

**GENERAL AGREEMENT
ON TARIFFS AND TRADE**

RESTRICTED
L/7426/Add.2
19 August 1994
Limited Distribution

(94-1692)

Original: Spanish

WORKING PARTY ON THE ACCESSION OF PANAMA

**Questions and Replies to the Memorandum on
Foreign Trade Regime (L/7228)**

Addendum

The following communication has been submitted by the Permanent Mission of Panama in response to additional questions raised by contracting parties.

The Permanent Mission of the Republic of Panama to GATT has the honour to submit the following documents to the GATT Secretariat, so that they may be made available to the contracting parties:

- (a) Document containing replies to questions formulated by the United States of America at the first meeting of the Working Party on the accession of Panama to the GATT.
- (b) Annexes to the replies for the United States:
 - 1. Copy of our Tariff in the Harmonized System.
 - 2. An updated table of the new tariff distribution as at 31 May 1994.
 - 3. Copy of decrees revising the import tariffs.
- (c) Corrigendum to replies to questions 26 (USA 11 and 27) C.6, pages 28 and 31 of document L/7426
- (d) Document containing replies to questions formulated by Canada during the first meeting of the Working Party.
- (e) Set of documents requested by the contracting parties at the first meeting of the Working Party:
 - 1. Chapter IV of Book I, Title I, of the Fiscal Code.
 - 2. Decree No. 33 of 3 May 1985.
 - 3. Decree No. 3 of 5 April 1978.
 - 4. Laws Nos. 55 and 56 of 20 December 1984 regulating insurance and reinsurance business.
 - 5. Cabinet Decree No. 238 of 2 July 1970.

These documents are available for consultation in the Secretariat (Office of the Special Adviser to the Director-General, Room 2017).

A. FIRST MEETING OF THE WORKING PARTY

Questions Received

COUNTRY: UNITED STATES OF AMERICA

CHAPTER I: ECONOMIC PROFILE

1. Trends and current situation of the economy

(b) Prices

Concerning the 36 products that remain subject to price controls after 31 December 1993:

USA.1 The list of these products, contained in Chart 2 of the annexes, subject to domestic price controls (e.g., imported cereals) and the separate list of imports subject to price controls (e.g., apple and grape juice) refer to price controls applied to imported products and not to similar products produced locally. How can this be justified within the national treatment obligations of Article III, and how does Panama intend to alter this unequal treatment prior to accession?

R. There is no discrimination in Panama between domestic and foreign products as far as price controls are concerned. With regard to the examples you indicate, Panama does not produce apple or grape juice, but if it did, it would apply in price controls equally.

USA.2 Are Panama's price controls on rice, sugar, coffee, milk, chicken, fish, and other agricultural commodities in any way connected with or influenced by the operations of a State-trading or State-distribution agency?

R. No. Panama applies import and other measures to support the price to the producer of domestic grains, then applies price controls for their consumption.

USA.3 Does this involve government absorption, at any stage of processing, of the difference between the price paid to the producer and the price at which such commodities are traded in Panama?

R. No. The Government does not absorb differences between the price paid to the producer and the price at which such commodities are traded in Panama, nor any other price differential, at any stage of the trading process.

USA.4 To what extent are Panama's price control levels for agricultural commodities held below internationally traded prices for these products?

R. Prices of agricultural commodities are held above international prices. Panama indicated in its responses that "farmers do not use the donated corn for food, but instead they use it to feed their corral birds."

USA.5 How are Panama's price controls and use of food-aid imports of corn applied to assist the cost base for chicken production in Panama?

R. The price controls applied to chickens do not affect and have no relation to the cost of chicken production. There is no price control for corn. Corn donated as food aid is not used to hold down costs of chicken production in Panama. We should emphasize that donations of corn to the State are

never donated to the end recipients since the corn provided to poor farmers is paid for by them with their labour and the excess is sold through public tendering. These corn imports account for less than 1 per cent of national consumption.

USA.6 What are Panama's plans for the full elimination of such price controls? How will the operations of the Office of Consumer Protection, when it is established, differ from the operations of the Office of Price Regulations?

R. The Government of Panama is eliminating price controls for almost all products which were regulated by the Office of Price Regulations. However, the Government recognizes that there are still distortions (monopolies, oligopolies, etc.) which affect the proper functioning of the market. The total elimination of price controls will therefore have to depend on passing an anti-monopoly law and the proper functioning of a market economy.

With regard to the Office of Consumer Protection, its main functions will be directed at a teaching role, to educate the consumer to take all factors into account when selecting the products which he consumes. In addition, it will become a body responsible for controlling the proper functioning of the market economy.

USA.7 Is there a schedule of elimination for all of the remaining 36 products and two services? What sort of pace does "gradual" mean in terms of timing?

R. At present there is no schedule of elimination for all the remaining 36 products and 2 services. Panama's plans for fully eliminating price controls depend on the disappearance of the circumstances which led to their introduction. This is linked to the full functioning of a market economy and approval of an anti-monopoly law.

1. Trends and current situation of the economy

(c) Production

The responses to the questions indicate that imports supplied less than 1 per cent of Panama's consumption of milled rice and sorghum in 1990-1992, and of red kidney beans in 1991-1992.

USA.8 How can Panama justify this virtual ban on imports under GATT rules? What are Panama's plans to eliminate this ban and to bring its trade regime for these products into conformity with GATT obligations?

R. The low levels of imports during those years were due to the existence of import quotas which were recently abolished.

Import quotas, prior authorizations or permits and other quantitative restrictions were abolished for potatoes, onions, beans (Vigna), kidney beans, lentils, vetches, peas, dwarf beans, maize, sorghum, pork and poultry meat through the following Decrees:

- Decree No. 51 of 22 September 1993 (amended by Decree No. 61 of 27 October 1993);
- Decree No. 55 of 13 October 1993;
- Decree No. 56 of 13 October 1993 (amended by Decree No. 61 of 27 October 1993, in turn amended by Decree No. 69 of 24 December 1993).

2. The new economic policy

Concerning the description of agricultural interest rate subsidies through the National Banking System:

USA.9 What other domestic supports for agricultural production are provided by the Government of Panama?

R. Total domestic support by the Government of Panama to domestic production is very small in absolute terms, some \$9 million annually. The aids are as follows:

- Preferential tariff for installation and consumption of electric power used in farming activities. The tariff will result in a reduction of up to 30 per cent of the current rate.
- Income tax deduction of 30 per cent of amounts invested in agricultural livestock, fisheries and agro-industrial activities, provided that the deduction may not be greater than 40 per cent of the taxable income prior to application of the entitlement to deduction and to the extent that the amounts invested are derived from sources other than the above-mentioned activities.
- Exemption from payment of tax on profits derived from commercial timber cut from artificial forests and which are planted in plantations within seven years from the entry into force of the law.
- Exemption from tax on the income of agricultural and livestock producers with gross income of less than \$100,000 (one hundred thousand dollars).
- Agricultural and livestock producers with gross income exceeding \$100,000 (one hundred thousand) dollars shall, in making their income tax return, deduct from the taxable income a percentage of the capital invested in the farming activity in the fiscal period concerned, equivalent to the average rate of interest for fixed term deposits determined by the National Banking Commission plus 3 per cent of that average.
- Exemption from payment of Property Tax on farming estates whose land registry value is not in excess of \$100,000.

Concerning export subsidies provided through Law 3 of 1986, e.g., income tax and real estate tax exonerations, and the additional discounts on the electricity rate and Tax Deposit Certificates of the exportation of non-traditional goods available to agricultural and industrial enterprises:

USA. 10 What are Panama's plans to bring these measures into conformity with GATT/WTO obligations?

R. We consider that these incentives are compatible with the General Agreement and with the Subsidies Code, as applicable to developing countries, since such incentives were granted for the purpose of achieving the goals of competitiveness, growth and economic development. Furthermore, such incentives do not cause "serious prejudice" to the trade or production of another signatory.

On becoming a contracting party, Panama is prepared to abide by the conclusions handed down by any GATT committee established to determine if such incentives are in conformity with the objectives of the General Agreement.

With regard to the granting of subsidies on basic products, Article XVI of the General Agreement provides that the contracting parties should avoid use of subsidies on the export of primary products which would result in that contracting party having more than an equitable share of world trade in that product. In the case of Panama, exports benefitting from such an incentive are minimal in volume, and have no impact on world trade, and thus do not violate Article XVI.

With regard to the Final Act of the Uruguay Round, Panama will adopt the measures provided in this instrument when it enters into force for Panama, and as part of the concessions made as the beneficiary of the above-mentioned instrument.

To this end, Panama will apply the provisions of the Agreement on Subsidies and Countervailing Measures, particularly the provisions of Article 27, paragraph 3.

USA.11 Please describe further the "elimination of the State monopoly of the Institute of Agricultural Market in the import and export agriculture products" noted in the responses to the written questions. Does the Institute still exist? Please describe how Government purchases or distribution facilities operate currently in the agricultural sector.

R. The Agricultural Marketing Institute (AMI) exists, but is not currently making purchases or sales of agricultural products in either the domestic or international market, and has not done so for years; and the Government has no intention that it should do so in the future.

Concerning tax reform:

In the responses to the written questions, Panama indicated that it had increased the "transferring fee" on alcoholic beverages.

USA.12 What is the "transferring fee"? Is it applied to other products? At what point of sale is it applied to imports, to domestic goods? What is its current level of incidence?

R. The reference that we made in the replies to the written questions to an increase in the transfer tax on alcoholic beverages refers to the tax on transfer of movable goods, which is a value added tax applied to all sales and transfer of movable goods at national level. It is a tax of 10 per cent applicable at the moment of transfer of the good. We should recall that this tax is applied equally to nationals and foreigners, without discriminatory treatment.

We wish to point out that in the translation submitted to the contracting parties the term "tax on transfer of movable goods" was translated as "transferring fee", which may have caused confusion concerning this tax, which was clearly described in Section F of Document L/7426, Questions and Replies to the Memorandum on Foreign Trade Regime.

3. Foreign trade structure and trends

(a) Goods

(1) Recording

Panama indicates that the statistics on trade in goods in L/7228 do not include imports and exports of the Colón Free Zone.

USA.13 Please describe the role of the Colón Free Zone in Panama's domestic economy. Please indicate the relative size of trade through the Zone with Panama's imports and exports from the national fiscal territory. Does Panama consider the Zone to be part of its customs territory?

R. The contribution to the domestic economy of the activities carried on the Free Zone is 8 per cent of gross domestic product. For a complete description of the role of the Colón Free Zone in Panama's Domestic Economy, please see the reply to USA.51. Panama does not consider the Free Zone to be part of its customs territory.

The following figures show the relative proportion of its trade to that of Panama.

FOREIGN TRADE OF THE COLON FREE ZONE AND PANAMA

(millions of dollars)

Details	Colón Free Zone (1)	Fiscal territory of the Republic of Panama (2)	Ratio of columns (1)/(2)
Year: 1991			
Total imports	3,683.6	1,695.6	2.2
Total exports and re-exports	3,959.5	452.1	8.8
Year: 1992(p)			
Total imports	4,365.1	2,018.8	2.2
Total exports and re-exports	4,833.3	474.2	10.2
Year: 1993(p)			
Total imports	4,522.2	2,187.3	2.1
Total exports and re-exports	5,133.4	507.6	10.1

(p) Preliminary figures

Source: General Comptroller's Office.

USA.14 Do goods from the Zone enter Panama's fiscal territory? Please provide statistics for the foreign and Panamanian trade of the Zone.

R. Goods from the Colón Free Zone enter the fiscal territory only as imports. The requested statistics are set out below.

**FOREIGN TRADE BETWEEN PANAMA AND THE COLON FREE ZONE
AND ITS SHARE OF PANAMA'S TOTAL FOREIGN TRADE**

(in millions of dollars)

Year	Imports from CFZ	Panama total imports	Share %	Exports to CFZ	Panama total exports	Share %
1991(p)	283.5	1,695.6	16.7	16.5	452.1	3.7
1992(p)	320.0	2,018.8	15.6	15.4	474.2	3.2
1993(p)	363.2	2,187.3	16.6	5.8	507.6	1.1

(p) Preliminary figures

Source: General Comptroller's Office.

3. Foreign trade structure and trends

(a) Goods

(2) Trends

Panama has indicated that banana exports to the European Union since 1989 have accounted for over 90 per cent of the total.

USA.15 What impact will the new regime instituted in 1993 have on the value and volume of this trade?

R. The establishment of the Common Market Organization by the European Union on 1 July 1993 certainly restricted imports of bananas from Latin American producer countries, since in comparison with a volume of approximately 2.6 million tonnes imported in 1992, it set a tariff quota of only 2 million tonnes.

The impact of the Common Market Organization for Panamanian bananas has been a reduction of 6 million boxes (111,000 tonnes) in exports to the European Union. In terms of value, this reduction is estimated at \$72 million, which meant a reduction of 18 per cent in the total c.i.f. value of bananas sold to the European Union.

In addition, Panama, with an export potential of 43 million boxes of bananas and as the main supplier to the countries of the European Free Trade Association, is concerned at the possibility of these countries joining the European Union, as a result of which this alternative market would be restricted by the quantitative barriers to banana imports from Latin America. This raises the prospect of this a possible further reduction in exports and greater injury is expected to the economy of this sector in Panama, which will have to abandon some 2,000 hectares of plantations.

CHAPTER II. FOREIGN TRADE REGIME

1. Trade policy

Concerning the Law 25 of 30 November 1992:

The Export Processing Zones covered by this Law are locations where according to the responses goods are "produced exclusively for exportation." Under these circumstances, the exemptions from direct taxes provided for firms locating in these zones do not appear consistent with the provisions of Article XVI or of the Subsidies Agreement.

USA.16 How does Panama intend to bring these measures into conformity with GATT obligations?

R. Panama considers that the exemptions granted to the Export Processing Zones are consistent with Article XVI of the GATT, as applied to developing countries.

In addition, Article XIV of the Subsidies Code which interprets the above-mentioned Article XVI establishes an exception for developing countries, allowing them to grant export subsidies to meet their needs for competitiveness and development.

The main objective of creating the Export Processing Zones is to generate employment in export-oriented service and manufacturing industries. The elimination of the incentives granted to these zones would hinder the achievement of the development objectives recognised in Part IV of the GATT and the Subsidies Code, which justify the granting of such exemptions.

Operations in Export Processing Zones are at an initial stage, so the volume of trade is minimal.

2. Tariff policy and rules governing external trade

(a) Tariff nomenclature

In the response to questions in this section, Panama indicates that the products listed in Charts 3 and 4 of Annex A are subject to import permits and quotas. These products include dairy products, wheat, soybeans, flour, sugar, fats and oils, and some meats. The Charts themselves, however, indicate that these products are "regulated by the Agricultural Marketing Institute by means of an importation fee." This fee is listed either as 4 per cent of the c.i.f. value of the import or a specific charge.

USA.17 Please clarify these responses. Are the goods listed in Charts 3 and 4 as requiring a fee from the Agricultural Marketing Institute also under quota and import permits? What is the difference between the two lists?

R. Yes. The products listed in tables 3 and 4 are the list of quotas and prior authorizations administrated by the AMI, and in addition to import taxes, these products pay a service charge, which is shown in these charts.

The difference between table 3 and table 4 is that the former contains the list of existing quotas, a quantitative restriction, while the second (referring to prior authorizations) does not restrict the quantity imported.

Please update the status of the conversion of Panama's tariff nomenclature to the Harmonized System.

R. We enclose for the Secretariat a copy of the Harmonized System approved by the Cabinet Council on 15 July 1994.

Concerning mixed tariffs, the specific tariff rate in a mixed tariff includes an ad valorem component.

USA.18 Is this "over rate" applied ad valorem customs fee?

R. No.

USA.19 This system is extremely non-transparent. Is there some way to simplify this system or otherwise address the need for accurate customs valuation and tariff protection?

R. Panama considers that this system is transparent since the tariff is published and there has been no confusion in the country over its application by importers. Other contracting parties of the GATT apply a system similar and in some cases identical, to that applied by Panama. However, despite considering it transparent, Panama is ready to discuss the suggestions that the contracting parties may wish to present to simplify it.

USA.20 Concerning Chart 8 in the responses to the written questions, please provide a list of the 131 products which enter Panama duty free? Do these products enter directly into Panama's fiscal territory, or through the Colón Free Zone?

R. Panama's tariffs apply to goods entering the fiscal territory, regardless of their origin, whether the Colón Free Zone or any other. We attach the list of duty-free items, which currently amount to 132 tariff lines.

Concerning Chart 8 in the Annexes to the responses to the written questions (different from Chart 8 in the text of the responses):

USA.21 Panama has added a number of products to the list of items with tariffs exceeding 90 per cent. This includes pork products, lentils, rice, and tomato juice. Please confirm that these items no longer are subject to quantitative restrictions of any kind.

R. These products are not subject to quantitative restrictions of any kind.

Concerning Table 8 in the responses, containing the distribution of Panama's tariff lines by tariff level:

USA.22 Please update this list including the increased tariff levels listed as from 17 January 1994 listed in Chart 8 of Annex A.

R. It should be clarified that table 8 of Annex A refers to changes which had occurred up to 10 December 1993, and its title refers only to the date when the table was prepared (17 January 1994). Consequently, the distribution of tariff intervals in document L/7426 already includes these tariff changes. The updated table of the new tariff distribution at 31 May 1994 is annexed.

2. Tariff policy and rules governing external trade

(b) Customs valuation

Panama indicates that reference prices for customs valuation appraisal were instituted as a temporary measure after conversion of the specific import tariffs to ad valorem rates of duty.

Panama further indicates in the response to the questions on customs valuation that if the import value declared by the importer "is over the margins established in the database, he is forced to support this price ...[or]... pay the tax over its adjusted value, which will be calculated through the information in the database".

USA.23 Is this "database" a list of prices? How does this differ from reference prices?

R. This database is indeed a list of prices produced from the daily register of imports into Panama through customs agencies.

The prices produced by the database differ from the reference prices in that the latter were fixed arbitrarily by customs and did not vary over time.

It is the commercial invoice price and not the reference price that is actually used in Panama. It is matched with the average prices produced by the database. Where there is a significant difference between the commercial invoice price and the average of other imports, customs will require information from the importer to justify the price indicated in the commercial invoice.

The only exceptions to this rule are imports of rice, maize, sorghum, chicken meat and steel where customs applies an established reference price.

USA.24 Will Panama state categorically that it no longer uses such measures for import valuation and that such measures will not be used in the future?

R. Panama does not apply arbitrary customs prices. The invoice price is generally accepted in the import documents to value goods. Only in the case of imports of sorghum, corn, rice, chicken and steel are goods valued on the basis of pre-established reference prices, and this measure will not be used in future for other products.

Panama indicates that non-standard valuation practices are used on imports of rice, corn, sorghum, and chicken.

USA.25 Please explain why Panama is using these non-standard customs valuation practices. How does Panama propose to bring these practices into conformity with the Customs Valuation Code?

R. Panama is using these custom valuation practices in the cases of these products to minimize the impact of the change from a mixed tariff to an ad valorem tariff.

Once it has acceded to the GATT, Panama will faithfully follow the provisions of the Valuation Code and will eliminate current non-tariff barriers in accordance with the WTO Agricultural Agreement.

2. Tariff policy and rules governing external trade

(c) Tariff measures

(1) Law No. 3 of 1986

In light of the changes effected by the recommendations of the Subcommittee of the National Economic Council (i.e., Nos. 51, 55, 56, 61, and 69 of 22 September-24 December 1993), is Law No. 3 of 1986 still in effect? If so, please describe what aspects of this law are still operative?

R. Law No. 3 remains in force. The above-mentioned Decrees provide that tariff exemptions granted to industries for their inputs shall not be applied when the inputs are potatoes, beans, kidney beans, lentils, split peas, sweet peas, small peas, corn, sorghum, and pork and chicken meat, which will always be subject to the corresponding tariffs.

These recommendations appear to have established *unrestricted* trade in potatoes, beans, kidney beans, lentils, split peas, sweet peas, small peas, corn, sorghum, and chicken and pork meat, subject to increased tariffs.

USA.26 Is this correct? If so, has Panama provided information to this Working Party on the new regime, e.g., a list of the new tariffs and an updated list of products subject to quantitative restriction, import permits, etc.?

R. Yes. We annexed the Decrees to document L/7426, Annex B.

Responding to a question concerning Cabinet Decree No. 92 of 12 December 1990, Panama indicated that this decree restored Executive Authority to alter tariffs under certain conditions.

USA.27 Could Panama describe the authority available at the present time to the Executive to increase or decrease tariff rates administratively, i.e., without the need for legislative action?

R. Under the country's present law, the Executive Authority has the power to alter and establish tariffs, fees and other provisions concerning the customs regime. However, in reality this power has been challenged as unconstitutional in the Supreme Court of Justice.

USA.28 Is Panama prepared to exercise this authority in conformity with GATT/WTO provisions?

R. Yes.

USA.29 It appears that Panama is continuing to make changes in its duty rates. Can Panama provide, for the WP and the CPs, an up-to-date listing of its applied tariffs on a tariff line basis?

R. Enclosed herewith we are sending the Secretariat a copy of the Decrees promulgated since 31 March 1994 which update the import tariffs as at 31 May 1994.

2. Tariff policy and rules governing external trade

(c) Tariff measures

(2) National strategy for economic development and modernization

Panama indicates that its laws provide for an increase in the tariff rate if new production is initiated.

USA.30 Is Panama prepared to meet GATT requirements for compensatory adjustment if such increases break established tariff bindings?

R. Yes, if that is the case. However, there is no intention of breaking established tariff bindings once they are established.

In response to questions concerning the application of sanitary requirements to poultry imports, Panama refers to the sanitary regulations established Law No. 7 of 30 March 1993.

USA.31 Panama states that these restrictions apply only to poultry parts. Why do these restrictions not apply to other poultry products from the same source?

R. The sanitary requirements are applied equally to all imports of poultry products.

USA.32 Are these requirements enforced exclusively on imports and not on competing domestic production?

R. They are applied both to imports and to domestic production.

2. Tariff policy and rules governing external trade

(d) Special tariff treatment

Panama indicates that during 1992-1993 approximately one third of its imports entered duty-free under the special provisions listed on pages 22-23 of L/7228 (English text), and that only about one quarter of that was accounted for by bilateral free trade agreements. For example, in 1993, 23 per cent of Panama's imports were subject to such exemptions, not counting its intra-regional free trade arrangements.

USA.33 Using the same database, could Panama please indicate the approximate proportion of Panama's imports that are exempted from duty (a) under Law No. 3 of March 1986 providing for incentives to encourage and develop national industry, (b) under Law No. 9 of 19 January 1989 providing for incentives for small manufacturers, and (c) under Law No. 25 of 30 November 1992 providing for incentives for export processing zones?

R. The proportion of total imports under the exemption schemes indicated for 1993 is as follows:

	<u>CIF value</u> (millions of dollars)	<u>Proportion</u> %
Imports covered by Law 3	438.1	20.0
Imports covered by Law 9	1.0	0.5

The exemptions for imports covered by Law 25 are not included in the statistics, since they relate to areas not within Panamanian fiscal territory. However, no imports under this law have been observed.

USA.34 What are Petroleum Free Zones, as referred to on page 23 of L/7228?

R. Petroleum Free Zones, as explained in document L/7228, are areas administered by national or foreign enterprises which have concluded a contract with the Government through the Ministry of Trade and Industry. The establishment of these zones is aimed at making use of Panama's comparative advantage as an area through which ships and aircraft must pass, to sell them petroleum and derivatives.

The principal benefit of these zones is that petroleum and derivatives can be imported free of tax and stored, pumped, transferred, distributed, sold and refined for subsequent export.

Concerning the exemptions referred to in Chart No. 12 in the text of responses to the written questions:

USA.35 Does this Chart reflect any exemptions additional to those described earlier?

R. No. The exemptions reflected in the table are those contained in the schedule set out under Decree 413 which, as we explained, was repealed and the enterprises which still have these benefits have contracts for a defined term. The majority of these incentives were intended to increase development of these remote areas.

The legislation in force is Law 3 of 1986, whose incentives are lower than those granted under Decree 413. Likewise, the scope of the Industrial Register covered by Law 3 is narrower.

Concerning tariff exemptions granted under Article 535 of the Fiscal Code:

USA.36 What situations are covered by Article 16 of Law 1 of 28 February 1985?

R. No situation is covered by Article 16 of Law 1 of 1985. That article repeals paragraphs 2 and 3 of Article 535 of the Fiscal Code. Paragraphs 2 and 3 of Article 535 stated the following:

"2. Those imported by autonomous or semi-autonomous State institutions, provided they are intended for their own use;

3. Those imported by municipalities or groups of municipalities".

However, paragraph 1 of Article 535 states the following:

"1. Imports by the State for the procurement of food, medicines, sports equipment, hospital equipment, laboratory equipment and suchlike, teaching materials for its educational establishments and donations received by the State, municipalities and local councils."

2. Tariff policy and rules governing external trade

(e) Anti-dumping and countervailing measures

Panama has stated in its written responses that decree 15 does not have "any relationship with the preventive measurements of Article XIX."

USA.37 Please cite and describe the authority exercised by Panama's Government for safeguarding domestic enterprises from import competition. Please include reference to any authority for safeguarding agricultural products.

R. There are no provisions requiring or indicating that the Government should apply measures safeguarding domestic production from competition by imports, similar to those envisaged in Article XIX of the GATT.

USA.38 Is Panama prepared to conform its domestic authority for the application of safeguard purposes to GATT provisions, e.g., Articles XVIII and XIX and WTO agreements?

R. Yes.

2. Tariff policy and rules governing external trade

(f) Non-tariff measures

(1) Prohibited imports

(2) Products subject to import restrictions

Concerning import bans and permits that restrict imports to protect domestic production, Panama is to be congratulated that it has unilaterally begun the process of removing products from the list of those subject to quantitative protection. The following questions and comments cover the restrictions left in place:

USA.39 Do Charts 3 and 4 and Charts 13 and 14 constitute the universe of remaining Panamanian quantitative restrictions (e.g., quotas, import licensing or permit requirements, and authorizations) applied to imports, not including sanitary and phytosanitary restrictions?

R. Yes.

USA.40. If not, will Panama produce such a list, by tariff line, identifying specifically the requirement or restriction and listing the GATT justification?

R. The tables indicated cover all existing quantitative restrictions.

USA.41 Are any permits on these products granted on an automatic, rather than a discretionary, basis?

R. At present prior authorizations are approved on a discretionary basis by the Import Licensing Commission at the request of enterprises, provided that they concern products which are traditionally imported by the enterprise and the quantities and quality to be imported are within the normal range of imports made by the enterprise. If a product subject to prior authorization is to be imported for the first time, a check is made to establish that the product cannot be substituted domestically in terms of quantity or quality.

USA.42 What offices of government determine whether a product is considered substitutable for national production?

R. The Ministry of Trade and Industry for manufactured products and the Ministry of Agricultural Development for agricultural products.

USA.43 How is potential damage to the national economy determined and which agency is responsible for determining this?

R. The potential damage to the economy is determined as a function of domestic manufacturing's capacity to supply compared with demand and volume or amount of intended imports. This means that any import as a result of which the percentage of domestic demand covered by domestic production is reduced shall be considered to give rise to potential damage to the domestic economy. This is determined by the AMI.

Panama states in its responses that quota levels are not generally announced, and that for some products the amount of national products (local production) that an importer has purchased confers eligibility on a request for a quota.

USA.44 Under what GATT Article would such a consideration be based? How is this practice consistent with Articles III and XI?

R. In the course of its negotiations for accession to the GATT, Panama will transform these protective measures so as to comply with the rules and practices accepted by the General Agreement and any other documents that may be negotiated.

2. Tariff policy and rules governing external trade

(f) Non-tariff measures

(3) Plant and animal health controls

(4) Import certificates

Concerning Panama's application of import prohibitions, import restrictions, and health controls for animal and vegetable products, the comments and questions that follow reflect only a preliminary review of Panama's system.

Section 1 of Decree No. 57 (2/7/56) establishes the basis for much of Panama's protection in the area of sanitary and phytosanitary protection. Law 7 of 30 March 1993 has further expanded the Government's protective authority:

USA.45 For example, all uncooked poultry meat has some salmonella present. Are Panama's domestic poultry subjected to the same stringent requirements as imports in this area and in the area of Newcastle's disease?

R. Panama is free of disease in the poultry sector. In order to maintain these high health standards in the sector concerned, two types of measures have been taken. The first is constant inspection of domestic poultry production through field inspections undertaken by the Ministry of Agricultural Development and inspection of processing plants carried out by the Ministry of Health. Both types of inspection are carried out by qualified veterinary doctors.

The second type of sanitary protection is applied to imports, by both the Ministry of Health and the Ministry of Agricultural Development, to prevent the entry of any disease which may be harmful to human or animal health.

If any of the sanitary measures taken by Panama is not in conformity with the requirements established by the GATT and other documents which may be negotiated, such measures will be modified on our accession so as to comply.

USA.46 Once Panama accedes to the General Agreement will these regulations be altered to conform to the sanitary and phytosanitary text of the Uruguay Round?

R. Once Panama has acceded to the GATT, it is prepared to bring all its legislation into conformity with the General Agreement and other documents that may be negotiated.

It appears that every agricultural product which enters Panama is subject to either a sanitary or phytosanitary certificate. In some cases, this precaution seems redundant.

USA.47 Can Panama provide information stating why these certificates are necessary for all products, specifically those items which are processed products?

R. Not all imports of agricultural products are subject to **phytosanitary** certificates. All imports of agricultural products in a natural state do require this certificate but, except in a few cases, processed agricultural products do not require such a certificate. The requirement applies to some processed products "when the original characteristics of the product may alter through changes in temperature, combined with packing conditions, making the products potentially susceptible of carrying disease. Examples of the latter are oats, alfalfa, tapioca, cornflour, soya, corn, wheatgerm, glutens, dehydrated vegetables, ground (milled) products, hops, malt and dehydrated medicinal herbs.

With regard to the sanitary certificate, all products for human consumption, both domestic and foreign, must have a sanitary register issued by the Ministry of Health. Whenever an import is to be made, it is necessary to attach a certificate issued by the Ministry of Health attesting to the prior existence of this register. This is nothing more than a customs health control measure and the certificate is rapidly obtained.

2. Tariff policy and rules governing external trade

(f) Non-tariff measures

(5) Other non-tariff restrictions

Panama states in its responses that all the wireless telecom equipment is controlled by the Ministry of Government and Justice.

USA.48 Does this mean that this Ministry controls the importation and exportation by approving or disapproving permission to import such equipment or does it mean that this Ministry physically controls all such equipment in Panama and does not allow commercial importation of such goods?

R. The Ministry controls imports only to approve or refuse licences for such purposes. The Ministry does not physically check the equipment once it is in Panama.

2. Tariff policy and rules governing external trade

(g) Procedure for importation for consumption (customs clearance for consumption)

(4) Duties, taxes and charges recorded on the customs declaration form

(A) Import tariff

The United States has asked "how" Panama intends to bind a mixed tariff which requires choosing from two tariff calculations, whichever is higher.

USA.49 How can Panama bind a tariff that varies between two levels of application depending on the valuation of the import at any given date of importation?

R. Panama has not indicated any preference for binding a particular type of tariff. What we have stated is that Panama reserves the right to bind any of the types of tariff hitherto accepted by the contracting parties in the GATT.

These include ad valorem, specific and mixed tariffs. With regard to the latter, we suggest a review of the tariffs bound by other contracting parties in the GATT which clearly show their legality within the context of the Agreement.

4. Commercial and industrial free zones

(a) The Colón Free Zone

(1) General aspects of the trade policy of the Colón Free Zone

Panama states in its written responses that imports and exports from the Colón Free Zone in 1993 amounted to 4.5 billion and 5.1 billion balboas, respectively. This compares with imports and exports into Panama's fiscal territory reported for 1991 in L/7228 of less than 2 billion and one half billion balboas respectively.

USA.50 Please expand the trade information in the tables L/7228 to cover 1992 and 1993 and indicate the import and export value of Panamanian goods with the Colón Free Zone for 1993.

R. Value of Panama's Imports and Exports to and from the Colón Free Zone

(\$ Millions)

Year	Imports (c.i.f.)	Exports (f.o.b.)
1990	273.5	7.9
1991	283.5	16.5
1992	320.0	15.4
1993(p)	363.2	5.8

USA.51 Please describe the commercial relationship of Panama to the Free Zone, e.g., what is the composition and nature of the trade?

R. The Colón Free Zone is simply a distribution centre for goods from the world towards Latin America. The receipt or dispatch of some goods to and from Panama by enterprises established in the Colón Free Zone is facilitated by the volume of their trade and their international commercial links. For example, Panamanian exporters try to take advantage of container space dispatched from the Free Zone to a particular country. Also, it is also logical that the Colón Free Zone re-exports to Panama products imported to supply markets in the area. Of course, importers pay the appropriate import taxes.

The principal products which Panama imports from the Colón Free Zone are: clothes and footwear, fabrics, televisions, picture-reproduction and sound-carrying equipment, domestic electrical appliances, motor cars and parts, medicines, office machines and a variety of other items. The principal products exported by Panama to the Colón Free Zone are: gold, clothing, cheese, condiments, spices and cosmetics (creams, deodorants, lotions).

Imports from the Colón Free Zone represent Panama's second largest import market. On the other hand, exports to the Colón Free Zone are not such an important market.

USA.52 Specifically, what measures has Panama taken to avoid importation and re-export through Panama of goods violating patent and trademark protection laws? How does Panama certify the true origin of goods imported and re-exported?

R. In Panama, the law regulating protection of trademarks and patents applies throughout the territory of the Republic, including the Colón Free Zone. In the event of breaches of this legislation, natural or legal persons in breach of it are sanctioned in accordance with the provisions of the law.

In the case of the Free Zone, there are by definition no customs controls or controls on movement of goods, and therefore the Government of Panama acts against those in violation of such laws on the basis of complaints by interested parties.

USA.53 Please elaborate on the control measures Panama reports to have taken to prevent "leakage" of Colón Free Zone and goods from warehouses of the US Army located in "defence sites, etc." to eliminate the problem.

R. As in all countries of the world where contraband is against the law, customs officers pursue such illicit activity under the authority conferred on them by the law. However, as occurs in all countries of the world, including the United States, contraband is a constantly recurring crime.

USA.54 To what extent does Panama have police or other regulatory powers in the Colón Free Zone? Can Panama enforce the non-tariff provisions of the WTO in the Free Zone after accession to the GATT/WTO?

R. Panama is fully sovereign throughout its territory, so that its laws are applicable in the Colón Free Zone.

4. Commercial and industrial free zones

(b) Industrial free zones

Panama has extensive plans to expand its tariff and tax free zones for export development. Trade of the Colón Free Zone already dwarfs Panama's direct international trade.

USA.55 Why does Panama maintain restrictions on trade in its fiscal territory that it is so anxious to eliminate in the special zones it has set up? In effect this penalizes any business entity that remains productive within the traditional fiscal territory. Why doesn't Panama equalize its tariff and tax laws to spread the benefits of the zones to the bulk of its population?

R. The Colón Free Zone and the other free zones being set up in the country are intended to make use of the comparative advantage which our geographical position and the Panama Canal provide to the country. This is linked to a series of measures aimed at promoting activities based on this comparative advantage in order to create employment in Panama.

The products which are imported from various parts of the world are then re-exported to countries in the region. There is no population group within the Colón Free Zone benefiting from tariff exemptions. All Panamanians who buy goods produced outside Panama and which are acquired outside Panamanian fiscal territory, including the Colón Free Zone, will have to pay all tariffs and duties established under Panamanian legislation.

III. OTHER TRADE-RELATED INSTITUTIONS

1. Public enterprises

In its written responses Panama has listed a number of public entities as covered by Article XVII.

USA.56 Do all of these entities engage in international trade for resale?

R. No, no state enterprise imports goods for subsequent sale. These enterprises do not import products for resale. The imports they make are to supply their needs in machinery or equipment necessary for their functioning.

USA.57 Which enterprises are granted special benefits or status by the Government of Panama or constitute a *de jure* or *de facto* monopoly trader in certain products?

R. The advantages offered to enterprises in Panama are of a general nature, i.e. applied by criteria and not by specific enterprise. There are, however, some enterprises whose contracts are approved by law.

The only *de jure* monopolies existing in the country are state monopolies, which are:

- Instituto Nacional de Telecomunicaciones (INTEL) - Telecommunications
- Instituto de Recursos Hidráulicos y Electrificación (IRHE) - Electricity
- Instituto de Acueductos y Alcantarillados Nacionales (IDAAN) - Drinking Water

- National Bingos, National Casinos, National Lottery, The President Remón Racecourse
- Charitable Games of Chance.

De facto monopolies are prohibited by the national constitution.

USA.58 To what extent are Panamanian firms or individuals required to use any of these enterprises to conduct international trade on their own behalf or to acquire imported products?

R. Not at all.

IV. TRADE AGREEMENTS

1. Bilateral Agreements with Central America

Panama's written responses would seem to indicate that while close to two thirds of its average trade within the Central American region in the period 1990-92 was subject to bilateral agreements with these countries, only 3 per cent of imports and 8 per cent of exports in the 1991-92 period were subject to tariff preferences.

USA.59 Please indicate the basis for this disparity. Are the goods covered by bilateral agreements not all subject to preferential trading arrangements?

R. The disparity arises from the fact that trade with countries in Central America is concentrated in agro-industrial products of relatively low value compared with other products, such as higher value capital goods, mainly originating in developed countries.

Concerning products covered by bilateral agreements, we should point out that although these receive preferential treatment, these preferences take various forms, as described below:

- Free trade
- Free trade restricted by quota
- Preferential tariff
- Preferential tariff restricted by quota.

All these forms may occur in one or two ways.

USA.59 Do the bilateral agreements outline a plan for completion of the free trade area with Panama at some specific point in the future?

R. There is no specific time for the entry into force of a free-trade area with Panama. Due to the diversity of economic models present in the region and in the case of Panama, particularly with regard to the monetary system and movement of capital, the process of regional integration must be subject to progressive and complementary action between the parties. This is what was agreed in the Guatemala Protocol modifying the General Treaty on Central American Economic Integration to which Panama is a signatory.

USA.60 What portions of Panama's import trade regime are specifically excluded from the preferences?

R. Nearly 90 per cent of the tariff lines are excluded. This is because there is no production of the vast majority of the items included in the tariff in the Central American region.

USA.61 Does Panama plan to implement price bands on basic grains as part of its integration into the Central America Common Market?

R Nothing is planned in this connection.

B. ANNEXES TO THE REPLIES FOR THE UNITED STATES

- 1 - In reply to USA 17, copy of the Harmonized System Tariff.
- 2 - In reply to question USA 22, an updated table of the new tariff distribution as at 31 May 1994.
- 3 - In reply to USA 29, copy of the decrees updating Import Tariff as at 31 May 1994.

COMPARATIVE TABLE OF TARIFF LEVELS
BY TYPE OF CUSTOMS DUTY
AS AT 31 MAY 1994

Description	No. of lines	Proportion %
TOTAL	3,323	100.0
A. Free	132	4.0
B. Ad valorem	2,666	80.2
1 - 40	2,577	77.6
41 - 50	9	0.3
51 - 60	42	1.3
61 - 90	36	1.1
91 and over	2	0.1
C. Specific	86	2.6
D. Mixed (1)	428	12.9
0 - 40	371	11.2
41 - 50	10	0.3
51 - 60	11	0.3
61 - 90	12	0.4
91 and over	24	0.7
E. Other	11	0.3

(1) The ranges refer to the ad valorem component of the mixed tariff.

Source: Technical Negotiation Unit - GATT/MICI.

C. CORRIGENDUM

Reply to questions 26 (USA.11 and 27) C.6 pages 28 and 31 of document of L/7426:

INSURANCE AND REINSURANCE

The legislation in force concerning insurance and reinsurance is contained in laws 55 and 56 of 20 December 1984. Both documents are annexed.

The first paragraph referring to insurance brokers should read:

"It is required to be a Panamanian citizen, resident in the Republic, or a foreigner who meets the requirements of Article 288 of the National Constitution."

(Article 288 is transcribed in the same question).

D. FIRST MEETING OF THE WORKING PARTY

Questions Received

COUNTRY: CANADA

PRICE CONTROLS

C.1 Could the Government of Panama please indicate in a more detailed manner the actual determination of the maximum selling price of products regulated by the Office of Price Regulation both for imported and domestically-produced product (e.g. tariff line 19.02.06.00.)?

R. (A) Breakdown of component costs of imported powdered infant formula (19.02.06.00) for infant feeding in the second six months.

Volume of boxes imported
Dollars (cost)
Freight
Insurance premium
Import tax
Ad valorem tax of 3.5 per cent applied to cost plus freight.
Stamp duties
Tax on packages
Brokerage
Transport
Interest
Total cost of shipment
Unit cost (per box)

Profit margins:

15 per cent to the distributor
15 per cent to the retailer

(B) Cost breakdown of domestic powdered infant formula, used for infant feeding in the second six months.

Volume on which the cost is based
Value of raw material
Packaging
Manufacturing costs
Administration and selling costs
Total costs

Factory price, 4.2 per cent mark up
Wholesale price, 15 per cent mark up
Retail price, 15 per cent mark up

C.2 With respect to imported products, are controlled prices administered by the Office of Price Regulation used in any way for the purpose of customs valuation?

R. No.

C.3 How often, and under which circumstances, does the Office of Price Regulation adjust applied profit margins?

R. There is no predetermined period of time to determine when profit margins should be adjusted by the Office of Price Regulation (ORP).

If the enterprise puts forward technical criteria to support the need to adjust profit margins, the ORP will analyse the justifications. If there are sufficient grounds, it will adjust the profit margins. A criteria which weighs heavily with the ORP is to ensure availability of the product in the market.

C.4 How frequently does a company succeed in obtaining the selling price proposed by it?

R. There are no statistics to allow us to determine the frequency with which the selling price proposed by the enterprise is fixed.

C.5 What is the nature of the "flexible system" alluded to in the reply to Question USA.1., (page 5 of document L/7426)?

R. The nature of the system is based on the possibility of changes occurring both in the internal costs of the enterprise and in the economic environment. Given such a situation, the Office of Price Regulation would suspend the controls, thus allowing the enterprise to set product prices. Once the conditions giving rise to the price liberalization returned to normal, the Office of Price Regulation would resume price regulation.

C.6 Does this flexibility include compensatory price increases for currency fluctuations, increased number of competitive products on the market, and/or increased research and development expenditures?

R. No. The flexibility refers to temporary and exceptional circumstances and not to permanent factors. When there are changes in cost structure, the enterprise, using the procedure described in the replies to document L/7426, applies to the Office of Price Regulation for an increase in the regulated price.

GOVERNMENT PROCUREMENT

C.7 Will the Government of Panama modify its existing procurement practices and measures to ensure they are in conformity with GATT Procurement Code disciplines?

R. No. Panama considers that its practices and measures are in conformity with the GATT Procurement Code disciplines.

C.8 Could the Government of Panama elaborate on the categories of contract for which no bidding is required according to the listing found on pages 20-21 of document L/7426, with illustrative examples?

R. We give below illustrative examples for each category of contract where bidding is not required under Article 58 of the Fiscal Code:

"1. Contracts that would produce a total income or expenditure that does not exceed one hundred and fifty thousand Balboas"; e.g.: The Ministry of Finance and the Treasury needs to procure items of office equipment whose cost does not exceed the sum of one hundred and fifty thousand dollars.

"2. Procurement contracts that deal with specific objects or leases that only have one holder, for which, according to an official technical opinion, there is no adequate substitute"; e.g.: The Ministry of Public Works needs to procure parts for official cars and there is only one distributor of such parts in Panama; e.g.: The National Institute of Culture needs a work by a specific artist (e.g. a specific painter who is qualified in the subject).

"3. Contracts concluded after two tender processes have been declared void"; e.g.: All bidding is declared void, either for lack of bidders or because the proposals submitted are considered high or oppressive.

"4. When there is obvious urgency that does not allow time needed for bidding"; e.g.: The Ministry of Health needs to contract with Control Sanitario the purchase of a certain product required to avoid propagation of an epidemic in a sector.

"5. Contract involving the floating of loans duly authorized"; e.g.: A resolution of the Cabinet Council authorizes the Ministry of Public Works to contract loans.

"6. Contracts authorized or regulated by special law, in which no bidding is required"; e.g.: A law authorizing a specific institution or ministry to conclude a contract without inviting bidding.

"7. Contracts between the State and municipalities or municipality association"; e.g.: The Institute of Water Resources and Electrification (IRHE) contracts with the municipality to clean certain areas (of weeds or waste) where it is necessary so that the necessary services for the electricity supply network and installations are not affected.

"8. Contracts that are simple extensions of existing contracts, as long as authorized by the proper authorities"; e.g.: Company X supplies office equipment to a certain ministry and the ministry concerned wishes company X to continue maintaining the equipment. For the purpose the equipment maintenance contract is extended; e.g.: the Ministry of Education rents premises for its offices: the lease of the premises is extended.

"9. Those whose price is the same for an entire sector of activity, by virtue of custom or commercial practice or tariffs or prices set or approved by competent public entities"; e.g.: the National Institute of Water Supply and Sewage (IDAAN) wishes to make an announcement in a specific periodical. There is a single tariff for the publication of advertisements in periodicals so that no bidding is required in such cases.

10. The Ministry of Education contracts with the IPHE for the manufacture of flags.

C.9 In each case would the government of Panama please indicate the number of occasions during the past three years that each of these exceptions has been applied to award contracts without resort to the formal bidding procedure, and the total value of these contracts on a category by category basis.

R. No. The Panamanian Government does not have such statistics. The statistics in the possession of the Government cannot be broken down in the way requested.

C.10 Could the government of Panama also indicate the proportion of the total dollar amount of government procurement won by foreign suppliers, and whether the total procurement figures indicated on page 16 of document L/7426 include procurement by state enterprises?

R. The current register of statistics does not allow us to determine government procurement won by foreign suppliers.

The total amounts indicated on page 16 of document L/7426 refer to payments to suppliers for procurement by the central government, so that it does not include procurement by state enterprises or decentralized entities.

BILATERAL AGREEMENTS WITH CENTRAL AMERICA

C.11 In response to question C.33B (page 127 of document L/7426), the government of Panama indicated that there are some sectors of its import tariff schedule exempted from preferential treatment as provided for in the bilateral agreements it has with other Central American countries. Could the government of Panama please indicate which sectors and/or individual products are so exempted, on an agreement by agreement basis, if necessary?

R. The products which benefit from exemptions under Panama's bilateral agreements with each country in Central America are listed in the Manual on Free-Trade and Preferential-Trade Treaties signed between the Republic of Panama and the countries of Central America, pages 17 to 235. A copy of this document was given to the GATT Secretariat.

DOCUMENTS REQUESTED BY THE CONTRACTING PARTIES IN THE FIRST MEETING OF THE WORKING PARTY FOR PANAMA'S ACCESSION TO THE GATT

1. Chapter IV of Book I, Title I, of the Fiscal Code.
2. Decree No. 33 of 3 May 1985 containing regulations under Chapter IV of Book I, Title I of the Fiscal Code, on public tendering, competitions, price requests and the respective contracts with the Government.
3. Decree No. 3 of 5 April 1978 creating the National Seed Committee, regulating production, processing and marketing of seeds.
4. Laws 55 and 56 of 20 December 1984 regulating the conduct of insurance and reinsurance business.
5. Cabinet Decree No. 238 of 2 July of 1970 reforming the Banking Regulations and creating the National Banking Commission.