October 1997, in accordance with Article No. 15 of Resolution No. 704-04-532 of 17 September 1997. Panama notified¹⁷ that Decision No. 3.1 (Treatment of Interest Charges in the Customs Value of Imported Goods) of the WTO Committee on Customs Valuation had been applied since 20 October 1997.

38. The customs value of used goods is determined on the basis of the transaction value if the invoices come from a supplier or seller of used goods recognized by the customs authority on the basis of checks carried out by its Valuation Section.¹⁸ Moreover, acceptance of the transaction value requires: (i) in the case of a recognized used goods seller, proof that the value approximates the values in the Customs Administration's records; or (ii) in other cases, that the invoice data correspond to the condition in which the used goods are presented. The authorities note that underinvoicing is not a major problem in Panama.

39. Machinery used in construction, mining or agriculture, like vessels, aircraft and motor vehicles, is treated as a specific case of used goods and is therefore subject to special valuation rules, mainly in those cases in which valuation based on the transaction value is not possible.¹⁹

40. In the specific case of used motor vehicles the valuation rules are laid down in Resolution No. 704-04-019 of 10 January 1997. The transaction value is accepted if the imports come from auctioneers or used goods sellers recognized by the customs authority. In other transactions, such as,

¹⁴ WTO document G/VAL/N/2/PAN/1 of 8 October 1998.

¹⁵ Provisions contained in Article No. 12 of Cabinet Decree No. 26 of 1996.

¹⁶ WTO document G/VAL/N/3/PAN/1 of 8 October 1998.

¹⁷ WTO document G/VAL/N/3/PAN/1 of 8 October 1998.

¹⁸ Used goods are goods which have been produced or manufactured and which, having been the subject of a first sale, have already been utilized for their intended purpose.

¹⁹ Resolution No. 704-04-528 of 1 October 1997 governs the importation of all used goods, with the exception of used motor vehicles.

for example, those between private individuals, the value is determined using one of the alternative methods described in Cabinet Decree No. 26 of 1996, in accordance with the framework established by the CAVA. If it is not possible to apply any of the above-mentioned methods, the customs value is determined on the basis of a price list supplied by the distributors of new vehicles in Panama, by applying the depreciation percentages and/or averages specified in Resolution No. 704-04-019 of 1997. Between 2000 and 2006, on average, the transaction value was accepted for motor vehicle imports (new and used) in 76 per cent of cases in terms of the number of vehicles and in 96 per cent of cases in terms of c.i.f. value.

(iii) Rules of origin

41. Panama has notified the WTO that it has no non-preferential rules of origin.²⁰

42. Panama applies preferential rules of origin under trade agreements which, at the beginning of 2007, were in force with Chinese Taipei, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Singapore. In 1998, Panama notified the WTO of the application of the rules of origin under these agreements, with the exception of the more recent ones with Chinese Taipei, El Salvador and Singapore.²¹

43. The general principle governing the determination of the origin of goods that incorporate inputs from outside the territories covered by the various preferential agreements is the change of tariff classification. Nonetheless, the rules of origin applied by Panama vary from one preferential treaty to another and between different goods.

44. The Preferential Agreements with Costa Rica, Guatemala, Honduras and Nicaragua only have rules for determining the origin of natural products according to the methods of cultivation, breeding or extraction employed. No specific rules or regional content percentages are defined.²²

45. Under the Partial Scope Agreement with the Dominican Republic, if the change of tariff classification method contained in the specific rules cannot be applied, then it becomes necessary to comply with the level of regional content value specified for the product in its specific rule of origin²³; the horizontal criterion of 35 per cent was not approved by the Treaty's Permanent Joint Commission.

46. Under the Partial Scope Agreement with Colombia, the general criterion for the determination of origin is a change of tariff classification through a change of tariff heading. In the case of products for which there are no specific origin requirements resulting from an assembly or erection process, or products whose tariff subheading is the same for both the goods and their parts, origin may be conferred without change of tariff heading if the c.i.f. value of the materials originating in third countries does not exceed 60 per cent of the f.o.b. value of the end product. Specific origin requirements take precedence over general criteria.²⁴

²⁰ WTO document G/RO/N/23 of 5 October 1998.

²¹ WTO document G/RO/N/23 of 5 October 1998.

²² Regulations of the Panama–Costa Rica FTA Decree No. 47 of 18 August 1986; Regulations of the Panama–Guatemala FTA Decree No. 10 of 11 October 1987; Article No. 2 of the Panama–Honduras FTA of 8 November 1973; Article No. 2 of the Panama–Nicaragua FTA of 26 July 1973.

²³ Regulations of the Panama–Dominican Republic Trade Treaty of 6 February 2003.

²⁴ Text of the Panama–Colombia Partial Scope Agreement signed on 9 July 1993.

47. Under the Partial Scope Agreement with Mexico, the determination of the origin of products is subject to the specific origin requirements laid down in Annex II to the Agreement.²⁵ Those products for which there are no specific requirements are subject to the LAIA general rules of origin. Under these rules, origin is conferred on products: (i) if they were manufactured in the territory of one of the signatories using exclusively materials from other signatories; (ii) if materials from non-participating countries were used and there has been a change of tariff heading; or (iii) in the case of assembly or erection operations, the c.i.f. value of the inputs of materials originating in third countries does not exceed 50 per cent of the f.o.b. value of the end product.

48. The Free Trade Agreements (FTAs) with Chinese Taipei, El Salvador, and Singapore have similar rules of origin. These rules confer origin on goods produced in the territory of one or more of the signatory parties: (i) exclusively from materials originating in any of the signatory parties; (ii) that incorporate non-originating materials which satisfy a change of tariff classification requirement or other specific requirements laid down in the respective Treaty; or (iii) incorporate non-originating materials which do not satisfy a change of tariff classification requirement provided that the c.i.f. value of the said non-originating materials does not exceed 65 per cent of the f.o.b. value of the end product, under the FTAs with Chinese Taipei and Singapore, or 70 per cent of the f.o.b. value of the end product, under the FTA with El Salvador.²⁶

49. The competent authority responsible for investigating the control and verification of origin is the DGA, in coordination with the National Directorate for the Administration of International Trade Treaties and Trade Protection of the Ministry of Trade and Industry (MTI).

50. Certificates of origin under the Preferential Agreements with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and the FTA with Singapore are made out, signed and presented at the time of the import declaration by the exporter or producer and do not need to be endorsed by any government body. In the case of certificates of origin under the agreements and treaties with Chinese Taipei, Colombia and the Dominican Republic, it is necessary to obtain the endorsement of a certifying body authorized by the government of each country; in Panama that authority is the Directorate-General for Industries.

(iv) Tariffs

(a) Structure and levels

51. In 2006, the import duties collected totalled B 276 million and accounted for 8.7 per cent of total central government revenue. Half the total receipts from the Tax on the Transfer of Movable Tangible Property and the Provision of Services (ITBMS) corresponded to imports (see also section (v) below). Import duties and ITBMS on imports together accounted for 23.9 per cent of tax receipts, which in their turn were equivalent to 13.7 per cent of total government revenue.²⁷

52. Panama grants at least MFN treatment to all its trading partners. It does not impose seasonal, temporary or variable import duties.

²⁵ Available for consultation at: <http://www.aladi.org/nsfaladi/textacos.nsf/b324a3677a1b8026032567ee006b7d26/39f1f952d12cdbf8032568240078c555?OpenDocument>.

²⁶ Article No. 4.03 of the Panama–El Salvador FTA of 6 March 2002; Article No. 4.03 of the Panama–Chinese Taipei FTA of 21 August 2003; and Articles Nos. 3.2 and 3.3 of the Panama–Singapore FTA of 26 June 2006.

²⁷ Consulted on the site of the Directorate-General for Revenue: <http://www.dgi.gob.pa/defaultsecure.asp>.

53. The Import Tariff applied by Panama is based on the 2002 Harmonized Commodity Description and Coding System (HS). The tariff has 8,918 lines (at 8-digit level), of which 100 per cent are *ad valorem* and levied on the c.i.f. value of the imported product (see Table III.1). In March 2007, the simple average of the MFN tariffs applied was 8.5 per cent, as compared with the average of 9.4 per cent applied in 1999. This decrease is largely due to tariff reductions on certain non-agricultural products (WTO definition).

Table III.1
Structure of the MFN import tariff, 2007
(Per cent)

| | 2007 |
|--|-------|
| 1. Total number of tariff lines | 8,918 |
| 2. Non- <i>ad valorem</i> tariffs (% of tariff lines) | 0.0 |
| 3. Non- <i>ad valorem</i> tariffs with no AVEs (% of tariff lines) | 0.0 |
| 4. Tariff quotas (% of tariff lines) | 0.8 |
| 5. Duty-free tariff lines (% of tariff lines) | 29.8 |
| 6. Average tariff for dutiable lines (%) | 12.1 |
| 7. Domestic tariff peaks (% of tariff lines) ^a | 1.5 |
| 8. International tariff peaks (% of tariff lines) ^b | 2.3 |
| 9. Bound tariff lines (% of tariff lines) | 100.0 |

a Domestic tariff peaks are defined as rates that exceed three times the overall average of the applied rates.

b International tariff peaks are defined as rates that exceed 15 per cent.

Source: WTO Secretariat calculations, based on data provided by the Panamanian authorities.

54. According to the authorities, between 1998 and 2000, five different investigations (initially classified by the government as safeguard investigations) were initiated to determine whether the government's decision to lower applied tariffs to half the percentages bound in the WTO was actually causing injury to the domestic industry.²⁸ In most cases, as a result of the investigation, the applied tariffs were re-established at the bound percentages.

55. Law No. 28 of 20 June 1995 on the universalization of tax incentives, as regulated by Executive Decree No. 274 of 29 December 1996, allows the importer to request the MTI or the Ministry of Agricultural Development (MAD) to reduce the tariffs on certain products not produced in Panama or which, if produced, do not satisfy the criteria of sufficient production, acceptable quality or competitive price. Moreover, the Law also requires that for all importers the import duty be reduced (to a single rate of 3 per cent) on any product that may have been exempted for enterprises with industrial registration, under Articles 9 and 10 of Law No. 3 of 20 March 1986; the authorities have pointed out that these tariff changes have not yet been implemented.

56. Any reduction or increase in duties must be examined by the Public Policies Directorate of the Economics Department of the MEF, and is subject to approval by the Cabinet Council of the Office of the President.

57. The average MFN tariff applied to lines with a tariff greater than zero is 12.1 per cent. About 2.3 per cent of lines are subject to rates of more than 15 per cent (international tariff peaks) (see Table III.1). The highest tariff (260 per cent) is applied to two products: fresh pieces of chicken and frozen chicken offal. The second highest tariff (155 per cent) is applied to condensed milk and

²⁸ These investigations are conducted within the legal framework of Law No. 29 of 1 February 1996, in connection with the following products: poultry, pig meat, biscuits and sardines, unrefined salt, and deformed steel bars.

evaporated milk and cream products. Other products, such as cane sugar, buttermilk and whey, are also subject to high tariffs; in all, 14 products are subject to tariffs of more than 100 per cent.

58. Panama applies tariff quotas to several agricultural products; the in-quota rates applicable are 3 or 15 per cent, while those outside the quotas vary from 15 to 260 per cent (see chapter IV (2)).

59. The tariff protection for agricultural products is higher than that for non-agricultural products: 15.1 and 7.3 per cent respectively (WTO product definition). In 2007, the groups of agricultural products with the highest average applied tariffs were dairy products (41.8 per cent), animals and animal products (24.3 per cent), and cereals (23.7 per cent). The non-agricultural products with high average tariffs include fish and fish products (12.7 per cent) and transport equipment (11.4 per cent) (see Table III.2).

60. The tariff is broken down into 37 tariff rates which vary between 0 and 260 per cent, with a coefficient of variation of 1.2 per cent. The most common tariff rate is 15 per cent (applied to approximately 31 per cent of lines), followed by the zero (duty-free) rate and the 10 per cent rate, which are applied to 29.8 per cent and 20.5 per cent of the total number of lines, respectively. A little over 66 per cent of lines are subject to rates of less than 10 per cent. Tariffs of more than 25 per cent are applied to 1.5 per cent of lines.

Table III.2
Summary of MFN tariff, 2007

| Description | MFN | | | | Average bound tariff ^a (%) |
|---|-----------------|-------------|----------------|-------------------------------|---------------------------------------|
| | Number of lines | Average (%) | Range (%) | Coefficient of variation (CV) | |
| Total | 8,918 | 8.5 | 0 – 260 | 1.2 | 23.7 |
| HS 01-24 | 1,472 | 15.4 | 0 – 260 | 1.3 | 27.3 |
| HS 25-97 | 7,446 | 7.1 | 0 – 81 | 0.9 | 23.0 |
| By WTO category | | | | | |
| Agricultural products | 1,405 | 15.1 | 0 – 260 | 1.3 | 28.3 |
| - Animals and animal products | 189 | 24.3 | 0 – 260 | 1.3 | 36.5 |
| - Dairy products | 74 | 41.8 | 0 – 155 | 1.1 | 44.7 |
| - Coffee and tea, cocoa, sugar, etc. | 278 | 13.1 | 0 – 144 | 1.2 | 26.0 |
| - Cut flowers and plants | 56 | 7.0 | 0 – 15 | 1.0 | 29.6 |
| - Fruit, vegetables and garden produce | 321 | 13.1 | 0 – 81 | 0.8 | 25.8 |
| - Cereals | 19 | 23.7 | 0 – 90 | 1.5 | 32.6 |
| - Oilseeds, fats and oils and their products | 116 | 9.7 | 0 – 30 | 0.9 | 23.8 |
| - Alcoholic beverages and liquids | 140 | 13.6 | 0 – 30 | 0.3 | 28.6 |
| - Tobacco | 15 | 13.0 | 0 – 15 | 0.4 | 26.0 |
| - Other agricultural products n.e.s. | 197 | 8.0 | 0 – 15 | 0.8 | 25.5 |
| Non-agricultural products (including petroleum) | 7,513 | 7.3 | 0 – 81 | 0.9 | 22.9 |
| - Non-agricultural products (excluding petroleum) | 7,486 | 7.3 | 0 – 81 | 0.9 | 22.9 |
| - Fish and fish products | 168 | 12.7 | 0 – 15 | 0.3 | 18.8 |
| - Minerals, precious stones and metals | 526 | 8.1 | 0 – 81 | 0.9 | 26.0 |
| - Metals | 945 | 7.6 | 0 – 15 | 0.8 | 27.2 |
| - Chemicals and photographic products | 1,459 | 3.0 | 0 – 15 | 1.5 | 6.8 |
| - Leather, rubber, footwear, and travel articles | 341 | 9.6 | 0 – 15 | 0.6 | 25.8 |
| - Wood, wood pulp, paper and furniture | 722 | 7.9 | 0 – 15 | 0.8 | 27.3 |
| - Textiles and clothing | 1,333 | 8.1 | 0 – 15 | 0.8 | 28.8 |
| - Transport equipment | 343 | 11.4 | 0 – 20 | 0.5 | 21.8 |

Table III.2 (cont'd)

| Description | MFN | | | | Average bound tariff ^a (%) |
|--|-----------------|-------------|-----------|-------------------------------|--|
| | Number of lines | Average (%) | Range (%) | Coefficient of variation (CV) | |
| - Non-electrical machinery | 644 | 5.0 | 0 - 15 | 0.9 | 25.7 |
| - Electrical machinery | 329 | 8.0 | 0 - 15 | 0.6 | 24.6 |
| - Non-agricultural products n.e.s. | 676 | 10.5 | 0 - 15 | 0.5 | 27.0 |
| - Petroleum | 27 | 5.0 | 0 - 30 | 1.7 | 26.2 |
| By ISIC sector^b | | | | | |
| Agriculture and fishing | 461 | 10.8 | 0 - 90 | 0.9 | 25.0 |
| Mining | 118 | 7.9 | 0 - 81 | 1.4 | 29.6 |
| Manufacturing | 8,338 | 8.4 | 0 - 260 | 1.2 | 23.5 |
| By HS chapter | | | | | |
| 01 Live animals and animal products | 400 | 22.4 | 0 - 260 | 1.3 | 30.7 |
| 02 Plant products | 429 | 10.9 | 0 - 90 | 1.1 | 25.9 |
| 03 Fats and oils | 71 | 11.4 | 0 - 30 | 0.8 | 27.3 |
| 04 Food preparations, etc. | 572 | 14.5 | 0 - 144 | 0.9 | 26.2 |
| 05 Mineral products | 199 | 7.2 | 0 - 81 | 1.3 | 29.3 |
| 06 Products of the chemical and related industries | 1,268 | 2.8 | 0 - 15 | 1.6 | 6.8 |
| 07 Plastics and rubber | 449 | 4.6 | 0 - 15 | 1.3 | 14.9 |
| 08 Hides and skins | 121 | 12.3 | 0 - 15 | 0.3 | 30.0 |
| 09 Wood and articles of wood | 176 | 7.3 | 0 - 15 | 0.9 | 28.7 |
| 10 Wood pulp, paper, etc. | 485 | 7.4 | 0 - 15 | 0.9 | 26.9 |
| 11 Textiles and textiles articles | 1,285 | 7.9 | 0 - 15 | 0.8 | 28.9 |
| 12 Footwear, hats and other headgear | 164 | 11.8 | 0 - 15 | 0.4 | 22.1 |
| 13 Articles of stone | 294 | 9.7 | 0 - 15 | 0.5 | 27.2 |
| 14 Precious stones, etc. | 66 | 7.2 | 0 - 15 | 0.8 | 28.3 |
| 15 Base metals and articles of base metal | 927 | 7.6 | 0 - 15 | 0.8 | 27.2 |
| 16 Machinery and mechanical appliances | 1,028 | 6.1 | 0 - 15 | 0.8 | 25.2 |
| 17 Transport equipment | 358 | 11.5 | 0 - 20 | 0.5 | 22.1 |
| 18 Precision instruments | 305 | 9.8 | 0 - 15 | 0.5 | 26.8 |
| 19 Arms and ammunition | 27 | 14.6 | 10 - 15 | 0.1 | 30.0 |
| 20 Miscellaneous manufactured articles | 285 | 11.8 | 0 - 15 | 0.3 | 27.6 |
| 21 Works of art, etc. | 9 | 7.8 | 0 - 15 | 1.0 | 29.4 |
| By stage of processing | | | | | |
| First stage of processing | 877 | 10.1 | 0 - 90 | 1.0 | 26.1 |
| Semi-processed products | 2,611 | 3.9 | 0 - 144 | 1.8 | 20.1 |
| Fully processed products | 5,430 | 10.5 | 0 - 260 | 1.0 | 25.2 |

a As the bound rates correspond to the HS96 classification and the applied rates to HS02, there may be a difference in the number of lines included in the analysis.

b ISIC (Rev.2), excluding electricity (1 line).

Source: WTO Secretariat estimates based on data provided by the Panamanian authorities.

61. Panama's Import Tariff does not reveal any obvious escalation of tariff rates. Imports of raw materials and fully processed products are subject to almost the same average tariff (about 10 per cent), but the latter is much higher than the average tariff for semi-processed products (3.9 per cent) (see Table III.2). According to the authorities, this tariff structure is not intentional, but a result of the tariffication process and various tariff reductions over the last twenty years.

(b) Tariff bindings

62. The bound tariff used in this review corresponds to the HS 1992 classification. When it joined the WTO, Panama bound its entire tariff universe, chapters 1 to 97 of the HS, at 46 different levels varying from duty-free to 260 per cent. The average bound tariff is 23.7 per cent; for agricultural products (WTO definition), the average is 28.3 per cent, and for non-agricultural products 22.9 per cent.

63. Panama has been applying a bound rate reduction programme that provides for linear annual reductions on 179 tariff lines between 1997 and 2011.²⁹ For strictly comparable headings, i.e. for those identical in the HS versions used in the bound (HS 1992) and applied (HS 2002) tariffs, the WTO Secretariat has found three products for which the rate applied exceeds the bound level (applied tariff/bound tariff in parentheses, per cent): other salt and pure sodium chloride HS 25010099 (81/30); soap dishes, towel-rails, toilet roll holders and the like, of plastic HS 39249021 (10/6.5); and other impregnated paper, printed HS 48119030 (10/5).

(c) Tariff concessions

64. The following imports are exempt from the payment of duties: those effected by the State; donations to the private sector intended to cover aid, relief and education services; those effected by members of the diplomatic corps accredited in Panama; those relating to teaching materials for use in private schools; medical equipment for hospitals; articles intended for the development of religious activities; equipment for police use; and, temporarily, goods intended for display at trade fairs and exhibitions.³⁰

65. Goods which have been temporarily exported or re-exported may be imported for home use free of customs duties, provided that they have not undergone any manufacturing, processing or repair whilst abroad. In order to benefit from this regime, the importer must show that the goods were in circulation in the national territory at the time of exportation and that they are in the same state, except for normal wear and tear.³¹

66. Panama also grants tariff concessions to imports intended for exportation, under the free zone and drawback procedures (see section (3)(iv) below).

(d) Preferences

67. At the beginning of 2007, under the relevant preferential agreements (see chapter II(4)), Panama was applying preferential tariffs to imports from Chinese Taipei, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Singapore. In the FTAs with Chinese Taipei, El Salvador and Singapore, Panama undertook to implement total and definitive tariff reduction programmes. As exceptions to these programmes, MFN tariffs have to be maintained for some groups of products, such as meat and dairy products under all three FTAs, vehicles under the FTA with Chinese Taipei, and textile materials under the FTA with El Salvador.

68. Panama does not participate in the Global System of Trade Preferences (GSTP) established in 1988.

²⁹ Panama also applied a bound rate reduction programme between 1997 and 2006.

³⁰ Articles Nos. 18 and 246 of Cabinet Decree No. 41 of 11 December 2002.

³¹ Article No. 136 of Cabinet Decree No. 41 of 11 December 2002.

(v) Other charges affecting imports**(a) Charges applied exclusively to imports**

69. In addition to tariffs, imports are subject to an Administrative Charge for Customs Services (TASA) equivalent to B 70.00 for each customs declaration covering imports for which the total c.i.f. value of the goods amounts to B 2,000.00 or more. The DGA is responsible for administering and collecting the TASA.³²

(b) Indirect taxes

70. Imports are subject to the payment of ITBMS, Selective Consumption Tax (ISC), and the Consumption Tax on Fuels Derived from Petroleum. In 2006, B 323 million was collected as ITBMS, of which 49 per cent came from imports and represented the equivalent of 18 per cent of total tax revenue. In 2006, the ISC collected amounted to B 173 million, of which 21 per cent came from the sale of alcoholic beverages and represented the equivalent of 10 per cent of total tax revenue. The same year, sales of fuels and other petroleum derivatives reached 581 million gallons. The tax collected amounted to B 86 million, or 4.7 per cent of total tax revenue.³³

Tax on the Transfer of Movable Tangible Property and the Provision of Services

71. The ITBMS applies to the transfer of movable property and services, both domestic and imported, and operates as a value-added sales tax in the sense that each taxpayer determines the tax payable on the basis of the difference between the fiscal debit and the fiscal credit. The tax base is the price agreed for the provision of services or, in the case of the transfer of property, the invoice price, including all costs charged to the buyer (for example, transport and packing costs and interest on financing). For imports, the tax base is the c.i.f. value plus duties, charges and any other customs levies that affect the imported goods.³⁴ Where the c.i.f. value of the goods is not known, the f.o.b. value plus 15 per cent is used.³⁵

72. The ITBMS on imported goods is declared and paid at the same time as the duty. The Directorate-General for Revenue (DGI), under the Ministry of the Economy and Finance, is responsible for administering and collecting the ITBMS.

73. Since the ITBMS was introduced in 1976, the basic rate of 5 per cent has been applied to most goods and services.³⁶ The only exceptions are alcoholic beverages, which are taxed at 10 per cent, and cigarettes and other tobacco product, taxed at 15 per cent. Some goods and services, including imports, are exempt from ITBMS (Table III.3). The inclusion of professional services within the scope of the ITBMS has been challenged in the courts, but these cases have not yet been decided by the Supreme Court.

³² Law No. 36 of 6 July 1995.

³³ Available for consultation at: <https://www.dgi.gob.pa/defaultsecure.asp>.

³⁴ Article No. 1.057-v of the Tax Code, as amended by Law No. 6 of 2 February 2005.

³⁵ Of the reference value, 13.5 per cent is for freight and 1.5 per cent for insurance.

³⁶ Law No. 75 of 22 December 1976.

Table III.3
Goods and services exempt from ITBMS

| |
|---|
| <p>Exempt goods:</p> <p>Agricultural products (crops, livestock, poultry, products of fishing and hunting, etc.) in the natural state</p> <p>Aerated beverages</p> <p>Crude oil, fuels, lubricants and related products</p> <p>Food products</p> <p>Manufactured fertilizers specified in the headings or groups of the Import Tariff^a</p> <p>Insecticides, fungicides, herbicides, disinfectants and the like, used in agriculture and livestock breeding, of the following subheadings: 38.08.10.10, 38.08.10.20, 38.08.20.10, 38.08.20.20, 38.08.40.10, 38.08.40.20, 38.08.90.11, 38.08.90.91 and 38.08.90.92</p> <p>All seeds used in agriculture</p> <p>Barbed wire of subheading 73.13.00.20</p> <p>Hand tools used in agriculture, such as machetes, hoes, spades, shovels, and picks</p> <p>Newspapers, magazines, reviews, magnetic media of an educational nature, exercise books, pencils, ballpoint pens and other articles exclusively for school use, as well as textbooks, books and publications in general, excluding pornography</p> <p>Drinking water supplied by public utility companies</p> <p>Medicinal and pharmaceutical products specified in Chapter 30 of the Import Tariff</p> <p>Foreign currency, shares, and government and private securities</p> <p>Transfers of goods and services within free zones and areas under customs control</p> <p>Exportation and re-exportation of goods (including accommodation services provided by persons in the hotel trade)</p> <p>Exempt services:</p> <p>Services related to human health</p> <p>Leasing and subleasing of real estate intended exclusively as the house or dwelling of the lessee</p> <p>Services related to education, if provided by persons authorized by the Ministry of Education</p> <p>Lending to the state, and loans, deposits and payments generated by financial services provided by entities legally authorized to provide this kind of service</p> <p>Freight transport services (excluding the transport of securities and private mail), and passenger transport by air, sea and land</p> <p>Generation, transmission and distribution of electrical energy</p> <p>Fixed telephone services</p> <p>Social communication services, such as radio, press and television, provided by public or private entities, with the exception of the sale of advertising space</p> <p>Postal services provided by the state</p> <p>Games of chance at state and private casinos and racecourses, including those operated on concession from the state</p> <p>Insurance and reinsurance</p> <p>International freight services for transporting goods abroad; repair of cargo and passenger ships and aircraft engaged in international trade activities, whatever their nationality; cleaning and maintenance services for such ships and aircraft; loading, unloading and transfer services provided wholly within customs areas and warehouses, and private services provided for the passage of vessels through the Panama Canal</p> <p>Legal services provided for vessels engaged in international trade registered in the national merchant marine</p> <p>Professional services provided to persons resident abroad</p> <p>Services provided within free zones and processing zones, directly related to export operations;</p> <p>Internet access services, residential and for entities that provide educational services, recognized as such by the state</p> <p>Sewage and garbage collection services provided by public entities or concession-holders</p> <p>Public cultural events, as classified by the National Institute of Culture</p> <p>Activities of securities and agricultural commodity exchanges and the financial activities of cooperatives</p> <p>Food retailing on business premises on which alcoholic beverages are not sold or consumed (for example, fast-food restaurants)</p> |
|---|

a A complete list of tariff headings can be found in Article 39.8(7) of Law No. 6 of 2 February 2005.

Source: WTO Secretariat, based on the text of Article 1.057-v of the Fiscal Code, as amended by Law No. 6 of 2 February 2005, and Executive Decree No. 84 of 26 August 2005.

Selective Consumption Tax

74. The Selective Consumption Tax (ISC) applies to the sale of certain domestically produced and imported goods and services. The goods and services subject to ISC include, *inter alia*, aerated and alcoholic beverages, tobacco products, cars and motorcycles, vessels, aircraft, jewellery, prizes won on slot machines, television services, and mobile phone services.³⁷

75. The tax base is the price agreed for the provision of services or the invoice price in the case of the sale of goods, including all costs charged to the buyer (for example, transport and packing costs and interest on financing) and excluding the value of the ITBMS.³⁸ For imports, the tax base is the c.i.f. value plus duty, charges and any other customs levies that affect the imported goods, with the exception of the ITBMS. Where the c.i.f. value of the goods is not known, the f.o.b. value plus 15 per cent is used.³⁹

76. Where domestically produced goods and the provision of services are concerned, the ISC must be paid by the taxpayer monthly, by the fifteenth day of the month following the date of the tax-generating activity.⁴⁰ In the case of imported goods, the ISC must be paid together with the other taxes levied on the importation of the product, within three working days reckoned from the day following the date of shipment of the imports. The DGI is responsible for administering and collecting the ISC.

77. The basic rate of ISC is 5.0 per cent on most goods and services, with the exception, *inter alia*, of tobacco products, which are taxed at the rate of 32.5 per cent, and alcoholic beverages, which pay a fixed amount in balboas for each degree of alcoholic strength per litre. National treatment is not accorded to spirits distilled from cane, honey, cane syrup or maize, which receive a rebate for years of aging in the case of domestic products, but not in the case of imports (Table III.4).

78. Exemption from payment of the tax is granted to sales of goods destined for abroad made directly to the crews and passengers of vessels and aircraft engaged in international transport, as well as to sales for export, including sales made to enterprises installed in free zones established in Panama.⁴¹

Table III.4
Selective Consumption Tax (ISC)

| Product | Rate | Exemptions |
|---|----------------------|---|
| Aerated beverages | 5% | |
| Syrups or concentrates used in the production of aerated beverages | 6% | |
| Rectified alcohol, rum, whisky or gin | B 0.035 ^a | Domestically produced spirits distilled from sugar cane, honey, cane syrup, molasses and maize aged for four years receive a rebate of 10% of the value of the tax; a further rebate of 5% for each additional year of aging; the total rebate may not exceed 40%. Alcohol used in pharmaceutical preparations; chemical products; fuels; dyes and perfumes |
| Wine and other alcoholic beverages with a low alcohol content (not less than 7% or more than 20%) | B 0.05 ^b | Non-alcoholic beers and liquid extracts of malt that do not contain more than 0.5% of alcohol by volume |

Table III.4 (cont'd)

³⁷ Law No. 45 of 14 November 1995 and amendments introduced by Law No. 6 of 2 February 2005.

³⁸ For products derived from tobacco the tax base is the final consumer price.

³⁹ Articles Nos. 60 and 63 of Law No. 6 of 2 February 2005.

⁴⁰ Article No. 61 of Law No. 6 of 2 February 2005.

⁴¹ Law No. 45 of 14 November 1995.

| Product | Rate | Exemptions |
|---|----------------------|---|
| Beer | B 0.325 ^b | |
| Tobacco products (incl. cigarettes) | 32.% | |
| Self-propelled land vehicles for the transport of persons, if the c.i.f. value exceeds B 15,000 or B 18,000 for four-wheel drive vehicles | 5% | Vehicles designed for the transport of freight and goods, ambulances and hearses, public transport vehicles, tow-trucks, fire engines, etc. |
| Motorcycles with two or more wheels and an engine of more than 125 cc | 5% | |
| Yachts, sailboats, jet skis, recreational craft, boats, and outboard engines of more than 75 cc | 5% | |
| Aircraft for non-commercial use and helicopters | 5% | |
| Jewellery | 5% | |
| Firearms | 5% | Arms purchased by the state |
| Cable, microwave and satellite television services | 5% | |
| Mobile telephone services | 5% | Mobile telephone services, prepaid |
| Prizes of more than B 300 won on slot machines related to games of chance | 7% | |

a For each degree of alcoholic strength per litre of domestic or imported beverage.

b Per litre of domestically produced or imported wine or beer.

Source: WTO Secretariat, based on the text of Law No. 45 of 14 November 1995 and Law No. 6 of 2 February 2005.

Consumption Tax on Fuels Derived from Petroleum

79. The Consumption Tax on Fuels Derived from Petroleum is applied to the sale of the products in question within Panamanian territory. As Panama is not an oil producer, the activity that generates the tax is the importation of fuels and other petroleum derivatives from abroad or a free zone. The taxpayers are the importing enterprises authorized by the Ministry of Trade and Industry's National Hydrocarbons Directorate. The tax must be paid by means of a bank order accompanied by the customs declaration, subject to compliance with the other customs formalities.⁴² The tax base is the gallon and the tax rate varies from product to product (Table III.5).

Table III.5
Consumption Tax on Fuels and Petroleum Derivatives

| Product | Rate (B per gallon) |
|-----------------------------|---------------------|
| Petrol, 87 octane | 0.60 |
| Petrol, 87 octane, unleaded | 0.60 |
| Petrol, 95 octane | 0.60 |
| Petrol, 95 octane, unleaded | 0.60 |
| Kerosene | 0.13 |
| Diesel, light | 0.25 |
| Fuel oil | 0.15 |
| Low viscosity | 0.15 |
| Asphalt, penetration grade | 0.08 |
| Asphalt, cutback | 0.09 |
| White spirit | 0.08 |

Source: WTO Secretariat, based on the text of Law No. 6 of 20 January 1998.

80. All natural or legal persons that sell, distribute or transfer, at wholesale level, petroleum-derived products that have been released into free circulation must submit, within the first 15 working days following the end of each month, a detailed report on the sales made. The DGI is responsible for administering and collecting the tax.

⁴² Resolution No. 201-2378 of 6 August 2003.

81. The consumption tax on light diesel and unleaded petrol for general use was temporarily reduced at the end of 2005.⁴³ Moreover, collection of the consumption tax on light diesel for public transport use was temporarily suspended for four months at the end of 2005 to reduce the cost overruns experienced by the transport sector in recent years. The DGI is responsible for administering and collecting the tax.

(vi) Import prohibitions, restrictions and licences

82. Panama has notified the WTO of Law No. 23 of 15 June 1997 which established general import licensing provisions and incorporated the WTO Agreement on Import Licensing Procedures.⁴⁴ Panama has also notified Resolution No. 5 of 18 November 1998 under which the granting of licences for the importation of products subject to tariff rate quotas is administered⁴⁵ (see chapter IV(2)), as well as various specific regulations on the licensing of medicaments and narcotic drugs.⁴⁶

83. In its replies to the questionnaire on import licensing procedures, Panama noted that its system provides for two types of import licence: automatic licences for statistical purposes and non-automatic licences for imports subject to restrictions and for the administration of tariff rate quotas (see chapter IV(2)).⁴⁷ Although the law provides for automatic licences for the importation of non-food products, the authorities have indicated that in practice they are not applied. In general, all persons, enterprises and institutions are entitled to apply for an import licence and to institute the relevant legal proceedings. It is possible to appeal decisions of the authorities on the granting of import licences both through administrative channels and, in the second instance, through the courts.

84. Panama maintains import prohibitions and restrictions on a limited number of products for sanitary and phytosanitary (see section (ix) below), health and safety reasons. The goods may be the subject of an absolute prohibition or of specific import rules (Table III.6).

Table III.6
Goods whose importation is prohibited or restricted

| Importation prohibited |
|--|
| False coins and implements for minting coins |
| Arms and instruments of war, offensive weapons in general |
| Smoking opium and opium resin |
| Falsely labeled spirits, wines, beers and medicines (see section (2) (viii)) |
| Indecent or morally offensive printed publications |
| Plants, seeds and animals designated by the Ministry of Agricultural Development (see section (2) (ix)) |
| Foreign lottery and raffle tickets |
| Non-original products that imitate, in whole or in part, the workmanship of traditional products of the indigenous peoples |
| Importation restricted |
| Machinery for minting coins can only be imported by the state |
| Firearms that are not weapons of war, that is, those intended for hunting, those used for the development of sporting skills and those permitted for self-defence; the corresponding ammunition; non-lethal articles for self-defence ^a |
| Dynamite, gunpowder, nitroglycerine and other explosives ^b |
| Medicinal opium, morphine, heroin, cocaine and all alkaloids of opium and cocaine if imported for medicinal use ^c |

a These articles require a permit issued by the Ministry of the Interior and Justice.

b These articles require a permit issued by the Safety Office of the Fire Service.

c These articles require a permit issued by the Ministry of Health.

Source: WTO Secretariat, based on the text of Cabinet Decree No. 19 of 30 June 2004.

⁴³ Law No. 30 of 17 August 2005.

⁴⁴ WTO document G/LIC/N/1/PAN/1 of 18 August 1998.

⁴⁵ WTO document G/LIC/N/1/PAN/1 of 18 August 1998.

⁴⁶ WTO document G/LIC/N/1/PAN/2 of 16 November 1998.

⁴⁷ WTO document G/LIC/N/3/PAN/2 of 4 March 2004.

(vii) **Special trade measures**

85. In 2006, the Directorate-General for Trade Protection (DGDC) was set up under the MTI by Decree Law No. 6 of 15 February 2006, the purpose of which is to reorganize and restructure the operations of the MTI. The DGDC replaces the *Comisión de Libre Competencia y Asuntos del Consumidor* (Commission on Free Competition and Consumer Affairs - CLICA) as the authority responsible for investigating, analysing and evaluating unfair trade practices and recommending to the Cabinet Council of the Office of the President the imposition of anti-dumping, countervailing or safeguard measures. Moreover, the DGDC is responsible for publicizing the rules on unfair trade practices.

86. Decree Law No. 7 of 15 February 2006, which repealed the relevant provisions of Law No. 29 of 1 February 1996, together with the Marrakesh Agreement and its Annexes incorporated in the legislation by Law No.23 of 1997, constitute the legal framework for Panama's anti-dumping, countervailing and safeguard measures. Panama has notified the WTO of Law No. 29 of 1996 and Decree Law No. 7 of 15 February 2006 under the Agreements on Anti-Dumping, Subsidies and Countervailing Duties, and Safeguards.⁴⁸ The Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures have examined Law No. 29 of 1996; four Members posed questions, to which Panama did not provide written replies.⁴⁹ At the beginning of 2007, these Committees had not yet examined Decree Law No. 7 of 15 February 2006.

87. Within the context of this review, the authorities have indicated that expert technical assistance to develop specific anti-dumping, countervailing and safeguard regulations is awaited.

88. As provisions common to anti-dumping, countervailing duty and safeguard investigations, Decree Law No. 7 of 15 February 2006 establishes: the possibility of an appeal to the Cabinet Council against decisions on whether to recommend the imposition of the respective measures, which is deemed to have been denied if 15 working days have passed without the competent official having ruled; and the penalties to which public officials are subject for infringement of the principle of the confidentiality of information.

89. Decree Law No. 7 of 15 February 2006 prohibits the simultaneous application of an anti-dumping measure and a countervailing measure to the same product. However, there are no provisions against a safeguard and an anti-dumping or countervailing measure being simultaneously applied to the same product.

(a) **Anti-dumping and countervailing measures**

90. Panama has notified the WTO of a single dumping investigation initiated since it joined the Organization.⁵⁰ That investigation was initiated in July 1998 and related to imports of sugar for human consumption from Colombia and Mexico. The authorities have noted that the application for the imposition of anti-dumping duties was rejected in February 2000 and the investigation was closed.

⁴⁸ WTO documents G/ADP/N/1/PAN/1 and G/SCM/N/1/PAN/1, of 17 April 1998, and G/ADP/N/1/PAN/2, G/SCM/N/1/PAN/2 and G/SG/N/1/PAN/2 of 4 August 2006.

⁴⁹ WTO documents G/ADP/Q1/PAN/1 of 7 October 1998, G/ADP/Q1/PAN/2 of 8 October 1998, G/ADP/Q1/PAN/3 of 20 October 1998, and G/ADP/Q1/PAN/4 of 22 October 1998.

⁵⁰ WTO document G/ADP/N/47/PAN of 6 April 1999; and Semi-Annual Reports of the Committee on Anti-Dumping Practices 1997-2006.

Panama has notified the Committee on Subsidies and Countervailing Measures that it has not adopted any countervailing duty measure since joining the WTO.⁵¹

91. According to Decree Law No. 7 of 15 February 2006 the determination of the normal value in dumping investigations must be based on the price of the like product when destined for consumption in the exporting country.⁵² If this method cannot be used, the normal value must be determined by comparison with the price of the like product when exported to a third country, or in terms of the cost of production of the product in the country of origin plus an additional amount for administrative and selling costs and for profits. These comparisons must take into consideration the differences between countries with respect to conditions of sale, taxation, etc. However, at the beginning of 2007 no detailed regulations on the method of comparing normal value and export price had been adopted.

92. The domestic industry affected may request the initiation of an administrative subsidy or dumping investigation only if it has the support of domestic producers accounting for at least 25 per cent of total production of the product under investigation. The MTI itself may initiate an investigation *ex officio*.

93. After having received the application for the initiation of an investigation, the MTI may, within five working days, request the applicant to send it corrections to the application within a period of ten working days.⁵³ Once it has all the information requested, the MTI must, within 15 working days, assess the merits of the application and declare, by resolution, whether an administrative investigation is to be initiated or refused. Before publishing the resolution the MTI must notify the government of the exporters' country. From receipt of the notification, the interested parties have 30 calendar days in which to reply; this period may be extended by a maximum of a further 30 calendar days. After that, the MTI has 30 calendar days (subject to extension) to examine the evidence and conclude the investigation by summoning the interested parties to a hearing to inform them of its decision. There are as yet no regulations concerning the limit on the extension for taking evidence. Once the hearing has been concluded, the parties have three working days to present their arguments in writing, and then within ten working days the MTI must issue a final resolution recommending the Cabinet Council to impose, or not to impose, definitive countervailing or anti-dumping duties.⁵⁴ There is no maximum period within which the entire investigation procedure must be completed following its initiation.

94. No sooner than 60 calendar days from the initiation of an investigation, the MTI may recommend to the Cabinet Council the application of provisional measures to prevent the unfair trade practice from causing imminent injury to the domestic industry. The provisional measures are applied by requiring the importer to lodge security in an amount not greater than the provisionally calculated margin of dumping. The duration of the provisional measures may not exceed four months in the case of subsidies or six months in the case of dumping.

95. The countervailing or anti-dumping duties may not exceed the subsidy or margin of dumping whose existence has been demonstrated and may not be applied for more than five years.⁵⁵ The authorities are authorized to set an anti-dumping duty below the margin of dumping but this provision has not yet been regulated. Definitive countervailing and anti-dumping duties may be applied retroactively from the date on which it would have been possible to apply a provisional measure.

⁵¹ Semi-Annual Reports of the Committee on Subsidies and Countervailing Measures 1997-2006.

⁵² The term "like product" is defined in Article 4 of Decree Law No. 7 of 2006.

⁵³ Within the MTI the formalities are mainly the responsibility of the DGDC.

⁵⁴ Decree Law No. 7 of 15 February 2006.

⁵⁵ Articles 9, 12 and 19 of Decree Law No. 7 of 15 February 2006.

(b) Safeguard measures

96. Panama has taken safeguard action on only one occasion, in connection with which, in October 2006, it notified the WTO of a safeguard investigation into the importation of printed film in rolls for the manufacture of flexible packaging.⁵⁶ According to the authorities, the investigation was initiated after the MTI had examined an application from the domestic plastic sack and bag industry. Peru raised questions concerning the initial procedures adopted by Panama in that investigation.⁵⁷ On 6 March 2007, the competent authority recommended to the Cabinet Council the application of provisional safeguard measures to all the products subject to investigation, with the exception of printed sheet in rolls for the manufacture of flexible polypropylene packaging.⁵⁸ At the beginning of June 2007 the proceedings were still continuing pending a final resolution.

97. Decree Law No. 7 of 15 February 2006 states that in considering the application of a safeguard measure the MTI must verify whether the serious injury is related with the increased imports of like or directly competitive products.⁵⁹ The safeguard measures may involve the imposition of: (i) tariff increases; (ii) tariff quotas; (iii) quantitative restrictions; or (iv) any other measure to prevent or remedy serious injury or threat of serious injury to the domestic industry.

98. Safeguard measures may have a maximum duration of four years, which may be extended for a further period of six years. However, measures with a duration of more than one year must be progressively liberalized as provided for in the legislation.⁶⁰

99. The producers' association or the domestic industry affected, provided they account for domestic producers that constitute a "substantial proportion" of total production of the product under investigation, and the MTI are entitled to request the initiation of an administrative investigation.

100. After the initiating resolution has been issued, the MTI has ten working days within which to give public notice and inform the interested parties. In general, the safeguards investigation procedure is similar to that followed in the case of dumping or subsidy investigations (see above).

101. The MTI may be requested to consider the imposition of provisional safeguard measures which must consist of temporary tariff increases with a maximum duration of 200 calendar days. If the MTI initiated the investigation ex officio, it may also decide to apply provisional measures.

102. Within the framework of the FTAs with Chinese Taipei, El Salvador and Singapore, bilateral safeguard measures may be applied in response to the adverse effects of a preference granted; these measures may not exceed the MFN tariff. The duration of these measures, like the provision for the application of provisional measures, is different for each agreement. The FTAs with Chinese Taipei and El Salvador prevent the signatories from applying global safeguard measures to imports from the other party, unless those imports account for a substantial share⁶¹ of total imports or are making a major contribution to the serious injury.⁶² In the case of the FTA with Singapore, imports from the

⁵⁶ WTO document G/SG/N/6/PAN/1 of 2 October 2006.

⁵⁷ WTO document G/SG/Q2/PAN/1 of 13 October 2006.

⁵⁸ WTO document G/SG/N/7/PAN/1 and G/SG/N/11/PAN/1 of 20 February 2007.

⁵⁹ Article 52 of Decree Law No. 7 of 15 February 2006 defines like or directly competitive products.

⁶⁰ Decree Law No. 7 of 15 February 2006.

⁶¹ The two treaties stipulate that a country has a substantial share, if it is one of the five main suppliers of the goods, on the basis of average imports for the last three years.

⁶² Normative texts of the Panama–El Salvador (6 March 2002) and Panama–Chinese Taipei (21 August 2003) FTAs.

other party may be excluded from global safeguards if those imports do not constitute a substantial cause of the serious injury.⁶³

103. In 1998, Panama notified its intention to reserve the right to avail itself of the transitional safeguard mechanism under Article 6.1 of the WTO Agreement on Textiles and Clothing.⁶⁴ However, Panama has not applied any measure under this mechanism.

(viii) Standards and technical regulations

104. Panama has notified the WTO that Title II of Law No. 23 of 15 July 1997 adapts the Panamanian legislation to the WTO's Agreement on Technical Barriers to Trade (TBT).⁶⁵ Panama has also notified that the *Dirección General de Normas y Tecnología Industrial* (Directorate-General of Standards and Industrial Technology – DGNTI), part of the MTI, is the only national entity responsible for notifying Panamanian technical regulations to the WTO and supervising all other provisions of the TBT Agreement. Moreover, the DGNTI is responsible for coordinating the technical committees and administering the National Information Service.⁶⁶ In March 1998, Panama also notified that the DGNTI had accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards.⁶⁷ However, the DGNTI has not notified the ISO/IEC⁶⁸ of its work programme for recent years.

105. Law No. 23 of 15 July 1997 changed the role of the *Comisión Panameña de Normas Industriales* (Panamanian Industrial Standards Commission – COPANIT), which became a DGNTI advisory body on studies and analyses of standards and technical regulations; and created the *Consejo Nacional de Acreditación* (National Accreditation Council – CNA), as an auxiliary organization of the MTI (see below). The authorities have also noted the importance of the documentation and advisory service provided by the DGNTI through the *Centro de Información Normativa* (Regulatory Information Centre – CIN).

106. Panama has signed a memorandum of understanding with *ASTM International* and is a full member of the Pan-American Standards Commission (COPANT) and the International Standardization Organization (ISO).

107. Table III.7 shows the classification, by sector, of the 84 technical regulations in force in Panama; of these, 34 have been notified to the WTO, 32 having been notified after publication. Nevertheless, to improve transparency, the authorities decided that, as from 2006, all new technical regulations would be notified, whether based on international standards or not. The complete list and contents of the technical regulations are available on the MTI web site.⁶⁹

⁶³ Text of Law No. 19 of 20 June 2006 approving the Panama–Singapore FTA.

⁶⁴ WTO document G/TMB/N/337 of 16 September 1998.

⁶⁵ WTO document G/TBT/2/Add.53 of 7 May 1999.

⁶⁶ WTO document G/TBT/ENQ/28 of 27 October 2006.

⁶⁷ WTO document G/TBT/CS/N/98 of 22 April 1998.

⁶⁸ Information Centre administered by the International Standardization Organization (ISO) in association with the International Electrotechnical Commission (IEC).

⁶⁹ Available for consultation at: <http://www.mici.gob.pa/nortec.php>.

Table III.7
Technical regulations, by sector, February 2007

| Classification by sector or subject-matter | Number of regulations | Notified to WTO |
|---|-----------------------|-----------------|
| Food technology | 59 | 24 |
| (sugar and its derivatives) | (18) | (12) |
| Quality, discharge and use of water and other liquids | 7 | 2 |
| Metrology (calibration, weights, etc.) | 7 | 2 |
| Hygiene and industrial safety | 3 | 3 |
| Building materials | 3 | 2 |
| Agriculture (pesticides) | 2 | 0 |
| Fuels derived from petroleum | 1 | 0 |
| System components (gas cylinders) | 1 | 0 |
| Chemical products for industrial use | 1 | 1 |

Source: WTO Secretariat, based on information provided by the authorities.

108. In general, the technical regulations are established in accordance with international guidelines and are applied in the same way to both domestic products and imports.

109. About 70 per cent of the technical regulations in force relate to food technology that must be applied by the food industry or agricultural producers; these include technical regulations applied to sugar and its derivatives, edible oils, milk, bovine cattle and bovine meat products, and tomatoes.

110. The labelling on imported products may be in the language of origin; however, in accordance with National Technical Standard No. 52 of 1978 another additional label, with a description of the contents and instructions for use in Spanish, must be stuck to the packaging.

111. In conformity with Decree Law No. 11 of 2006, Panama has eliminated the requirement of sanitary registration with the Ministry of Health for imported and domestic food products.

112. The process of preparation of standards and technical regulations begins with the receipt of the application by DGNTI, which must determine whether it is viable or not. If the application is considered viable, it is assigned to a DGNTI standardization expert, who is required to prepare a draft standard or regulation and set up a Technical Committee composed of the interested parties (public and private sectors). The Technical Committee, coordinated by the standardization expert, must develop a normative document (standard or regulation) and once consensus has been achieved, that document must be made available for public discussion for a period of 60 days by publishing it in a local newspaper. At the same time, the WTO notification process must be initiated in order to allow WTO Members 60 days in which to examine the document. Comments arising out of the public discussion are considered by the Committee in preparing the final document, which is published in the *Gaceta Oficial de Panamá* (Official Gazette). In general, technical regulations enter into force immediately after publication.⁷⁰

113. The private sector can adopt (voluntary) standards without having to inform the DGNTI, but for these to be considered national standards the preparation process described above must be followed.

114. Imported products must also comply with the mandatory technical regulations of the country of origin.⁷¹

⁷⁰ Law No. 23 of 15 July 1997.

⁷¹ Article 120 of Law No. 23 of 15 July 1997.

115. The DGNTI must accept the technical regulations of other countries as equivalent, if they differ from the Panamanian ones, provided that the regulations in question fulfil the objectives of the Panamanian regulations.⁷² Panama also recognizes the procedures and results of technical conformity assessments carried out in the exporting country if it has a mutual recognition agreement with that country. In mid-2007, Panama had not recognized the technical regulations of any other country or signed any mutual recognition agreement relating to technical regulations or conformity assessment. Nevertheless, the authorities have indicated that work is being done on this.

116. The CNA is the organization responsible for granting and issuing accreditation to private conformity assessment bodies, such as, for example, certification and inspection bodies, and sampling, testing and/or calibration laboratories. The accreditation of these entities follows ISO recommendations and is valid for three years with the possibility of extension.⁷³ As of mid-2007, the CNA had accredited six laboratories for hydrocarbon and environmental testing, as well as five inspection bodies, but had not accredited any certification body.⁷⁴ According to the authorities, almost all certification is done independently by the private sector. The DGNTI must carry out batch certification, but as of mid-2007 had not carried out any certification of this kind as the procedure had not yet been established.

117. The *Autoridad de Protección al Consumidor y Defensa de la Competencia* (Authority for the Protection of the Consumer and Defence of Competition) and the Food Safety Department of the Ministry of Health are the government entities responsible for monitoring compliance with technical regulations. Monitoring is carried out by sampling products, and those products which do not comply with the technical regulation are penalized. In mid-2007, these entities were discussing the possibility of implementing border inspections with the DGA.

(ix) Sanitary and phytosanitary measures

118. In March 2007, Panama restructured and notified to the WTO the following bodies as the enquiry point for sanitary and phytosanitary measures (SPM): the *Centro de Operaciones de Emergencias y Vigilancia Sanitaria* (Centre for Emergency Operations and Health Surveillance – COP) of the Ministry of Agricultural Development (MAD) and the *Autoridad Panameña de Seguridad de Alimentos* (Panamanian Food Safety Authority – AUPSA).⁷⁵ The authority responsible for WTO notifications is the *Dirección Nacional de Administración de Tratados Comerciales Internacionales y de Defensa Comercial* (National Directorate for the Administration of International Trade Treaties and Trade Protection) of the MTI.

119. The COP performs surveillance and support functions for the MAD's National Directorates of Animal Health, Plant Health and Agricultural Quarantine, maintaining a permanent system for monitoring outbreaks of disease and pest infestation at national and international levels.⁷⁶

120. The MAD's National Animal Health Directorate is responsible, among other things, for establishing the zoosanitary requirements for the introduction of live animals, semen and embryos, medicaments for exclusively veterinary use, and biological and chemical products for animal use. This Directorate is also responsible for everything to do with the exportation of products of animal

⁷² Article 121 of Law No. 23 of 15 July 1997.

⁷³ Executive Decree No. 55 of 6 July 2006.

⁷⁴ Available for consultation at: <http://www.cna.gob.pa>.

⁷⁵ WTO document G/SPS/N/PAN/49 of 19 March 2007.

⁷⁶ Available for consultation at: <http://webserv-mida.mida.gob.pa/MAD/pdfsdocs/compras/InformedelCOP.pdf>.

origin, whether food products or not, as well as for proposing animal health standards for the transit and domestic movement of such products.⁷⁷

121. The MAD's National Directorate of Plant Health is responsible for establishing inspection measures and phytosanitary import and transit requirements for any product of plant origin not deemed to be food for human or animal consumption. These requirements may be changed at any time for quarantine reasons in order to protect the Panamanian agricultural heritage, by publication in the Official Gazette. This Directorate is also responsible for everything to do with the exportation of products of plant origin, whether food products or not. Another responsibility of this Directorate is to propose to the Minister accession to international plant health conventions and agreements.⁷⁸

122. The MAD's Executive Directorate of Agricultural Quarantine (DECA) is required to coordinate with the DGA inspection and surveillance activities at all points of entry into the country in connection with the quarantining of animals, plants and their products not deemed to be food. This Directorate is also required to issue phytosanitary and zoosanitary import and transit licences for these goods.⁷⁹

123. The *Dirección Nacional de Farmacia y Drogas* (National Pharmacy and Drugs Directorate of the Ministry of Health – MINSa) is responsible for authorizing and signing import permits for medicaments and other human health products.⁸⁰

124. In October 2006, Panama notified the WTO of the creation, by Decree Law No. 11 of 22 February 2006, of the AUPSA as an autonomous entity.⁸¹ This Authority establishes sanitary and phytosanitary measures applicable to food imports, and applies public policies for the prevention of diseases and pests transmissible through food. AUPSA's Executive Board, composed of its Administrator General and the Ministers of Agricultural Development, Health, and Trade and Industry, is required to coordinate the establishment of human, animal and plant health measures with these ministries.

125. Panama is a member of the Codex Alimentarius Commission, the International Office of Epizootics and the International Plant Protection Convention.⁸² Panama is also a signatory to the Biological Diversity Convention.

126. The Panamanian legal framework relating to sanitary and phytosanitary measures is mainly composed of Law No. 23 of 15 July 1997 which approved the Marrakesh Agreement and its Annexes, as well as establishing zoosanitary and agricultural quarantine measures; Law No. 47 of 9 July 1996 establishing phytosanitary protection measures; and Decree Law No. 11 of 22 February 2006 establishing food safety measures.⁸³ The Executive Decree enabling Decree Law No. 11 of 2006 is in the stage of consultation with civil society and has not yet been approved.

127. As of mid-2007, Panama had notified 49 measures under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPM), approximately half of which were

⁷⁷ Article 6 of Law No. 23 of 15 July 1997, as amended by Decree Law No. 11 of 22 February 2006.

⁷⁸ Articles 10 and 20 of Law No. 47 of 9 July 1996.

⁷⁹ Articles 51 and 56 of Law No. 23 of 15 July 1997, as amended by Decree Law No. 11 of 22 February 2006.

⁸⁰ Available for consultation at: <http://www.minsa.gob.pa/>.

⁸¹ WTO document G/SPS/N/PAN/47 of 3 October 2006.

⁸² WTO document G/SPS/GEN/49/Rev.7 of 26 July 2006.

⁸³ Law No. 23 of 1997 and Decree Law No. 11 of 2006 were notified in WTO documents G/SPS/N/PAN/1 of 24 September 1998 and G/SPS/N/PAN/47 of 3 October 2006, respectively.

adopted before Panama joined the WTO (Table III.8). Of the measures notified, 52 per cent concern the importation of live animals, meat and by-products, and of these more than half relate to bovine meat or cattle. Altogether, six notifications relate to the prohibition or suspension of imports of agricultural products, of which two were applied as emergency measures. Moreover, seven of the notifications related to a regulatory change without the application of a specific measure. Panama does not have a public inventory of all the sanitary and phytosanitary measures in force in the country, but these measures are published in the Official Gazette and on the web sites of the competent agencies.

Table III.8
Sanitary and phytosanitary measures, by product affected and by type of measure, 1995-07

| Classification | Number of measures | | | Total |
|--|----------------------|----------------------|----------------------|-------|
| | 1995-97 ^a | 1997-99 ^b | 2000-07 ^c | |
| By product affected | | | | |
| Live animals in general | 1 | 2 | 2 | 5 |
| Bovine, sheep, goat, swine and buffalo meat products and by-products | 5 | 1 | 1 | 7 |
| Bovine meat and/or bovine cattle | 1 | 2 | 4 | 7 |
| Poultry products and/or poultry meat | 4 | - | - | 4 |
| Fish products and/or crustaceans | 2 | - | - | 2 |
| Pesticides, additives and/or fertilizers | 2 | 2 | - | 4 |
| Plants and plant products in general | 1 | 2 | 2 | 5 |
| Plant products with wood packing | - | - | 1 | 1 |
| Food and beverages | 2 | 1 | 2 | 5 |
| Salt | - | 1 | 1 | 2 |
| Wheat flour | 1 | - | 1 | 2 |
| Dairy products or raw milk | 2 | - | - | 2 |
| Honey | - | 1 | - | 1 |
| Coffee | - | - | 1 | 1 |
| Rice, bananas, maize et al. | - | 1 | - | 1 |
| Total | 21 | 13 | 15 | 49 |
| By type of measure | | | | |
| Prohibition or suspension of importation | 3 | - | 3 | 6 |
| Regulatory change without a specific measure | 2 | 2 | 3 | 7 |
| Removal of prohibition on importation | - | - | 2 | 2 |
| Classification or inspection of abattoirs and farms | 5 | 1 | - | 6 |
| Transport or movement regulations | 1 | 3 | - | 4 |
| Product registration regulations | 2 | 1 | - | 3 |
| Addition of iodine to salt | - | 1 | 1 | 2 |
| Other measures | 8 | 5 | 6 | 18 |
| Total | 21 | 13 | 15 | 49 |

a Before Panama joined the WTO in September 1997.

b After Panama joined the WTO in September 1997.

c Up to May 2007.

Note: The Table includes only the sanitary and phytosanitary measures notified to the WTO.

Source: WTO Secretariat, based on WTO documents of the G/SPS/N/PAN/ series.

128. In the Committee on Sanitary and Phytosanitary Measures, two Members expressed concern regarding the application by Panama of the requirements relating to imported dairy products. In 2000, the European Union mentioned the difficulties in obtaining permits to import milk powder into Panama.⁸⁴ In 2005, Costa Rica expressed concern regarding risk assessment and the scientific grounds for the new sanitary measure on the importation of *dulce de leche* (caramelized milk spread) and condensed milk.⁸⁵ The authorities have pointed out that Canada has removed Panama from the list of specific trade concerns as a result of the elimination of double pre-inspection for foods; the

⁸⁴ WTO document G/SPS/GEN/220 of 22 November 2000.

⁸⁵ WTO document G/SPS/GEN/582 of 28 June 2005.

creation of AUPSA made it possible to combine the inspections previously carried out by MINSA and MAD.

129. Except in emergencies, MAD must allow not less than 60 days between the publication of a SPM in the Official Gazette and its entry into force, in order to give time for the producers to adapt and the WTO to be notified.⁸⁶ According to the Panamanian authorities, all the measures are consistent with international rules or recommendations.

130. MAD and AUPSA are responsible for coordinating the accreditation of sanitary and phytosanitary sampling laboratories with the *Consejo Nacional de Acreditación* (National Accreditation Council – CNA). In mid-2007, the CNA had not accredited any foreign laboratory. However, Panama recognizes sampling done by reference laboratories accredited with international organizations.

131. Panama reserves the right to take samples in the country at the time of arrival of cargo at any official entry point⁸⁷, and in those cases in which risk analysis gives rise to any doubts. Spot checks are made on all imports, with a sampling frequency that depends on the risk attached to each product, its country of origin and, where possible, the record of the importer. Where imports of live animals, fresh meat, fresh fruit and vegetables, grain and live plants are concerned, samples are taken in all cases.

132. A prior zoosanitary licence is required for the importation of live animals and inputs for animals not deemed to be food, as well as a phytosanitary licence for the importation of plants and phytosanitary inputs.⁸⁸ These licences incorporate a list of sanitary and phytosanitary requirements with which the national authority of the exporting country must certify that the exporter complies. The list is specific for each country and can be obtained by making an official application or consulted on the MAD web site.⁸⁹ If a licence is refused, the reasons must be given; moreover, in animal or plant health emergencies, licences can be revoked.⁹⁰ The authorities have indicated that in 2005 some 97 per cent of all import licences were granted within seven days, and note that in that year more than 100,000 licences were authorized.

133. First-time imports require a pre-inspection of the foreign installations or processing plants, regions and/or countries by means of a pest risk analysis based on the animal and plant health requirements laid down in the Panamanian legislation. The method of risk analysis employed is the same as that applied for border control purposes. This phyto- or zoosanitary pre-inspection must be carried out by MAD and AUPSA professionals with the support of laboratories accredited in Panama. The territorial extent of the assessment of each country depends on the information provided by the competent sanitary authorities of the country concerned, the geographical extent of the country, and the product to be imported.

134. The Panamanian legislation does not specify a time limit for MAD to conclude the assessment, but the authorities have indicated that in recent years, on average, the process of source risk analysis has taken 30 to 40 days. The cost of the pre-inspection is borne by the enterprise or country inspected. According to the authorities, in 2006, MAD carried out pre-inspections in the

⁸⁶ Article 22 of Law No. 23 of 15 July 1997.

⁸⁷ The official entry points are those recognized by the DGA, such as ports, airports, land borders, customs offices and railway stations.

⁸⁸ MAD Resolution No. DAL-004-ADM-07 of 1 February 2007.

⁸⁹ Available for consultation at: <http://www.mida.gob.pa/>.

⁹⁰ Law No. 47 of 9 July 1996 and Law No. 23 of 15 July 1997.

following countries: Chile, Costa Rica, Cuba, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Peru, and United States; these pre-inspections covered four different groups of products.

135. Medicaments and biological and pharmaceutical products for animal use must be registered with the National Animal Health Directorate.⁹¹

136. There is no legislation in Panama prohibiting the importation of genetically modified products for human or animal consumption. However, as of mid-2007 no imports of such products had been registered. At the same time, Panama prohibits the production, importation, marketing and use of veterinary products that contain certain animal feed additives.

137. Decree Law No. 11 of 22 February 2006 introduced changes in the food import procedures. Since February 2006, for statistical purposes, all food imports have required the filing of an import form through the *Sistema de Notificación de Importaciones de Alimentos* (Food Import Notification System – SISNIA) 48 hours before unloading. The computer system determines whether the product on the corresponding form is classified as high risk, and if so the system warns the competent authorities of the need to carry out sampling at the border. No prior permit, licence or authorization is required to import food apart from the above-mentioned form. Nevertheless, the sanitary authority of the country of origin of the food must issue a sanitary or phytosanitary certificate indicating that the food complies with AUPSA requirements; these requirements are public and available on the AUPSA web site.⁹²

138. Moreover, the importation of canned, bottled or packaged food must be registered with AUPSA. Registration is an automatic procedure, there is no cost and no approval is required.⁹³ However, the Panamanian Government may draw up a list of products by origin whose sanitary standards are internationally recognized. In this case, the product in question will also be exempt from registration and it is only necessary to present the free sale certificate of the country of origin.⁹⁴

139. MAD and AUPSA are authorized to charge fees based on the cost of the sanitary and phytosanitary services they provide, such as inspections, isolation, laboratory analyses, permits and licences. The cost of applying any other technical measure contracted out by the MAD or AUPSA to private laboratories must be borne by the importer. The fees must be published in the Official Gazette and may not be a function of the value of the goods to which the service relates.⁹⁵

140. An application for reconsideration may be made to the same official of the authority that adopted the SPM decision in question, that is to say, the MAD Directorate of Animal Health, Plant Health or Agricultural Quarantine or AUPSA, within five working days of notification of the decision. It is also possible to appeal to the Minister of Agricultural Development or the AUPSA Scientific and Technical Food Safety Council. In all cases, the responsible official must rule on the matter within a maximum of 30 days.

⁹¹ Article 23 of Law No. 23 of 15 July 1997.

⁹² See: www.aupsa.gob.pa.

⁹³ The application for registration must contain the following information: name of product, manufacturer and importer; provenance; description of product and method of manufacture; date of production and use-by date; four labels; free sale certificate of country of origin; a sample of packaging; and a description of the batching system.

⁹⁴ Article 55 of Decree Law No. 11 of 22 February 2006.

⁹⁵ Article 11 of Law No. 47 of 9 July 1996, Article 10 of Law No. 23 of 15 July 1997, and Decree Law No. 11 of 22 February 2006.

141. MAD and AUPSA may recognize and accept as equivalent the sanitary or zoosanitary measures and registrations of other countries, even if they differ from the measures applied in Panama, if it can be shown that they ensure an appropriate level of protection in accordance with the provisions of the Panamanian legislation. For example, MAD and AUPSA recognized the equivalence of the sanitary and phytosanitary system of the United States through Resolution No. DAL-216-06 of 23 August 2006.

142. Panama has a cooperation and coordination agreement on plant health and quarantine with Argentina.⁹⁶ Moreover, most of the preferential agreements that Panama has in force contain SPM cooperation clauses.⁹⁷

(3) MEASURES AFFECTING EXPORTS

(i) Procedures, documentation and registration

143. The entity responsible for regulating everything concerned with export procedures is the Foreign Trade Subministry (VICOMEX). There is a single window for export formalities in VICOMEX, established and governed by Executive Decree No. 53 of 15 July 1985 and incorporated in Law No. 53 of 21 July 1998 establishing VICOMEX. VICOMEX coordinates its activities with respect to export procedures with a number of agencies, including the Ministry of Agricultural Development (MAD), through the Executive Agricultural Quarantine Directorate, Phytosanitary Export Licences Section; the Ministry of the Economy and Finance, through the DGA, Customs Permits Section; and the Ministry of Health (MOH), through the Food Inspection Department.

144. In order to export from Panama, it is necessary to present an export declaration form, a signed commercial invoice, a certificate of origin, and the tax registration of the exporting enterprise.

145. In accordance with Executive Decree No. 53 of 15 July 1985, the Single Window is the technical unit responsible for centralizing and expediting export formalities through permanent interaction and collaboration with the various public entities concerned with Panama's international trade. In Panama there are seven single windows, in the Colon, Coclé, Chiriquí, Los Santos, Bocas del Toro, Herrera, and Panama regional zones.

146. Through the Single Window, VICOMEX issues a general certificate of origin for all exports, except for those under FTAs or Partial Scope and Preferential Trade Agreements, for which a certificate of origin is issued for each treaty.⁹⁸ The Chamber of Commerce, Industry and Agriculture of Panama and the Industry Association of Panama (SIP) are also authorized to issue certificates of origin, but these must be authenticated and approved by the Single Window; these certificates are not used to obtain benefits, but only as a reference for determining the origin of the goods. The Chamber of Commerce also provides a certificate of provenance, as well as the tax registration of the exporting enterprise, which is only presented the first time goods are exported, so that the enterprise can be registered in the DGA's electronic system.

147. Depending on the requirements of the country of destination, exports of grain and fresh fruit and vegetables may require a phytosanitary certificate. The phytosanitary certificate is applied for in the place where the product or packing originates; it is issued by MAD's Plant Health Directorate and

⁹⁶ Available for consultation at: <http://www.mire.gob.pa>.

⁹⁷ Available for consultation at: <http://www.mici.gob.pa>.

⁹⁸ In the case of the FTA between Panama and El Salvador there is self-certification as a certificate of origin is not required. With regard to export under preferential treatment to Europe, United States, Canada, Japan and Australia, special certificates of origin are issued for this purpose.

channelled through the Single Window. Depending on the destination, exports of live animals may require a zoosanitary certificate issued by MAD's National Animal Health Directorate. Depending on the requirements of the country of destination, manufactured food products of plant or animal origin may require a phytozoosanitary licence, issued by MAD's Executive Agricultural Quarantine Directorate. In the case of fresh products for human consumption, MINSA, through the National Food Inspection Directorate, issues a sanitary certificate. This Directorate also inspects meat, poultry and other processing plants and certifies processing plants for export.

148. In addition, as required by the importing country, MINSA, and in some exceptional cases MAD also, issues free sale certificates. The exportation of seafood products to the main markets (United States and Europe) requires the plant to be certified by a MINSA-endorsed veterinary surgeon and the issuing of a sanitary certificate; this applies only on the first occasion on which the products are exported. The export documents are channelled through the Integrated Foreign Trade System (SICE).

149. Exports in general are not subject to physical inspection, with certain exceptions such as wood, inspected by the *Autoridad Nacional del Ambiente* (National Environmental Authority – ANAM), which issues a wood export permit; scrap, inspected by the DGA; shark fins, sandworm and lobster tails, inspected by the recently established *Autoridad de los Recursos Acuáticos de Panama* (Panamanian Aquatic Resources Authority – ARAP), among others. MAD carries out inspections before issuing phytosanitary certificates for the exportation of products of plant origin, and zoosanitary certificates for the exportation of live animals. MINSA inspects plants and installations in which food for export is processed and issues sanitary certificates.

(ii) Export duties and taxes

150. Exports are exempt from internal taxes. Panama does not use minimum export prices. There are no taxes on exports, except for exports of finished products made of native woods, which are subject to a 1 per cent tax under Forest Law No. 1 of 3 February 1994.

(iii) Export prohibitions and restrictions and licensing regimes

151. As a contracting party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Panama prohibits exports of certain plants and animals in danger of extinction in accordance with that Convention. Wood exports are governed by Executive Decree No. 57 of 5 June 2002, which prohibits the exportation of wood in the form of logs, stumps, roundwood or blocks, sawn or roughly dressed, of any species from natural forests, as well as wood submerged in water. The authorities have noted that the purpose of the measure is to guarantee the domestic supply of wood, in order to encourage the manufacture of furniture at national level.

152. The exportation of some products calls for special formalities: sandworm (marine species) and lobster tails require a resolution (*resuelto*) and a marketing permit, respectively, obtained through the Marine Resources Directorate (Executive Decrees No. 4 of February 1997 and No. 15 of 30 March 1981) and issued by ARAP. Wood requires an export permit issued by ANAM, in accordance with Executive Decree No. 57 of 5 June 2002 governing wood exports; non-ferrous scrap requires a special licence granted by the DGA (Executive Decree No. 32 of 8 February 1991).

153. Inflammable products require the approval of the Panama Fire Service in accordance with Law No. 48 of 31 January 1963, as amended by Law No. 21 of 18 October 1982 and regulated by Resolution No. CDZ03-99 of 11 February 1999 (petroleum derivatives) and Resolution No. 132-05 of 31 August 2005 (compressed gases), which require the marketing, sale, purchase, importation and exportation of inflammable products to be checked and approved by the Fire Service. Under Decree

No. 354 of 29 December 1948, Decree No. 2 of 2 January 1991 and Law No. 48 of 1980, exports of firearms, ammunition, explosives, accessories and non-lethal defensive articles, and the like require an authorization issued by the Ministry of the Interior and Justice for the purpose of completing the export formalities in the Single Window.

(iv) Tariff and tax concessions and other export incentives

154. Panama has notified the WTO of subsidies granted to agricultural exports for the period 1997-2003. Since 2000 the subsidies have been falling, in absolute terms and as a percentage of exports: subsidies were US\$15.75 million in 2000 (20.6 per cent of agricultural exports); 13.52 million in 2001 (15 per cent); 10.19 million in 2002 (12.9 per cent); and 9.57 million in 2003 (12.6 per cent).⁹⁹

155. Panama maintains several programmes for promoting exports in general, although one also offers incentives for production for the domestic market. These are: the Tax Credit Certificate (CAT); the Export Processing Zone (EPZ) Programme; the Official National Industry Register (ROIN, see section (4)(iv) below); the Free Zones and the temporary admission regime.

156. CAT, EPZ and ROIN have been notified to the WTO as subsidies, in accordance with paragraph 1(d) of the procedure proposed for the granting of extensions under Article 27.4 of the SCM Agreement to certain developing country Members and the Decision of 22 November 2002 on Industrial Free Zones (G/SCM/85) and the Industry Register (G/SCM/84).¹⁰⁰

(a) Tax Credit Certificate

157. The Tax Credit Certificate (CAT) is a subsidy for exporters of non-traditional products produced or processed wholly or partially in Panama. The CAT is governed by Law No. 108 of 30 December 1974 and its amendments, including Law No. 28 of 20 June 1995 adopting measures for the universalization of tax incentives for production, and by its regulations (Executive Decree No. 274 of 29 December 1995). The period of application of this scheme was extended to 31 December 2005 by Law No. 62 of 26 December 2002, as a result of the extension obtained by Panama and other developing country Members of the WTO for the maintenance of programmes identified as export subsidies. Law No. 62 of 2002 stipulated that, from 1 January 2003 to 31 December 2005, only exports that had qualified as non-traditional would be entitled to apply for a CAT, with the value of the CAT being limited to the equivalent of 15 per cent of the domestic value-added of the exported goods, and repealed Law No. 108 of 1974.

158. Law No. 25 of 19 July 2005 extended the period of application of the CAT, limiting its scope by stipulating that, from 1 January 2006 to 31 December 2006, only exports of agricultural, livestock and aquaculture goods that qualify as non-traditional would be entitled to apply for CAT. Law No. 5 of 25 January 2006 made it clear that these benefits could be granted to exports of both fresh and processed products and extended them to fishing. Law No. 3 of 3 January 2007 extended the period of application of the CAT to 30 June 2007.

159. The CAT is a tax credit consisting of a transferable non-interest-bearing document (bond) made out to a person and issued by the Ministry of the Economy and Finance, with a redemption period of nine months, that can be used to pay internal and import taxes. In order to benefit from the CAT the exporter of non-traditional products must meet the requirement of a minimum percentage of national content or national value-added of 20 per cent for persons located in the metropolitan region

⁹⁹ WTO document G/AG/N/PAN/9 of 19 April 2005.

¹⁰⁰ WTO document G/SCM/N/146/PAN of 4 July 2006.

and 10 per cent for persons located outside the metropolitan region. The credit received is an increasing function of the national value-added, with the beneficiary receiving up to 15 per cent of the national value-added contained in the exported goods.¹⁰¹ The total amount of CAT granted was US\$32.01 and 23.77 million for 2001 and 2002, respectively; in 2003, it was US\$23.5 million; in 2004, US\$24,58 million; and in 2005, US\$30.99 million.

(b) Export processing zones

160. One of the principal support programmes for exports is the Export Processing Zone (EPZ) programme. EPZs are tax-free areas (defined as "free and free-enterprise zones"). The purpose of the programme is to contribute to national development by generating employment and foreign exchange, encouraging investment creation, and stimulating the scientific, technological, economic, cultural, educational and social development of the country. Any natural or legal person, Panamanian or foreign, interested in the production of goods and services may participate in a EPZ and the licences may be of several kinds: for promoters, operators, and established or installed enterprises.

161. The EPZs are governed by Law No. 25 of 30 November 1992, its amendments and regulations.¹⁰² The Law grants tax incentives and special labour and migration benefits. Enterprises established in the EPZs, together with any activity or transfer of property and the purchase or importation of any goods or services required for their operations within the EPZ, are totally free of national direct and indirect taxes, contributions, charges, duties and levies. The capital of enterprises established in EPZs is also free of national direct and indirect taxes. The legislation does not establish a date for the expiration of the regime.

162. To qualify for the benefits of the EPZ regime it is necessary to add value in the zone. Re-exportation is not permitted. There are no minimum investment requirements in general, only in order to take advantage of the migration regime (see below). To install themselves in a EPZ, enterprises must obtain a licence to operate in the Zone and an official registration document issued by the MTI's National Export Promotion Directorate. Enterprises that have received a licence are enrolled in the Official Export Processing Zone Register. EPZ promoters must obtain the prior approval of the Cabinet Council.

163. The legislation establishes a special migration regime for foreigners whose enterprises are installed in a EPZ or have been authorized as EPZ promoters or operators, provided that the investment amounts to more than B 250,000. Under this regime, foreign investors are entitled to apply for a permanent residence visa as an investor, and to employ executives, experts and technicians who are entitled to apply for a temporary residence visa valid for the duration of their contract. There are also certain special labour provisions for enterprises incorporated in the EPZ regime.

¹⁰¹ WTO document G/SCM/N/48/PAN, G/SCM/N/60/PAN, G/SCM/N/71/PAN of 4 January 2002. The domestic value-added was calculated in accordance with the value of the domestic raw materials, domestic labour, domestic containers and packaging, national and municipal taxes, and domestic utilities in relation to the value of the products to be exported.

¹⁰² Executive Decree No. 28 of 19 May 1993 (regulating Law No. 25 of 30 November 1992 in relation to the Immigration Regime); Executive Decree No. 1-D of 28 January 1994 (regulating Law No. 25 of 30 November 1992 in relation to the commercial activity of enterprises subject to the Export Processing Zone Regime); Law No. 28 of 1 February 1996 (cancelling special passports issued on the basis of Law No. 25 of 1992 and introducing other provisions); Decree Law No. 3 of 7 January 1997 (adding an article to Law No. 25 of 30 November 1992); and Law No. 53 of 21 July 1998 (repealing Articles 5 and 6 of Law No. 25 of 30 November 1992).

164. The movement of goods into and out of the EPZ is recorded by means of a Commercial Movement Declaration, in accordance with the provisions of Executive Decree No. 1 D of 28 January 1994. Imports must be accompanied by an Entry Declaration, together with a commercial invoice, air waybill, bill of lading or land transport waybill; the signature and stamp of the enterprise, and the signature and stamp of the window. Exports require an Exit Declaration and must be accompanied by a commercial invoice, the signature and stamp of the enterprise, and the signature and stamp of the window.

165. In the case of exportation into Panamanian territory, the Exit Declaration must also be accompanied by the consolidated customs assessment of the local importing enterprise. The authorities have noted that, although Law No. 25 of 1992 does not establish a maximum or a minimum for EPZ production destined for the local market, in practice between 10 and 20 per cent may be sold internally. When goods are removed from the EPZ for consumption in Panamanian customs territory, they pay the appropriate import taxes, that is to say, import duties and internal taxes. Enterprises installed in a EPZ are not required to pay income tax on sales to enterprises located in Panamanian territory.

166. At the end of 2006, Panama had 12 EPZs and a total of 62 registered EPZ enterprises.¹⁰³ The enterprises installed in the EPZs engage in various activities, including: manufacture of plastic, pharmaceutical, chemical and glass products, ready-made clothing and manufactured aluminium products; waste recycling (cardboard, steel, wood, plastics, etc.); storage, transport and cargo handling services; provisioning services for international vessels; electrical plant assembly and maintenance services; maintenance of underground structures; petroleum and derivatives inspection and analysis services; diesel engine assembly and repair; tuna fishing net repair and cleaning services; and data processing, storage and transmission services, among others.¹⁰⁴ The total value of exports from the EPZs increased from US\$26.0 million in 2000 to 77.8 million in 2005 and 88.2 million in 2006.¹⁰⁵

(c) Other export incentives

Colon Free Zone

167. The Colon Free Zone (ZLC), established by Decree Law No. 18 of 17 June 1948, promotes domestic and foreign investment in commercial and industrial activities. However, in practice, for about the last 13 years, only re-exportation and commercial service activities have been carried on in the ZLC. The general aspects of the ZLC's legal regime are incorporated in a series of laws, decrees and resolutions that have been approved over the years by the Executive Board of the ZLC.¹⁰⁶ To establish operations in the ZLC companies are not required to have a trading licence or a minimum

¹⁰³ PANEXPORT (17 enterprises), Marpesca, S.A. (14), Davis (9), Isla Margarita (6), Albrook (8), Telepuerto Panama, S.A. (2), Proinexport (2), Schlobhom (2), Eurofusión (1), Rail Road Export Processing Zone (1), Tocumen (0), Espanam Iberoamérica (0).

¹⁰⁴ Information provided by the authorities and WTO document G/SCM/Q4/PAN/5 of 11 October 2006.

¹⁰⁵ Office of the Comptroller General of the Republic and Subministry of Foreign Trade of the Ministry of Trade and Industry.

¹⁰⁶ Executive Decree No. 665 of 2 October 1951, approving the Rules and Regulations of the Colon Free Zone; Resolution No. 13 of 28 June 1993, promulgating rules on certain incentives in the Colon Free Zone, Law No. 29 of 30 December 1992 adopting a special Free Port system for the Province of Colon; Cabinet Decree No. 38 of 27 November 1996 regulating the drawback system established by Article 1 of Law 28 of 1995 for goods exported.

investment capital but must comply with certain rules. In particular, they must employ at least five local workers and re-export at least 60 per cent of the goods imported.

168. Imports, exports and re-exports of goods into and from the ZLC are free of tax; enterprises operating in the Zone are also exempt from ITBMS and any internal tax on their export activities.¹⁰⁷ The repatriation of capital or dividends generated abroad is not treated as profits for tax purposes. ZLC enterprises must pay full income tax in respect of the income derived from sales made in the customs territory of Panama.¹⁰⁸ On the taxable income from foreign operations they pay income tax at the single reduced rate of 15 per cent. Earnings from commission and services provided within the ZLC are considered to be local operations and pay income tax, unless they produce their effects abroad. The employees of natural or legal persons established in the ZLC pay income tax, as do professional service contracts.

169. The ZLC operates as a global goods distribution and logistical hub; in 2006 there were some 2,462 enterprises established in the Zone.¹⁰⁹ The Zone generates some 27,000 direct and indirect jobs. In 2006, imports into the Zone totaled B 6,935.6 million, while re-exports recorded a total of B 7,632.2 million.

170. The Government's objective is to transform the ZLC into a multimodal centre. To this end, in mid-2000, the Government adopted as a national strategy the development of a logistical hub for multimodal transport (sea, air, rail and road), services and industry. The project calls for investment estimated at US\$1,104 million, of which by 2006 some 410 million had been invested; the aim is to improve the supply chain for goods and services in the ZLC and enable the commercial area to expand its markets.¹¹⁰ The project also includes the creation of an industrial estate with seven interconnected zones producing free of taxes.

Other Free Zones

171. Apart from the ZLC, there are other free zones with their own legislation that constitute special customs areas. These include the Barú Free Zone, and the Howard Zone or Special Economic Area of Panama.

172. The Barú Free Zone was established by Law No. 19 of 4 May 2001. This Law created a tourist and multimodal logistical support free zone under a special tax and customs regime in Barú (Chiriquí province). The law permits importation, re-exportation, unloading, forwarding, storage, manufacturing, packaging, assembly and other commercial activities. It also authorizes the establishment of utilities and the construction of ports, airports and other infrastructure. Activities in the Barú Free Zone are exempt from all domestic taxes, and imports into the zone are duty-free, but those working in the zone do not benefit from any tax concessions. Goods removed from the zone for use or consumption in the fiscal territory of Panama pay the corresponding customs duties and taxes.

173. The Panama Pacific Special Economic Area was created as a result of the conversion of the former Howard Air Base inside the Canal Zone after it reverted to Panama. Its purpose is to use the telecommunications and logistical infrastructure available at Howard to encourage services activities,

¹⁰⁷ Under the Tax Code (Article 701), export operations are taken to mean: sale transactions involving domestic or foreign goods that leave the ZLC bound for customers located outside Panamanian territory; transfers of goods within the ZLC and with the Free Zone of Tocumen International Airport; and the income from such transfers.

¹⁰⁸ See: http://www.zonefrancadebaru.com/z.f.b_regimen.htm.

¹⁰⁹ See: <http://www.zonelibredecolon.com.pa/main.htm>.

¹¹⁰ See: <http://www.zonelibredecolon.com.pa/menu06/concepto.htm>.

thereby strengthening Panama's role as a transport, telecommunications and international services hub. The Panama Pacific Special Economic Area Agency is the government entity responsible for assisting investors, informing them about the opportunities for doing business in the Panama Pacific Special Economic Area, and implementing the Panama Pacific Project for the Area's development.

Drawback, replacement of goods and temporary admission procedures

174. The drawback procedure, the rules for which are laid down in Law No. 28 of 20 June 1995, establishes a mechanism for reducing import tariffs on raw materials and inputs used by industry. The procedure is available to manufacturing enterprises engaged in both outward processing (exportation of domestic goods for processing abroad, after re-importation into Panama) and inward processing (temporary admission of imports for processing in Panama and subsequent exportation). The concession consists in the initial payment by all industrial enterprises of a 3 per cent import duty on raw materials, intermediate goods and capital goods, which is refunded when the finished product is exported.¹¹¹

175. Law No. 28 of 20 June 1995 also lays down the rules for the duty-free replacement of goods procedure, which allows the duty-free importation of goods equivalent (similar in kind, quality and technical characteristics) to imported goods used to obtain products previously exported outright.

176. The temporary admission procedure provides for conditional relief from customs duties, general sales tax, and other taxes and surcharges on the importation of raw materials, semi-processed products, packaging and other inputs for producing goods or services intended for exportation (see section (2) above).

(v) Export finance, insurance and promotion

177. Panama does not have official export finance or insurance programmes. There is a private company that provides export credit insurance on a commercial basis, namely, the *Compañía Nacional de Seguros*, S.A., which is authorized to market a global export credit insurance policy under Resolution No. 320 of 13 June 1996 of the *Superintendencia de Seguros y Reaseguros* (Supervisory Authority for Insurance and Reinsurance). The credits covered may not have a term of more than one year; only risks of a commercial nature are covered. The insurance covers up to 85 per cent of the final net loss incurred by the businessman. The premium is based on the buyer's financial situation; the economic situation and political stability of the country of destination of the goods, and the nature of the transaction. *Panamericana de Seguros S.A.* sells CONASE policies.

178. VICOMEX is the department responsible for export promotion in Panama; within the Sub-Ministry there is a National Export Promotion Directorate, the unit responsible for promoting Panamanian exports. The Directorate administers the Single Foreign Trade Window and the existing export support and promotion instruments and provides technical assistance for export-oriented enterprises.

179. The programmes for which the Directorate is responsible include EXPORTA, the principal national export promotion programme. The aim of this initiative is to boost Panamanian exports of non-traditional products (for example, pineapples and watermelons) to new markets. The quantitative target of the EXPORTA programme is to increase exports in general by 15 per cent in two years, and by 32 per cent in five years, while stepping up non-traditional exports by 10 and 20 per cent,

¹¹¹ For the purposes of the Law, exportation is also considered to include the sale on the domestic market of raw materials, semiprocessed products, and containers and packaging of domestic manufacture, provided that they are supplied to enterprises that export at least 90 per cent of their production.

respectively, during the same periods. It is also intended to increase the number of exporting enterprises, by creating 40 new ones, and to encourage the installation of up to 20 international enterprises.

180. The implementation of the EXPORTA programme includes: support for exports through promotion campaigns; the preparation of guides for potential exporters; the organization of seminars, workshops, business conferences, fairs, training and technical assistance programmes; the modernization of the single window system; and the awarding of a prize for Exporter of the Year.

181. The support documentation prepared under the programme includes the compilation of an Exporter's Handbook¹¹², and a study of Panama's exportables.¹¹³ This study concluded, among other things, that in the short and medium term there would be no significant variation in the composition or volume of Panama's merchandise exports. The study identified deficiencies with regard to commercial structures and marketing activities, in relation to studies of production conditions and with regard to information systems on the part of the principal institutions responsible for trade promotion policies. The study recommended measures to encourage the expansion of opportunities for entering new markets and the adaptation of the export range to those markets.

182. VICOMEX is also trying to stimulate the export activities of SMEs, by implementing export development programmes for suppliers and associations. For exporter development purposes in general, VICOMEX is in process of creating an Exporter Development Services Centre.

183. The *Asociación Panameña de Exportadores* (Panamanian Exporters Association – APEX), founded in 1971, is the Panamanian private-sector institution that brings together and represents the interests of the exporting enterprises.¹¹⁴ APEX participates in all public and private initiatives relating to exportation, being the private institution that represents national exporters in their dealings with government departments and the international organizations connected with the sector. APEX participates in the *Comisión Nacional de Negociaciones Comerciales Internacionales* (National Commission on International Trade Negotiations), on which it represents the interests of the exporters. Other private organizations that represent the interests of exporters are: the *Grupo de Agro Exportadores no Tradicionales de Panama* (Group of Non-Traditional Agro-Exporters of Panama – GANTRAP), the *Asociación de Productores y Exportadores de Productos del Mar* (Seafood Product Producers and Exporters Association – APPEXMAR) and the *Sindicato de Industriales de Panama* (Panama Industry Association – SIP).

(4) OTHER MEASURES AFFECTING PRODUCTION AND TRADE

(i) Company formation and taxation

184. The formation, operation and liquidation of commercial companies are governed by the Commercial Code (Law No. 44 of 10 March 1917), Law No. 24 of 1966 on private limited companies (*empresas de responsabilidad limitada*), and Law No. 32 of 1927 on public limited companies (*sociedades anónimas*). The Civil Code (Law No. 2 of 1916) governs civil-law companies. The MTI's Directorate General of Internal Trade is the entity responsible for organizing, supervising, regulating and protecting commercial and industrial activities carried on in Panama.

185. Commercial companies can be formed as public limited companies, private limited companies, civil-law companies, general partnerships, limited partnerships, limited partnerships with

¹¹² The Handbook is available for consultation at: http://www.mici.gob.pa/manual_exportador.php.

¹¹³ Sub-Ministry of Foreign Trade of Panama (2005).

¹¹⁴ See: <http://www.industriales.org/apexartlicledetail.asp?id=23>.

shares, majority state-owned companies, cooperatives, branches of foreign enterprises, joint ventures, private foundations, trusts, franchises, etc.

186. The type of company most used in Panama is the public limited company. Public limited companies are governed by Law No. 32 of 1927 and the Commercial Code and must have at least two subscribers, of any nationality and without any residence requirement, who by law acquire the first two shares in the company (one each), although later the company may operate with a single shareholder. Public limited companies must have at least three directors and must have an agent resident in Panama. The minimum capital required to form a public limited company is B 10,000. Private limited companies are governed by Law No. 24 of 1966; the number of shareholders may not exceed 20, and the subscribed capital may be anywhere between B 2,000 and B 500,000. There are no nationality or legal residence restrictions on the shareholders.

187. Agreements to form or make changes in a commercial company must be recorded in the Public Register. Public limited companies and private foundations are required to pay an annual fee of B 250 in the first year and B 300 thereafter. In the case of a foreign enterprise, if it is going to do business in or from Panama, it must deposit in the Public Registry, among other things, a translation of the incorporation papers, the resolution of the meeting of shareholders authorizing registration, and a certificate from a Panamanian Consul confirming that the enterprise exists and is organized in accordance with the laws of the country in which the head office is located.

188. Under the regime in force up to July 2007, commercial and industrial operations required a licence or commercial registration issued by the Licensing Department of the MTI's Directorate-General for Internal Trade.¹¹⁵ A licence was not required for agricultural, bee-keeping or poultry farming activities or for the manufacture and sale of craft products. Commercial registrations and licences were classified as: Type A, for wholesale trading; Type B, for both wholesale and retail trading activities; and industrial, for extractive or manufacturing activities, and for selling wholesale to the state the products extracted or manufactured.

189. Since July 2007, the commercial licence and commercial registration have been replaced by a document called the "*Aviso de Operación*" or operation notice, stating that the MTI has been duly informed of the activity which the natural or legal person is going to carry on. No operation notice is required for agricultural, bee-keeping or poultry farming activities or for the manufacture and sale of craft products. Company operation notices are subject to a 2 per cent tax on the company capital, with a minimum of B 100 and a maximum of B 40,000, amounts similar to those paid under the licensing system. Natural and legal persons with an invested capital of less than B 10,000 are exempt.

190. Enterprises resident in Panama pay taxes only on their income generated in the country. Income tax is levied on companies at the rate of 30 per cent of their taxable income up to B 100,000, after which the rate increases progressively up to 42 per cent on taxable income above B 500,000. In February 2005, an alternative method of calculation, equivalent to a tax of 1.4 per cent on the gross income of enterprises operating in Panama, was introduced, together with a tax of 1 per cent on the firms operating in the Colon Free Zone. A provision for the payment of a "minimum income tax" equivalent to 4.67 per cent of gross company income was also introduced; the income tax payable is the greater of this amount and the result of applying the 30 per cent rate. Moreover, employers must pay 10.75 per cent in social security contributions.

191. Dividends paid by Panamanian enterprises are not subject to income tax, but they are subject to the payment of a withholding tax of 10 per cent, except for bearer stock for which the rate is set at

¹¹⁵ Commercial registrations could be issued for amounts up to B 10,000, whereas commercial licences were issued for amounts of B 10,001 or more.

20 per cent. A retained profits tax of 10 per cent is applied if less than 40 per cent of taxable income is distributed; this payment can be used as credit against the tax applicable to distributed profits. Subsidiaries of foreign companies pay withholding tax on all their profits. Branches of foreign legal persons pay as income tax 10 per cent of their taxable income obtained in Panama. Interest credited to the accounts of foreign lenders must pay a withholding tax of 6 per cent.

192. Since the tax reforms introduced in 2005 the remittance abroad of income generated in Panama has been subject to the payment of withholding tax. Among other things, this includes payments for patents and other intellectual property rights, royalties and technology transfers. The base for calculating the withholding tax is 50 per cent of the remittance income. Services contracted for abroad are subject to a 15 per cent tax.

193. An annual tax is paid on the value of immovable property and another on capital gains from the disposal of immovable property. This tax is based on the official valuation of the property and varies between 0.7 per cent and 1 per cent of that valuation. The capital gains tax is applied at a flat rate of 10 per cent, unless the operation is in the taxpayer's normal course of business, in which case the rate is determined in accordance with the tables for the payment of income tax. In addition, there is a 2 per cent property transfer tax paid by the seller.

(ii) Price controls

194. Panama does not apply price controls in the case of goods. However, Law No. 29 of 1996 and amendments permit, by regulation, the application of price controls to those products whose import tariff exceeds 40 per cent *ad valorem* (with some exceptions such as products derived from petroleum and staples). Controls can be applied for maximum periods of six months, which can be extended for the same length of time. The authorities have pointed out that the last general regulation establishing controlled prices dates from September 1997. In addition, Law No. 1 of 2001 authorizes the application of controls on the wholesale prices of medicaments. The authorities have pointed out that the last regulation in this respect expired in July 2004 and there are now no medicaments whose price is controlled. However, distributors of medicaments must inform the Authority for the Protection of the Consumer and Defence of Competition of any changes in pharmacy prices.

195. In the case of services, there are some activities whose prices are controlled, including: land passenger transport, where the fares are fixed by the *Autoridad de Tránsito y Transporte Terrestre* (Transit and Land Transport Authority); electricity distribution and marketing; and telecommunications services, where there is only one concession-holder operating (see chapter IV(5)).

196. Furthermore, the National Consumer Protection Directorate of the Authority for the Protection of the Consumer and Defence of Competition monitors the prices of some products, which are published in reports and are available on the Authority's web site.¹¹⁶ The aim is to keep the consumer informed and promote competition; the products whose prices are monitored include: fuels, medicaments, the 50 items included in the basic basket (food and beverages), and some goods and services classified as "special products", such as cars and educational services.

(iii) Competition policy

197. Panama's main competition legislation is contained in Law No. 29 of 1 February 1996, as amended by Decree Law No. 9 of 2006, in Executive Decree No. 31 of September 1998, and in Decree Law No. 9 of 20 February 2006 establishing the Authority for the Protection of the Consumer and Defence of Competition. There are also guidelines on the monitoring of business mergers, the

¹¹⁶ Available for consultation at: <http://www.autoridaddelconsumidor.gob.pa/>.

analysis of vertical restrictions on free competition, and on conducting a competition audit. Since May 2006, the body responsible for safeguarding competition has been the Authority for the Protection of the Consumer and Defence of Competition.¹¹⁷ The Authority, headed by an Administrator, performs the functions previously performed by the *Comisión de Libre Competencia y Asuntos del Consumidor* (Commission on Free Competition and Consumer Affairs – CCLICAC). Within the Authority, the National Free Competition Directorate is responsible for competition policy issues.

198. According to Law No. 29 of 1 February 1996, its purpose is to protect and ensure free competition by eradicating monopolistic practices and other restrictions on the efficient operation of the markets in goods and services, in the best interests of the consumer. The Law applies to all economic operators, whether natural or legal persons, private-sector enterprises or state or municipal institutions, and to those who for whatever reason actively take part in economic activity. However, the Law does not apply to state monopolies in branches of economic activity that the Constitution and other laws reserve exclusively for the state and which have not been put out to concession (for example, electricity transmission and airport management).

199. Law No. 9 of 2006 introduced amendments to the Panamanian competition legislation, including changes in the way in which decisions are adopted within the Authority. It also broadened the Authority's powers to investigate anti-competitive behaviour on the part of utility companies and provided for the possibility of state entities consulting the Authority if in the course of their activities free competition might be affected. Law No. 9 of 2006 also increased the maximum fine from B 100,000 to B 1,000,000 and established an advisory council on competition with members representing both business and the consumer associations.

200. The Panamanian legislation prohibits absolute monopolistic practices *per se*, these being defined as "any act, contract or practice that restricts, lessens, injures, prevents or in any other way harms free competition in the production, processing, distribution, supply or marketing of goods or services". However, the law does not prohibit a monopoly position or the pursuit of such a position, provided that it is not achieved by means of prohibited practices. Relative monopolistic practices are not prohibited *per se*; they must be shown to be unlawful and the costs and benefits of applying measures to end them must be weighed by analysing their reasonableness.

201. Law No. 29 of 1996 establishes a general exception from its application for transactions, agreements, pacts or any other association entered into by economic operators for the purpose of increasing, saving on or improving the production and/or distribution of goods or services or promoting technical or economic progress that generate benefits for consumers or the market, provided that they involve: (a) the exchange of technical information or technology; (b) the joint establishment and/or development of infrastructure, equipment, resources or production facilities and technology; (c) the joint establishment and/or development of collection, storage, transport and distribution facilities; or (d) exported products.

202. The Authority can apply administrative penalties for noncompliance with the legislation and may refer the case to the courts for the application of civil measures of another nature, such as the imposition of fines, of up to three times the amount of the damage and injury caused as a result of the unlawful act, plus legal costs.

203. The Authority is responsible for examining mergers, whether at the request of the interested party or *ex officio*, by carrying out both preliminary checks and *post facto* investigations. Although it is not compulsory to notify a merger in advance, if it has previously been verified by the Authority

¹¹⁷ See: <http://www.autoridaddelconsumidor.gob.pa/>.

and received a favourable opinion, it cannot subsequently be challenged on the basis of the elements verified, unless the favourable opinion was obtained on the basis of false or incomplete information provided by the interested operator. In general, the Authority can refuse to give a favourable opinion on a merger submitted to it for verification only if: (a) it potentially confers on the economic operator resulting from the merger the power to fix prices or materially restrict the supply of the relevant market; (b) may be intended to displace other competitors, or block their access to the relevant market; or (c) materially facilitates the exercise of prohibited monopolistic practices. Mergers that have not submitted voluntarily to verification may be challenged for up to three years after having entered into effect. If an investigation finds that a merger submitted for verification is leading to a prohibited practice, the Authority may subject the granting of a favourable opinion on the transaction to compliance with the conditions necessary to bring it into conformity with the law, or challenge the merger in the appropriate courts with a view to obtaining a decision ordering the partial or total demerger of what was improperly merged. In addition, the Authority and the courts may apply penalties.

204. The principal mergers examined since 2000 involve the following sectors: dairy products (Nestlé-Borden, 2000); the automotive sector (Automóviles Mitsubishi Motor Corporation, 2001); and brewing (Cervecería Grupo Bavaria and Cervecería Barú, 2002). The first two mergers were authorized, whereas in the case of the merger of the brewing companies a favourable opinion was denied.¹¹⁸ Moreover, in October 2006 and April 2007 a favourable opinion was given in connection with the mergers between HSBC Asia Holdings, B.V. and Grupo Banistmo and between Banco General and Banco Continental, respectively. In both cases, the opinions were made conditional on the temporary (about two years) non-application of penalty clauses to the lenders for early cancellation of the loans.

205. The main cases decided in connection with investigations for monopolistic practices, which involved both Panamanian and foreign enterprises, include: price fixing and market sharing between flour companies (1998); fixing of the price band for cuts of beef between vertically integrated abattoirs and supermarket chains (2002); and coordinated bidding on contracts to supply medical oxygen to the Social Insurance Fund (2001); the flour and beef cases resulted in fines being imposed by the courts in 2006. Other cases initiated but still pending in January 2007 include: price fixing by five oil companies (2000); concerted action by five airlines to reduce the commission paid to travel agencies (2001); code-sharing agreement among three airlines; forced purchases of metals at special prices (2001); monopolistic practices of a network interconnection company directed against certain financial institutions (2002); and concerted action by advertising agencies to manipulate or impose the price of services for planning investment in advertising (2003). The Authority (or prior to that the Commission) found violations of the competition law in all these cases and they were referred to the courts.¹¹⁹

206. In general, the level of competition in Panama appears to be high in services, particularly in areas characterized by the presence of foreign companies (banking, insurance), but less so in relation to certain goods with a limited number of producers (dairy products, cement, biscuits, oils, plastics, etc.) and/or a high level of effective protection (cattle and pig breeding, poultry farming, rice). In the case of banking services, the authorities have noted that, although mergers have resulted in a considerable increase in the concentration indicators, there is keen rivalry between institutions, and accordingly they do not consider that there has been any restriction of competition.

¹¹⁸ See: <http://www.autoridaddelconsumidor.gob.pa/pdf/resolucion%20concentracion%20nestle%20borden.pdf>.

¹¹⁹ The Authority's web site contains updated information on the progress of these cases. See: <http://www.clicac.gob.pa>.

207. The bilateral trade agreement between Panama and Singapore contains clauses that invite cooperation in competition policy and call on each party to adopt or maintain competition legislation and an agency responsible for its application, but anti-competitive practices are excluded from the scope of the dispute settlement chapter. The agreement with Chinese Taipei states that "each Party shall adopt and maintain measures to prohibit anti-competitive practices". The agreements with Chile and the United States do not contain any references to competition policy.

(iv) Incentives

208. With reference to the proposed amendment to the procedures for extensions under Article 27.4 of the SCM Agreement for certain developing country Members and the period of extension itself submitted to the SCM Committee by a group of proponent countries with small, vulnerable economies in April 2006¹²⁰, Panama has expressed its strong support and interest in the continuation of the granting of extensions through to the end of 2018, subject to annual reviews during that period to verify that the transparency and standstill requirements are being fulfilled.¹²¹

(a) Exemptions for Enterprises included in the Official National Industry Register (ROIN)

209. Apart from export-related incentives (section (3)(iv) above), Panama maintains incentives under the programme of exemptions granted to enterprises included in the ROIN. The basic objective of the programme is to offer suitable incentives for the promotion of industrial activity and exports, factors of importance for the country's progress and economic development.

210. To be eligible for the programme, enterprises must be registered in the ROIN. Law No. 28 of 20 June 1995 (adopting measures for the universalization of tax incentives to production and introducing other provisions) repealed Law No. 3 of 20 March 1986 (adopting an incentive regime for the promotion and development of national industry and exports), which regulated the ROIN. Although Law No. 28 of 1995 repealed all of the provisions of Law No. 3, the existing benefits of registration were maintained for enterprises which enjoyed the incentives until 2010. Other legislation regulating the programme includes Executive Decree No. 274 of 29 December 1995, the regulations of Law No. 28 of 20 June 1995, and Law No. 26 of 4 June 2001. No enterprise has been able to take advantage of the programme since 1995; the law provides for the benefits granted to those previously registered to end at the latest in 2010, provided that the Committee on Subsidies and Countervailing Measures grants a new extension of the programme, since the present one runs until 31 December 2007.

211. While Law No. 3 of 20 March 1986 was in force, the registration of an enterprise in the ROIN was ordered by a Resolution issued by the MTI, conferring on the holder, from the date of issue and for the period of validity of the respective registration, the right to enjoy the benefits and incentives provided by the programme, in accordance with the modality selected. Any enterprise established in Panama and engaged in industrial manufacturing or assembly activities could benefit from this programme. The duration of the benefits depended on the period of validity of the registration, which was for a maximum of 15 years.

212. In the ROIN, enterprises were registered as either: (a) enterprises all of whose production is intended for export; (b) enterprises producing partly for export; and (c) enterprises producing for the domestic market. The benefits depended on the type of registration, being greater for enterprises that

¹²⁰ WTO document G/SCM/W/535 of 12 April 2006. The countries in question are: Antigua and Barbuda, Barbados, Belize, Dominica, Dominican Republic, El Salvador, Fiji, Granada, Jamaica, Mauritius, Papua New Guinea, St. Kitts and Nevis, Saint Vincent and the Grenadines, and Saint Lucia.

¹²¹ WTO document G/SCM/W/537 of 23 June 2006.

exported all their production and less substantial for those that produced only for the domestic market (Table III.9). Thus, enterprises that exported their production could import inputs free of customs duties and other import charges, whereas producers for the domestic market had to pay import duties of 3 per cent. Moreover, the former were exempt from ITBMS on imports of machinery, equipment and spare parts used in the production process, whereas enterprises producing for the domestic market had to pay ITBMS, in addition to import duty at the reduced rate of 3 per cent.

Table III.9
Tax incentives granted under the Official National Industry Register

| |
|--|
| <p>1. Enterprises producing wholly for export</p> <p>(a) Exemption from all levies and charges and customs duties, as well as from ITBMS on the importation of machinery, equipment and spare parts used in the production process, with the exception of building materials, vehicles, furniture, office supplies, and any other inputs not used in the production process</p> <p>(b) Total exemption from income tax on profits, with the exception of extractive industries and those that exploit Panama's natural resources</p> <p>(c) Total exemption from export duty (if applicable)</p> <p>(d) Total exemption from sales tax; total exemption from production tax</p> <p>(e) Total exemption from taxes on company capital and assets, except for licence and real estate taxes</p> <p>(f) Establishment of special financing programmes on terms more favourable than those normally available on the market</p> <p>2. Enterprises producing partly for export</p> <p>(a) Total exemption from income tax on profits obtained from production for export, with the exception of extractive industries and those that exploit Panama's natural resources</p> <p>(b) Total exemption from export duty</p> <p>(c) Total exemption from export sales tax (if applicable)</p> <p>(d) Total exemption from export production tax</p> <p>(e) Establishment of special financing programmes on terms more favourable than those normally available on the market</p> <p>(f) Deduction from taxable income of fixed costs, such as interest, depreciation and maintenance, provided total export sales do not exceed 20 per cent of the total value of sales</p> <p>3. Enterprises producing for the domestic market</p> <p>(a) Import duty equivalent to 3 per cent of the c.i.f. value of the foreign inputs on the importation 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 ITBMS will also be paid</p> <p>(b) Exemption from income tax on the net profits reinvested in order to expand production capacity or produce new articles, applicable to the portion of that reinvestment in excess of 20 per cent of taxable income in the tax year in question</p> <p>(c) Special carry-over regime for losses</p> <p>(d) Special depreciation formula</p> <p>(e) Application of an import tax of 3 per cent of the c.i.f. value on the introduction of machinery and equipment used in the production process, with the additional payment of ITBMS</p> <p>(f) Enterprises established in the districts of Santiago, Chitré, Bugaba, Chorrera, Los Santos, Las Tablas, Aguadulce, Natá, and Penonomé and in the provinces of Colon are granted: (a) 100 per cent exemption from real estate taxes for a period of ten years; (b) 100 per cent exemption from income tax on profits from sales on the domestic market for the first five years of production and 50 per cent exemption for the next three years</p> |
|--|

Source: Information provided by the authorities. WTO document G/SCM/N/95/PAN of 3 July 2003.

213. Of the enterprises producing for the domestic market, those located in certain areas receive special tax treatment for a period of 10 years from the time of registration in the ROIN. Enterprises that benefited from total exemption from income tax on the profits generated by export activity could not benefit from the CAT incentive, with the exception of persons engaged in agricultural or agro-industrial non-traditional product export activities.

214. The amount of the benefits granted under the programme of exemptions for enterprises included in the ROIN fluctuated from year to year. Between 2000 and 2002 it was observed to decrease, but began to increase again starting in 2003. Altogether, during the period 2000-2005, disbursements totalled US\$241 million (Table III.10). A good proportion of these benefits (47 per

cent of the total between 2000 and 2005) corresponded to import duty exemptions or reductions. By October 2006 the number of enterprises registered in the ROIN had fallen to 371 as compared with 1,170 in 1995.

Table III.10
Amount of Tax Incentives Granted under the Official National Industry Register, 2000-2005
(US\$ million)

| Type of benefit | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|---|-------------|-------------|-------------|-------------|-------------|-------------|
| Total or partial relief from import duty | 27.3 | 22.2 | 15.2 | 18.7 | 17.5 | 14.1 |
| Total or partial relief from tax on reinvestment income | 15.2 | 11.3 | 11.5 | 8.7 | 11.6 | 9.7 |
| Exemption from income tax | 7.4 | 6.6 | 6.9 | 9.8 | 10.7 | 16.6 |
| Total | 49.9 | 40.1 | 33.6 | 37.2 | 39.8 | 40.4 |

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

215. The elimination of the benefits intended exclusively for enterprises producing partly or wholly for export was initially envisaged for 1 January 2003. In conformity with its Decision of 22 November 2002, the Committee on Subsidies and Countervailing Measures decided to extend this period to 31 December 2003.¹²² This extension was subsequently itself extended by the SCM Committee, the latest extension being up to 31 December 2007.¹²³ MTI Resolution No. 32 of 31 December 2002 incorporated the initial extension, and subsequent ones, up to the end of 2007, in the Panamanian legislation.

(b) Other fiscal and financial incentives

216. Law No. 33 of 25 July 2000 contains support measures and incentives for promoting the strengthening, consolidation and self-sustainability of micro, small and medium-sized enterprises (MSMEs). The Micro, Small and Medium-Sized Enterprise Authority (AMPYME), established by Law No. 8 of 29 May 2000, is the authority responsible for implementing Law No. 33 of 2000 and is charged with fostering the development of MSMEs by carrying out promotion and strengthening policies.¹²⁴ Between 2000 and 2006, AMPYME issued 3,132 income tax exemption certificates; between January and May 2007 a total of 515 certificates were issued.

217. The Authority provides support for company formation and the implementation of training programmes; it also acts as an intermediary with the financial system to facilitate access to credit.¹²⁵ However, the Law authorizes the State to establish the financial, customs and fiscal support programmes it considers appropriate for facilitating and promoting MSME activities. The authorities have acknowledged that in practice this has not happened.

218. Law No. 33 of 2000 established a Guarantee Fund, administered by the Authority, for guaranteeing loans and for training and technical assistance for micro and small businesses, with annual funding of at least B 5 million deposited in the National Bank of Panama. The resources of the Fund come from the proceeds of the *Fondo Fiduciario para el Desarrollo* (Trust Fund for Development); other state contributions; the income generated by its own operations; and donations. Of the Fund's resources, 50 per cent is used for guaranteeing loans for MSMEs; 30 per cent for training; and 20 per cent for technical assistance. The guarantees are for a maximum of B 25,000 and

¹²² WTO document G/SCM/84 of 12 December 2002.

¹²³ WTO document G/SCM/84/Add.4 of 13 November 2006.

¹²⁴ AMPYME classifies enterprises as follows: micro enterprise: gross income or annual turnover up to B 150,000; small enterprise: from B 150,000.01 to B 1,000,000; medium-sized enterprise: from B 1,000,000.01 to B 2.5 million (<http://www.ampyme.gob.pa/index.html>).

¹²⁵ For example, in 2001, AMPYME signed such an agreement (Agreement No. 002-01) with MULTICREDIT BANK, a bank which established a financing programme especially for MSMEs.

can only cover up to 80 per cent of the amount owed. The authorities have noted that on average they cover 60 per cent of the debt. During the period from 2004 to 2006, 764 guarantees totalling B 2,000,000 were granted.

219. Law No. 9 of 19 January 1989 provided micro and small businesses engaged in manufacturing with a series of incentives, including total exemption from income tax during the first five years of their existence, a reduction of 75 per cent during the next five years, and 25 per cent for the rest of their existence. Moreover, they were granted total exemption from import duties on equipment, capital goods, spare parts and raw materials and from dividend tax, and ten years' exemption from the tax on real property. To benefit from these incentives, businesses had to register in the MTI's Register of Small and Medium-Sized Manufacturing Enterprises. This register lasted 15 years. Although Law No. 9 of 1989 was repealed by Law No. 8 of 29 May 2000, there was provision for pending benefits to continue to apply, expiring together with the registration of the last beneficiaries.

220. The authorities have noted that, since it was introduced 134 enterprises have benefited from total or partial relief from income tax under Law No. 9 of 1989; in mid-2007, 74 enterprises were enjoying benefits up to the end of their corresponding 15-year period. The last benefits will be paid in 2015, when the registration of the last enterprises to take advantage of the scheme in the year 2000 expires. In addition, between 2001 and 2007, 125 permits were granted for the importation of products exempt from import duties.

221. Law No. 8 of 14 June 1994 establishes tax incentives for tourism activities, mainly in order to promote foreign investment in this sector. The incentives granted include total exemption from: income tax for a period of 15 years; real estate tax for a period of 20 years; import duties on materials and furniture needed by the investment company to meet its building and equipment requirements, provided the goods are not produced in sufficient quality and quantity in Panama; taxes and fees for the use of wharves and airports built by the investment company, for a period of 20 years; and tax on the income that creditors can generate in tourism investment operations.

222. Law No. 3 of 28 January 1988 permits the duty-free importation of materials, spare parts, machinery and equipment for use in mining activities. Law No. 7 of 10 July 1990 includes incentives for enterprises engaged in leasing movable property. The lease of property situated outside Panamanian territory is free of taxes, and the profits from Panamanian vessel chartering transactions are totally exempt from tax.

223. Under Law No. 24 of 23 November 1992, as amended by Law No. 6 of 2 February 2005 (Law on Fiscal Equity), the profits derived by natural or legal persons exclusively from the marketing of products extracted from man-made plantations, at the time of final felling of the plantation, are exempt from income tax for a period of 13 years from the entry into force of the Law on Fiscal Equity (under the Law of 1992 the period was 25 years, up to 26 November 2017). Farms with more than 75 per cent of their area dedicated exclusively to reforestation are also exempt from the payment of real estate tax and ITBMS; in both cases, the farms must be registered in the Forest Registry of the *Autoridad Nacional del Ambiente* (National Environmental Authority).

224. The National Strategic Plan for the Development of Science, Technology and Innovation 2006-2010, implemented by the Government through Cabinet Resolution No. 104 of 21 December 2005, is coordinated by the *Secretaría Nacional de Ciencia, Tecnología e Innovación* (National Science, Technology and Innovation Secretariat – SENACYT). This Plan structures SENACYT's activities, the aim of which is to support the development of science, technology and innovation for the purpose of modernizing the public, private and academic sectors and increasing

their productivity. The Plan recognizes five core sectors for innovation and technological modernization in the private sector: intermodal transport and logistics, information technology, biosciences, tourism, and agro-industry.¹²⁶ The main action taken within the context of the Plan includes: establishing funds, open to competitive bidding, for promoting research, development and innovation; the implementation of innovation and technological modernization projects in priority areas; the strengthening of conglomerates; and innovation capacity-building at enterprise level.

225. Law No. 2 of 20 March 1986 on Agricultural Exports, as amended by Law No. 28 of 1995, establishes measures and incentives in favour of agricultural production and exports, with a view to encouraging agro-industrial development (chapter IV(2)).

(c) Credit incentives

226. There are two development banks in Panama: the National Bank and the Banco de Desarrollo Agrícola (see also chapter IV(5)(iii)). The National Bank of Panama is the principal financial institution of the State and operates as a commercial, government and development bank; it is governed by Decree Law No. 4 of 18 January 2006. In its capacity of development bank, the National Bank supports the development of projects with an economic and social impact, and grants loans to private-sector producers and, in special circumstances, to public-sector institutions.

227. In 2006, the National Bank granted loans worth a total of B 1,976 billion, of which B 1,203 billion went to the private sector and the rest to the public sector. Agricultural loans accounted for 15.7 per cent of private-sector lending; commercial loans for 14.2 per cent; industrial loans for 0.9 per cent; and small business loans for 1.4 per cent. The balance consisted of home mortgages, personal loans, loans to credit institutions, overdrafts and leases. On 31 December 2005 the annual interest rate on loans ranged from 2 to 15 per cent; the weighted average interest rate for 2005 was 6.9 per cent.¹²⁷

228. The agricultural sector, including agro-industry, can benefit from special loans granted by the Agricultural Development Bank and the National Bank (see chapter IV(2)).

(v) Government procurement

229. There are no official statistics on the value of government procurement in Panama. Central government expenditure on goods and services totalled US\$215 million in 2005, the equivalent of 1.4 per cent of GDP, while capital expenditure amounted to 277 million or 1.8 per cent of GDP. Moreover, in 2006 the public contract market of the Panama Canal Authority (ACP) was US\$236.6 million, distributed as follows: open tendering (34 per cent); contracts negotiated on the basis of the lowest price (44 per cent); contracts negotiated on the basis of best value (21 per cent); the remainder corresponding to two-stage open tendering and micro-purchases. The authorities have pointed out that 80 per cent of ACP contracting (in terms of both number of contracts and value) involves Panamanian participation.

230. Following the entry into force of new Law No. 22 of 2006, between 28 December 2006 and May 2007, there were 19,185 minor contracts awarded, 679 open tender procedures, 46 best value awards, 1 framework agreement award, and 484 cases of single tendering.

¹²⁶ Cabinet Resolution No. 11 of 2 February 2007 establishing and adopting the National Strategic Plan for the Development of Science, Technology and Innovation 2006-2010. Available for consultation at: <http://www.senacyt.gob.pa/media/documentos/DireccionGestion/Plan%20Estrategico%20actualizacion%202007.pdf>.

¹²⁷ National Bank of Panama (2006).

231. Panama is not a party to the WTO's Plurilateral Agreement on Government Procurement, but it participates in the WTO Working Group on Transparency in Government Procurement. The FTAs signed by Panama with Chinese Taipei, El Salvador and Singapore and the recently negotiated treaty with the United States have a government procurement chapter with clauses that promote transparency, non-discrimination and market access in relation to government purchases. The treaty with the United States is the first to include the ACP in the government procurement chapter.

232. Law No. 22 of 27 June 2006 has governed government procurement in Panama since 28 December 2006. The Law was regulated by Executive Decree No. 366 of 28 December 2006. Up to then, the main provisions were those of Law No. 56 of 1995 and its Regulations, contained in Executive Decree No.8 of 1996. Other government procurement legislation includes Law No. 1 of 2001 and Law No. 51 of 2005.

233. Law No. 56 of 1995 established a decentralized contracting system and allowed both domestic and foreign suppliers to participate, without granting preferences. Similarly, Law No. 22 of 2006 enshrined the principle of national treatment, by allowing the participation of domestic and foreign suppliers, whether natural or legal persons, in government procurement procedures. Executive Decree No. 98 of 2 September 2005 created the electronic government procurement system called "*PanamaCompra*" (PanamaBuys) through which public purchases have had to be made since October 2005.¹²⁸ "*PanamaCompra*" maintains an electronic catalogue of products and services which contains all the products and services included in framework agreements already concluded and in force (see below).

234. Since 28 December 2006, the body responsible for establishing and monitoring compliance with the provisions governing government procurement of goods and services has been the *Dirección General de Contrataciones Públicas* (Directorate-General for Public Contracts – DGCP), established by Law No. 22 of 2006.¹²⁹ The DGCP is subject to oversight by the Office of the Comptroller General of the Republic and to the policies of the Executive, through the MEF. The DGCP issues the general guidelines for the operation of the "*PanamaCompra*" system in coordination with the Presidential Secretariat for Government Innovation, and maintains the electronic catalogue of products and services. The DGCP's mandate is to promote as much competition as possible in government procurement procedures.

235. Contracts are awarded on a decentralized basis. Law No. 56 of 27 December 1995 introduced the decentralization of the government purchasing system, previously centralized in the *Dirección General de Proveduría y Gastos* (Directorate-General for Supply and Expenditure) of the Ministry of the Economy and Finance. Law No. 22 of 2006 established an Administrative Government Procurement Tribunal for settling disputes relating to the procedures for awarding contracts. It also laid down the rules for public contracts awarded by central government, the autonomous and semiautonomous entities, financial intermediaries and public limited companies in which the state owns 51 per cent or more of the shares or assets for: (i) the purchase or leasing of goods by the state; (ii) the execution of public works; (iii) the disposal of state goods, including leasing; (iv) the provision of services; (v) the operation or administration of goods; (vi) concessions or any other contract not governed by special law, such as the ACP's purchases and contracts system and the milk and nutritional biscuit distribution programme (see below). Law No. 22 of 2006 applies residually to contracts awarded by municipalities, communal and local authorities, and the Social Insurance Fund.

¹²⁸ See: www.panamacompra.gob.pa.

¹²⁹ The DGCP replaced the Directorate for Government Procurement. Available for consultation at: <http://www.mef.gob.pa/Contrataciones%20Publicas/Contenido/Rese%C3%B1a.asp>.

236. The procedures for selecting contractors are listed in Table III.11. Minor contracts, up to B 30,000, are awarded under simplified procedures. Only contracts worth less than B 1,000 may be based on a single bid. Calls for bids on minor contracts which exceed that amount are issued through "PanamaCompra". Contracts worth more than B 30,000 should, in principle, be awarded on the basis of competitive bidding, but Law No. 22 of 2006 provides for exceptions under which single tendering may be authorized for any value. For example, when there is not more than one bidder, in emergencies, in the case of contracts authorized or governed by special law, contracts awarded on merit for science, technology, innovation and culture, and those related with public safety or state security, among others.

Table III.11
Procedures for public sector purchases, 2007

| Procedure | Value of contract | Comments |
|---------------------------------------|-----------------------|---|
| Regular procedures | | |
| Minor contract | Up to B 30,000 | Can be awarded under simplified procedures |
| Open tendering | From B 30,000 | According to Law No. 22 of 2006, open tendering is the contractor selection procedure in which the determining factor is the price |
| Best value tendering | From B 30,000 | Used when the goods, works or services to be contracted for have a high degree of complexity. The technical, economic, administrative and financial aspects of the bids are weighed and the contract is awarded to the bidder who obtains the most points as a result of applying the weighting method specified in the bidding conditions. The price must have a weighting of not less than 30 per cent and not more than 50 per cent of the total points considered in awarding the contract. |
| Tendering under a framework agreement | Not specified | One or more bidders are selected and invited to sign a contract for products or services for mass and daily use, called a framework agreement, which establishes specific prices and conditions for a specified period of not more than one year. The tendering procedure for a framework agreement can only be carried out by the DGCP. Once the corresponding framework agreement has been awarded, the products and services contained in the agreement are included in the Electronic Catalogue of Products and Services. Products and services are purchased directly during the term of the contract, through purchase orders covered by the framework agreement. |
| Reverse auction | Not specified | For mass consumption goods. It is a process of bidding and re-bidding for the purpose of obtaining the best price for goods, services or works for the institution or institutions, within a fixed period. Bidders compete in real time and on-line through "PanamáCompra". The contracting authority establishes a maximum reference price, and the lowest price is published in "PanamáCompra" to permit re-bidding at lower prices. Once the auction process has ended, the tendering authority awards the contract to the lowest bidder. |
| Auction of public property | Independent of amount | Applies to the sale or lease of movable and immovable state property and can be effected by public auction, which can only be arranged by the MEF. Auctions can be conducted electronically through "PanamaCompra". |
| Special procedure | | |
| Single tendering | Not specified | Allowed for goods and services where there is not more than one bidder, in cases of emergency, contracts authorized or governed by special law, and contracts related with public safety or state security, among others. |

Source: Information provided by the authorities.

237. No preferences are given to domestic suppliers and neither are there preferences or minimum quotas for small suppliers. However, Article 7 of Law No. 22 of 2006 provides for the state to promote the competitive participation of micro, small and medium-sized enterprises in certain public contractor selection procedures. The authorities have noted that there are no regulations for this aspect of the Law; in mid-2007, the authorities were not considering granting preferences to micro, small and medium-sized enterprises, but had not dismissed the idea.

238. Preferences are granted to domestic products under the milk and nutritional biscuit or fortified nutritive cream distribution programme for official preschool and primary education centres, which requires that all products used in implementing the programme be purchased from the domestic

production sector and be manufactured from domestic products, in accordance with the provisions of Law No. 35 of 6 July 1995.

239. Law No. 22 of 2006 provides for procurement employing public funds to be made, subject to exceptions, under the contractor selection procedures. If the products or services required by the procuring entity are in the Electronic Catalogue of Products and Services, the entity must purchase the products or services from that catalogue, although it may request the DGCP to carry out a contractor selection procedure (open tender) if that is deemed to be more advantageous. Under the contractor selection procedures, tender notices and the decisions adopted must be published in "*PanamáCompra*". Purchases of goods and services involving information and communications technology worth more than B 175,000 require the approval of the Presidential Secretariat for Government Innovation.

240. Natural and legal persons and consortia or partnerships, domestic or foreign, wishing to participate in a contractor selection procedure for more than B 30,000, concluded electronically, like those awarded a contract under a contractor selection procedure, must be registered in the DGCP's Bidders Register. To register a person must show that he is not a delinquent state debtor; that he has a commercial licence authorizing him to carry on the corresponding activity; and, in the case of public works contracts, that he is registered with the *Junta Técnica de Ingeniería y Arquitectura* (Technical Authority for Architecture and Engineering).

241. The recent reform of Panama's government procurement regime has made good certain deficiencies identified in the previous system. A report on the government procurement system applied in Panama since December 2006 indicates that there were loopholes in the Law on Government Procurement which mainly reflected the lack of proper regulation.¹³⁰ The report also mentions that one weakness of the system was the widespread use of single tendering as an exception to the open tendering mechanism, which encouraged the exercise of discretionary authority in procurement. The report also notes the excessive number of objection mechanisms for prolonging the competitive bidding procedure in the event of an unfavourable outcome and observes that in administrative litigation (Third Chamber of the Supreme Court of Justice) the waiting time can be very long.

242. The authorities have noted that, in making good the deficiencies identified in the previous legislation, Law No. 22 of 2006 and its regulations reduce the number of situations in which single tendering can be used, but maintain the ground of clear emergency. Moreover, it provides for all single tendering procedures to be published in "*PanamáCompra*". The new law also creates a special tribunal for government procurement, which should expedite litigation.

243. The ACP has its own procurement system. The ACP's Procurement Regime has its legal basis in Constitutional Title XIV, Art. 319.6, and in Organizational Law No. 19 of 11 June 1999-Section Four. The main provisions governing the procurement process are contained in the Procurement Regulations, in force since 31 December 1999, and in the amendments adopted by Decisions of the Executive Board. Decision No. 24 of 4 October 1999 approved the ACP's Procurement Regulations. These Regulations establish the rules applicable to contracts for and purchases of works, goods and services necessary for the operation, maintenance, preservation and modernization of the Panama Canal; the disposal and sale of Authority property; and the granting of concessions and contracting for special services.

¹³⁰ Transparency International (2007).

244. An Internet tendering system is used for all procurement.¹³¹ All procurement for amounts in excess of B 1,000, except for contracts governed or authorized by special law, or concluded by the Authority with other state agencies, must be subjected to some form of contractor selection procedure, which must be publicly advertised. Contractors are selected by tender if the value of the contract exceeds B 100,000. A simplified purchase procedure is used if the value of the contract is between B 1,000.01 and 100,000.¹³² In both cases one of the tendering procedures contained in the Regulations is used for advertising and awarding the contract. The administrative authorities may purchase goods and services by issuing purchase orders for not more than B 10,000 per order, on the basis of price list decisions containing lists of official unit prices, with a period of validity of not more than one year. They may also use purchase orders for purchases of between B 10,000 and 100,000, but in these cases the purchase order is issued by the centralized procurement office.

245. Tendering may be open based on price; negotiated; or two-stage open. Negotiated tendering may be based on the lowest price or best value. There is no single tendering, but there may be limited tendering, in cases of emergency. ACP imports are exempt from duty.

(vi) State trading and state trading enterprises

246. Panama has notified the WTO that it has no state trading enterprises within the meaning of Article XVII of the GATT.¹³³

247. In January 2007, Panama had the following state-owned enterprises: *Instituto de Acueductos y Alcantarillados Nacionales* (National Water Supply and Sewerage Company – IDAAN); *Empresa de Transmisión Eléctrica S.A.* (Power Transmission Company – ETESA); *Empresa de Generación Eléctrica S.A.* (Power Generation Company – EGESA, established in 2006); *Aeropuerto Internacional de Tocumen S.A.* (Tocumen International Airport Co.); National Bank of Panama; *Caja de Ahorros* (Savings Bank); National Bingos; *Instituto de Mercadeo Agropecuario* (Agricultural Marketing Institute); *Agencia Panamá Pacífico* (Panama Pacific Agency); *Lotería Nacional de Beneficencia* (National Welfare Lottery); and the Colon Free Zone.

248. Moreover, in January 2007, the state held 51 per cent of the shares in the power generators *Empresa de Generación Fortuna*, *Empresa de Generación Chiriquí* (La Estrella and Los Valles hydroelectric power plants), and *Empresa de Generación Bayano*, as well as owning 49 per cent of the distributors *Empresa de Distribución Eléctrica Metro-Oeste*, *Empresa de Distribución Eléctrica Chiriquí* and *Empresa de Distribución Eléctrica Noreste*. The state also owned 49 per cent of the shares in the power generator *Empresa de Generación Bahía Las Minas* and *Cable & Wireless Panama, S.A.*

249. In the middle and late nineties, Panama implemented a privatization process that included the partial sale to the private sector of state shares in electricity and telecommunications companies, the sale of a cement company (Bayano), and the privatization of the operation of some ports (concession of the ports of Colon to Manzanillo International Port, Cristóbal and Balboa to Hutchitson Port and the port of Coco Solo to Colon Port Terminal (Evergreen), railways (Panama Canal Railway) and highways (North and South Corridors). Later, Tocumen International Airport was converted into a private-regime company, *Aeropuerto Internacional de Tocumen, S.A.*, but all its shares remained in state ownership.

¹³¹ See: <http://www.pancanal.com/esp/procsales/buy.html>.

¹³² As a general rule, purchases between B 0.01 and B 1,000 (micro purchases) must be listed on the Internet, in accordance with Decision No.107 of 15 December 2005.

¹³³ WTO document G/STR/N/10/PAN of 25 August 2004.

250. The legal framework for the privatizations in Panama is contained in Law No. 16 of 14 July 1992; the *Unidad Coordinadora para el Proceso de Privatización* (Coordinating Unit for the Privatization Process – Proprivat) was established under this Law. This MEF department is responsible for regulating the process of privatization of state-owned enterprises, goods and services. The privatizations governed by Law No. 16 of 1992 include the total or partial sale of state assets, concessions, administration contracts and leases (Article IV).¹³⁴ The legal framework for privatizations in Panama makes no distinction between domestic and foreign investors, and both Panamanian and foreign enterprises participated in the process. From the start of the privatization process up to the beginning of 2007, 20 privatization projects were carried out, mostly during the nineties. Out of a total of 21 projects planned only the privatization of the Atrapas Convention Centre remains pending, and in June 2007 this was in progress.

(vii) Intellectual property rights

(a) General aspects

251. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force in Panama when it joined the WTO on 6 September 1997; no transition period was applied.¹³⁵ As part of the preparations for accession, Panama amended its industrial property and copyright legislation to adapt it to the TRIPS Agreement.

252. As well as being a member of the World Intellectual Property Organization (WIPO), Panama is a signatory to several international agreements on intellectual property rights, including: the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, in force since 2 September 1983; the Berne Convention for the Protection of Literary and Artistic Works, 8 June 1996; the Universal Copyright Convention of 1952; the Brussels Convention relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, 25 September 1985; the WIPO Convention of 17 September 1983; the UPOV Convention of 23 May 1999; the Paris Convention for the Protection of Industrial Property, of 19 October 1996; the Phonogram Convention of 29 June 1974; the WIPO Copyright Treaty of 6 March 2002; and the WIPO Performances and Phonograms Treaty, of 20 May 2002. Where registration is concerned, Panama is a member of the Paris Convention, the TRIPS Agreement and the Washington Trademark Convention of 1929.

253. Panama is not a party to the Patent Cooperation Treaty or to any classification treaty, although Law No. 35 of 10 May 1996 provides for marks to be registered in accordance with the international classification system.

254. Under Art. 63 of the TRIPS Agreement, Panama has notified WTO Members of its laws and regulations relating to intellectual property rights (IPR) and has provided information on its national enforcement system. On the basis of these notifications, the TRIPS Council examined the Panamanian IPR legislation in 1999.¹³⁶ Panama answered the questions raised, which concerned such aspects as the retroactivity of copyright protection; protection of compilations of data; rental rights for computer programs; licences for trademarks; protection of well-known marks; term and scope of trademark protection; patent uses; and enforcement.¹³⁷

¹³⁴ See: <http://www.mef.gob.pa/proprivat/>.

¹³⁵ WTO document WT/ACC/PAN/19 of 20 September 1996.

¹³⁶ WTO document IP/Q/PAN/1 of 13 April 1999.

¹³⁷ WTO document IP/Q/PAN/1, IP/Q2/PAN/1, IP/Q3/PAN/1 of 13 April 1999.

255. Apart from its multilateral commitments, Panama has entered into IPR commitments under the free trade agreements it has signed with Chinese Taipei and El Salvador. The agreement with the United States (not yet signed in mid-2007) also contains provisions relating to intellectual property.

256. The MTI is responsible for the formulation and implementation of Panamanian industrial property policy. The MTI's *Dirección General del Registro de la Propiedad Industrial* (Directorate-General for Industrial Property Registration – DIGERPI) is the department responsible for the registration of industrial property. Its activities are governed by Law No. 35 of 10 May 1996 and regulated by Executive Decree No. 7 of 17 February 1998. The *Dirección Nacional de Derecho de Autor* (National Copyright Directorate – DNDA), under the Ministry of Education, performs copyright registration, depository, monitoring and inspection functions, as well as being responsible, among other things, for conciliation and arbitration and for authorizing and auditing the operation of collective management bodies, in accordance with Law No. 15 of 8 August 1994. The *Oficina de Registro del Derecho de Autor y Derechos Conexos* (Office for the Registration of Copyright and Related Rights), attached to the DNDA, is responsible for handling applications for the registration of works, productions and contracts. The DNDA is also empowered to authorize the operation of collective management bodies.

257. Panama has notified the WTO that the *Dirección de Negociaciones Comerciales Internacionales* (International Trade Negotiations Directorate – DINECI), DIGERPI, the Intellectual Property Department of the DGA, the Intellectual Property Department of the Colon Free Zone and the Tenth Circuit Public Prosecutor's Office (specializing in intellectual property offences) of the Department of Public Prosecution are the contact points specified in Article 69 of the TRIPS Agreement.¹³⁸

258. According to DIGERPI data, between 2001 and 2005, there were 35,766 applications to register trademarks and 34,979 certificates were granted.¹³⁹ Most trademark, patent and industrial design owners are foreigners. For example, between 2001 and 2005, out of the 892 patents granted only 13 went to Panamanian nationals; out of the 2,000 technology-related certificates (patents, industrial designs and utility models) granted, only 151 went to Panamanian nationals.

259. The Panamanian legislation addresses almost all aspects of the TRIPS Agreement (Table III.12).

Table III.12
Overview of the protection of intellectual property rights, 2007

| Law/Scope | Term | Comments, limitations and exclusions |
|---|--|---|
| Copyright and related rights | | |
| Law No. 15 of 8 August 1994 on Copyright and Related Rights; Decree No. 261 of 1995 regulating Law No. 15 of 1994 Scope: Copyright on all literary, artistic, educational or scientific production capable of being disclosed or published by means of any medium or process (including computer programs). Related rights include the rights of performers, phonogram producers and broadcasting organizations. | Lifetime of author (or last co-author) plus 50 years. Anonymous or pseudonymous works, 50 years from disclosure or first publication. Audiovisual works, collective works and computer programs, 50 years from first publication or termination | No registration is required for protection; registration is declaratory and does not constitute a right. By the mere fact of creation, the author of a work has the original ownership of the right in the work, which includes the economic and moral rights defined in the Law. Laws, decrees, official regulations, public treaties, judicial decisions and other official acts are not subject to protection, nor are generic expressions of folklore, news, or mere facts and data. |

Table III.12 (cont'd)

¹³⁸ WTO document IP/N/3/Rev.9 of 8 November 2005.

¹³⁹ See: http://www.mici.gob.pa/digerpi_docs/Marcas/Table_marcas29.pdf.

| Law/Scope | Term | Comments, limitations and exclusions |
|---|--|--|
| Patents | | |
| <p>Law No. 35 of 10 May 1996 (adopting provisions on industrial property); Executive Decree No. 7 of 17 February 1998 (Regulations)</p> <p>Scope: Inventions, of products or processes, that are new, involve an inventive step and are capable of industrial application. The law does not provide for the granting of compulsory licences</p> | 20 years from filing of application, non-extendable | The following, <i>inter alia</i> , are not considered inventions: theoretical principles, computer programs, aesthetic works, methods of surgical, therapeutic or diagnostic treatment applicable to the human body and those relating to animals. The following cannot be patented: plants and plant varieties, animals; biological material existing in nature, inventions relating to living tissue that makes up the human body. Panama recognizes retroactivity in patents only when a priority right is invoked. |
| Industrial designs | | |
| <p>Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998.</p> <p>Scope: Two-dimensional or three-dimensional form which, incorporated in a product, gives it a special appearance or makes it suitable for use as a type or model for manufacturing purposes.</p> | 10 years from filing of application for registration in Panama, extendable for one additional period of five years | Protection through registration. The protection conferred does not include those elements or characteristics of the design which serve only to obtain a technical effect. Possibility of protection cumulated with copyright |
| Utility models | | |
| <p>Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998</p> <p>Scope: Any shape, configuration or arrangement of the elements of a device, tool, instrument, mechanism or other object that makes possible an improvement or change in the functioning, use or manufacture of the object in which it is incorporated, or provides it with some utility, advantage or technical effect which it did not have before.</p> | 10 years from date of filing of application, non-extendable | Protection through registration and a utility model patent. To be eligible for registration models must be new and have an industrial application. Models that differ only in minor ways from previous models cannot be registered. |
| Layout-designs of integrated circuits | | |
| <p>Law No. 15 of 8 August 1994 on Copyright and related Rights; Decree No. 261 of 1995 regulating Law No. 15 of 1994</p> <p>Scope: Original layout-designs.</p> | Life + 50 years | Protection through copyright if the requirements necessary to be treated as a protected work are met. |
| Product or service marks | | |
| <p>Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998</p> <p>Scope: Subject to registration, any mark, sign, word or combination of these elements capable of distinguishing a product or service in trade. The right to register a mark is acquired by use. The owner of a mark may, by contract, grant a licence for its use.</p> | 10 years from being granted, indefinitely renewable for 10-year periods. Use of the mark not compulsory | The following, <i>inter alia</i> , may not be registered: (a) descriptive or generic indications; (b) titles of literary or scientific works; (c) the shape given to products lacking in originality; (d) those which are identical, similar or alike to used marks; (e) national or foreign designations of origin which may give rise to confusion or error in this respect; (f) misleading names. |
| Geographical indications | | |
| <p>Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998</p> <p>Scope: Designations of origin, understood as the geographical designation of a country, region or locality that serves to identify a product originating therein and whose quality or characteristics are exclusively or essentially attributable to the geographical environment; indications of provenance, defined as an expression or sign used to indicate that a product or service comes from a particular country, region or place.</p> | Not specified | Protection through registration and certificate issued by DIGERPI. Designations of origin and indications of provenance that do not correspond to the country, locality or region of manufacture may not be used. |

Table III.12 (cont'd)

| Law/Scope | Term | Comments, limitations and exclusions |
|---|---|--|
| <p>New plant varieties Law No. 23 of 15 July 1997, Title V; Law No. 12 of 3 May 1999 (accession of Panama to UPOV) Scope: New plant varieties.</p> | <p>Right granted to the breeder for 20 years, from the date of granting of the protection title. 25 years for vines, forest trees, fruit trees and ornamental trees</p> | <p>Protection through breeder certificates. A variety is considered new if on the date of filing of the application or priority date the reproductive or multiplication material or harvested material of the variety has not been offered for sale or marketed, by the breeder or his successor in title: in Panama, more than one year prior to the filing or priority date; in the territory of any other country, more than four years or, in the case of trees and vines, more than six years prior to that date.</p> |
| <p>Protection of undisclosed information Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998 Scope: Art. 39.2 of TRIPS</p> | <p>Not specified</p> | <p>Industrial and commercial secrets are protected: information with industrial or commercial applications which means obtaining or maintaining an economic competitive advantage over third parties and with respect to which adequate measures have been taken to maintain its confidentiality and restricted access.</p> |

Source: WTO Secretariat.

260. Law No. 15 of 8 August 1994 on Copyright and Related Rights and its regulations (Decree No. 261 of 1995) protect all original literary, artistic, educational and scientific creations, including computer programs and databases. Registration is not required in order to be granted protection. Both the pecuniary and non-pecuniary rights of authors and related rights in original and derived works are protected, and national treatment is accorded to foreigners who publish their works in Panama. Pecuniary rights are protected for the entire life of the author (or the last co-author) plus 50 years; for 50 years from disclosure or first publication for anonymous and pseudonymous works; and for 50 years from first publication or termination for collective and audiovisual works and computer programs. Performers, phonogram producers and broadcasting organizations enjoy related rights. Phonogram producers have the right to receive remuneration for the communication of the phonogram to the public and must pay the performers of works included in the phonogram 50 per cent of the net amount that the producer receives from the collective management body. The body responsible for the collective management of copyright in musical works is the *Sociedad Panameña de Autores y Compositores* (Panamanian Society of Authors and Composers – SPAC). This body collected B 841,628 in 2006. In January 2007, the DNDA approved the operation of the *Sociedad Panameña de Productores Fonográficos* (Panamanian Society of Phonographic Producers – PRODUCE), as a collective management body.

261. The Law on Industrial Property of 1996 contains the rules on patents, utility models and industrial designs. Patents are granted for a period of 20 years from the filing of the application, with no provision for extension, and are published in the *Boletín Oficial del Registro de la Propiedad Industrial* (Official Bulletin of the Industrial Property Register – BORPI). Utility models are protected by granting utility model registration certificates for a period of ten years, with no provision for extension. Industrial designs are protected by means of ten-year registration certificates, which can be extended for a further period of five years. The Law on Industrial Property also governs everything relating to trademarks, geographical indications and undisclosed information. Panama grants protection to trademarks and other distinctive signs, provided they are registered in the Industrial Property Register, for periods of ten years, which can be renewed for an equal number of years at the request of the party. Protection for geographical indications and appellations of origin is granted by registration, for an indefinite term. The Law on Industrial Property and the Penal Code protect industrial and commercial secrets, without the need for registration and for an indefinite period, as long as the constituent information is not generally known. Panama does not have any specific legislation on the protection of layout-designs, which are protected under the copyright

legislation, provided they meet the requirements for being treated as a protected work. The Panamanian legislation does not provide for the granting of compulsory licences for the use of a patent, although licences may be granted on a voluntary basis.

262. The legislation on new plant varieties is based on Article 276 of Title V of Law No. 23 of 15 July 1997 and its regulations (Executive Decree No. 13 of 19 March 1999), which introduced rules for recognizing and guaranteeing the rights of the plant breeder in Panama and created the *Consejo para la Protección de las Obtenciones Vegetales* (Council for the Protection of New Plant Varieties – COPOV) for the purpose of organizing the national system for the protection of new plant varieties. COPOV is chaired by the Minister for Agricultural Development. Panama is a member of the International Union for the Protection of New Varieties of Plants (UPOV). At the end of 2006, there were 25 botanical genera protected in Panama and declared to UPOV, including varieties of rice, maize, coffee, sugar cane, kidney bean, and a series of fruits and vegetables.

263. In principle, parallel imports are not prohibited where industrial property is concerned, since Panama recognizes the international exhaustion of IPRs; however, the right holder may bring an action. Neither are such imports prohibited in the case of copyright; nevertheless, anyone who imports in parallel an intellectual good protected by copyright may not exploit it in unauthorized ways. The authorities have noted that, in practice, there are certain limitations on the parallel importation of pharmaceutical products, since the importer requires a sanitary registration.

264. The authorities have indicated that, at the beginning of 2007, a preliminary draft reform of Law No. 15 of 1994 and Law No. 35 of 1996 was being prepared to adapt the Panamanian legislation to the WIPO treaties on Copyright, Performance and Phonograms and Information Technologies and Modes of Exploitation of Protected Works, Productions and Artistic Performances, and to incorporate the amendments to the intellectual property legislation that would follow from ratification of the agreement negotiated with the United States.

(b) Enforcement of intellectual property rights

265. Panama replied to the Checklist of Issues on Enforcement in 1998.¹⁴⁰ The legislation on IPR enforcement includes: Resolution No. 9 of 27 December 2002; Resolution No. 013 of 9 March 2006; Law No. 45 of 4 June 2003; and Law No. 1 of 5 January 2004. Moreover, the Law on Copyright provides for administrative, civil and criminal proceedings in cases of copyright infringement.

266. The Intellectual Property Department of the Directorate-General of Customs is entrusted with border surveillance for the protection of IPRs. The Intellectual Property Department of the Colon Free Zone is responsible for protecting IPRs pertaining to goods and services marketed through that zone. The Department of Public Prosecutions is the institution responsible for prosecuting intellectual property offences. The *Comisión Interinstitucional de la Propiedad Intelectual* (Interinstitutional Intellectual Property Commission), established by Law No. 35 of 10 May 1996 and composed of representatives of the above-mentioned institutions and the DINECI, is responsible for the harmonization, coordination and monitoring of intellectual property policies.

267. The *Fiscalía Especializada in Delitos contra la Propiedad Intelectual* (public prosecutor's office specializing in intellectual property offences) is responsible for initiating the investigation of intellectual property offences and bringing criminal proceedings before the competent courts. It carried out 107 searches in 2005, seizing 33,249 items as evidence of copyright infringements and 2.47 million as evidence of infringements of industrial property rights. The technical branch of the

¹⁴⁰ WTO document IP/N/6/PAN/1 of 23 June 1998.

police, under the direct supervision of the Property Offences Division, assists the Department of Public Prosecutions and the judiciary in the investigation, prosecution and punishment of IPR offences and their perpetrators. At judicial level, there are courts that specialize in IPRs, under Law No. 29 of 1996 which established Circuit Courts and a Third Commercial High Court with Jurisdiction in Intellectual Property Matters.

268. Border measures include administrative and judicial measures to suspend the release of goods through the enforcement of provisional measures, which must subsequently be reviewed by a court. Under Executive Decree No. 123 of 26 November 1996, which regulates Articles 176 and 177 of Law No. 35 of 10 May 1996, customs officers are empowered to inspect or detain goods they are processing that may be infringing the intellectual property legislation in force.¹⁴¹ In 2006, customs seized infringing goods with a total value of B 10 million.

¹⁴¹ In the Colon Free Zone IPRs are enforced under Resolutions No. 03-98 of 11 June 1998; No. 04-98 of 11 June 1998; No. 05-98 of 26 August 1998; and No. 18-98 of 14 February 1998.