

Rules of Procedure of the Treaty on Free Trade and Preferential Trade Practices between the Republics of Panama and Costa Rica

[TRANSLATION]

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CHAPTER 1: DEFINITIONS

Article 1: Whenever the following terms are used in these Rules of Procedure, they are to be assigned the following meanings:

Treaty: The Treaty on Free Trade and Preferential Trade Practices between the Republics of Panama and Costa Rica signed in Panama City on 8 June 1973;

Party, Parties, Contracting Parties, Signatory States: The Republics of Panama and Costa Rica.

The Governments: The governments of the Republics of Panama and Costa Rica.

The Joint Standing Committee, the Joint Committee, the Committee, the JSC: The Joint Standing Committee established by Article 23 of the Treaty.

Administrative Authorities: The General Office of Economic Integration and Trade of the Ministry of the Economy and Commerce of Costa Rica and the Panamanian Institute of Foreign Trade.

List or Lists: The list of goods to be traded under the provisions of this Treaty.

Domestic Treatment, Equal Treatment: These terms refer to the treatment given to goods originating in the territory of each Contracting Party in its own territory, as stated in Articles 12 and 21 of the Treaty.

Minister or Ministers: The Minister of the Economy of the Republic of Costa Rica and the Minister of Commerce and Industry of Panama.

Representative: The person specifically named by the Minister to represent him in the JSC.

Advisors: The public sector employees and private sector representatives that accompany the Minister or his representative to meetings of the JSC and that have been duly accredited in said capacity.

CHAPTER II: THE TRADE OF GOODS

Article 2: Goods originating in the territories of the Contracting Parties that are included in the list annexed to this Treaty shall specifically receive the treatment described therein. Any goods added in the future and any changes made to the list of goods will receive the treatment stipulated by the JSC in accordance with the provisions of Article 2 of the Treaty.

Article 3: The lists annexed to this Treaty, and any additions or modifications to them, shall be considered an integral part of the Treaty. Any specific good listed must be classified with a code number of at least seven (7) digits, in conformity with the tariff classification officially used in the two countries.

For purposes of trade, the specific description of the good prevails. Such description should be fully consistent with the good's tariff classification. When what is indicated by the title or classification heading and what is indicated by the lists do not coincide, it shall be understood that only the products specified in the lists are included in the trade regime.

PARAGRAPH: The Administrative Authorities of the Contracting Parties are responsible for breaking down tariff groups and subgroups for purposes of identifying the goods included in the lists annexed to the Treaty.

Until such time as the seven digit classification system herein stipulated is applied, the criteria for interpretation agreed upon by the Administrative Authorities shall be used.

Article 4: To add one or more products to the annexed lists referred to in the Treaty or to change the previously agreed upon trade regime, a Contracting Party, through its Administrative Authority, must present a written request to the other Party. That request must be accompanied by all the necessary information, including a specific description of the good, its tariff classification of at least 7 digits and the name of the company making the request. The written request must be submitted at least 30 days before it is to be examined by the JSC. If the Committee approves the request, it shall notify the governments of the goods added or of the modifications to the preferential treatment granted. These additions and/or modifications will take effect upon verification of an exchange of notes between the countries' Ministries of Foreign Affairs.

Article 5: With the exceptions stipulated in Article 13 of the Treaty, natural or manufactured goods originating in the territory of one of the States shall receive the same treatment as domestic goods in the territory of the other Party. Such treatment refers to the amount, form and payment terms of taxes, national or municipal fees on production, sale and consumption, and other taxes of any kind or name. The goods shall not be subject to any kind of quantitative measure except for health, security or law enforcement controls applicable in the territories of the Contracting Parties.

In regard to taxes now existing or imposed in the future on specific goods not produced in the importing country, efforts will be made to ensure that they do not become a *de facto* tax on imports tending to eliminate trade. In all such cases, the importing country must also impose the same tax for at least the same amount on similar products imported from third countries.

PARAGRAPH: When one of the Parties imposes a tax that is in effect a tax on the import of goods included in the Treaty, and said tax does not apply to domestically made goods, the Joint Committee shall examine the case and specify measures to correct the situation within 30 calendar days. If compensatory measures are not agreed upon by the JSC, the affected Party may impose an equivalent tax on imports from the other Party or take other measures that it deems advisable.

Article 6: Goods included in the lists annexed to the treaty that originate in and proceed from one of the Contracting Parties and are deposited in a duty-free zone in the territory of the other Party, shall enjoy the treatment stipulated in Articles 3 and 4 of the Treaty, as appropriate, once their entry into the customs territory of the importing country is final.

The Administrative Authorities of the importing country shall establish any mechanisms needed for the smooth entry of goods traded under this treaty and deposited in their duty-free zones.

CHAPTER III: THE ORIGIN OF GOODS

Article 7: Natural goods or manufactured goods produced in the territories of the Contracting Parties, as well as handcrafted goods made predominantly of domestic materials, are considered to be good originating in the countries.

Products that are merely assembled, packed, packaged, mixed, cut or diluted in the exporting country shall not be considered to be goods originating in the Contracting Parties.

Article 8: The following shall be considered natural goods originating in the Signatory States:

- a. Any product extracted from its atmosphere, surface, subsurface or continental shelf;

- b. Any agricultural product cultivated or harvested therein;
- c. Animals born or raised there;
- d. Any products derived from the animals referred to in c) above;
- e. Any products obtained from hunting and fishing that was carried out in the territory of the country in question;
- f. Marine products collected from ships that are the property of or are in service to one of the Signatory States or its natural or legal persons;
- g. Any product made on factory ships using the materials mention in f) above, as long as the factory ships in question are the property of or are in service to one of the Signatory States or its natural or legal persons;
- h. Unused and nationalized articles that are good only for the recovery of the raw materials used in making them, as long as such articles have been used in the territory of the Signatory States.

and

- i. By-products, waste and scraps resulting from manufacturing activities in the territory of the Contracting Parties.

Article 9: A customs form signed by the exporter must accompany goods traded under the provisions of this Treaty. The form must include a declaration of origin and is subject to approval by the customs officials in both the sending and receiving countries. The customs form must also contain a specific description of the good, its gross and net weight in kilograms and its FOB value.

Article 10: Goods traded under this Treaty must also carry on them, in a visible place and in Spanish, the words "Hecho en ... (country of origin)" or "Producido en ... (country of origin).

(Translators note: "Made in..." and "Produced in...")

Nevertheless, if the nature, size, shape or form of marketing of the good in question doesn't allow such words to be put on the good itself, then the words shall be included on the wrapping, box, container, package or recipient.

The stipulations of this article shall not apply to natural goods that are sold in bulk or without packaging, a box or other wrapping. In such cases, presentation of the customs form shall be sufficient.

For goods to be consumed by humans, a health registration form of the importing country shall also be required.

Article 11: Whenever there is doubt about the origin of goods, the customs port of entry shall immediately transfer the matter to its Administrative Authority, whose decision shall be binding.

When resolving questions of origin, the Administrative Authority of the importing country shall have a maximum of 30 calendar days. Any questions it has for the Administrative Authority of the exporting country must be handled during this time period also. If the Administrative Authority cannot reach a decision, it shall refer the matter to the JSC for a final determination of origin. While the case is being examined and upon the request of the interested party, customs shall allow the goods to be taken out of storage, subject to payment of a deposit covering import duties and any other charges for the entry of the goods.

The JSC shall have two weeks from the opening of its session to make a final determination. If it does not, it shall be taken that the parties have not reached an agreement and that the affected Party may opt to take unilateral measures regarding the good in question.

CHAPTER IV: COMPETITION QUESTIONS

Article 12: When one of the Signatory States, after examining the situation, finds serious problems of competition for a specific enterprise or branch of industry due to measures that have put it in competitive disadvantage, it shall submit the matter to the JSC for consideration. The JSC may impose quantitative measures or modify those already existing for goods included on the list, or it may delete the items in question from the list.

Such changes shall enter into force on the date stipulated by the JSC.

Upon the request of one of the Contracting Parties, the JSC shall meet within a period of 30 calendar days to rule on the adoption of the measures referred to in this article.

In the meantime, the affected Party may take provisional measures with the aim of bringing the trade in question back to normal.

If the JSC should meet but not reach agreement, the affected Party may resort to provisional measures, such as suspension of free trade for the good in question or the establishment of a quota or other restrictions, until such time as the JSC takes pertinent action.

In the case of suspension of free trade, the suspension shall enter into force one year after it has been announced.

Quotas or other restrictions shall enter into force 60 calendar days after the date on which they were announced. Such measures shall in no way move toward eliminating trade that is being carried out between the Parties.

Article 13: Given that unfair trade practices go against the very purposes of the Treaty, each Contracting Party shall use the legal means at its disposal to keep goods from being exported at a price below real production cost. The purpose of this is to avoid distorting production and commerce in the importing country.

When either of the Contracting Parties believes there is evidence of unfair trade practices, it shall submit the case to the JSC for consideration. Within five working days of receiving such a request, the JSC shall announce its decision or authorize a temporary suspension of the trade regime in force for the good in question. This would mean that the good could be imported only after a security deposit equal to the customs duties in effect in the pertinent general tariff is made. Suspension shall be granted for a maximum of 30 days. During that period the JSC will have to resolve the question. If a country receives no initial decision from the JSC in the five days mentioned above, it may proceed to demand the above-mentioned security deposit.

If the JSC rules that unfair trade practices do in fact exist, the affected Party will be entitled to the security deposit and moreover charge the relevant customs duties retroactively to one month prior to the date on which it lodged the complaint.

If the unfair trade practice continues, the duties set in the pertinent tariff go on being charged.

Article 14: For the purposes of Articles 12 and 13 of these Rules of Procedure, when an enterprise believes it faces unfair competition or trade practices, it must present a written report on the situation to its Administrative Authority illustrating the existence and extent of the problem. The Administrative Authority must check the evidence. If it confirms the problem, the Signatory State to which the Administrative Authority pertains shall forward the matter to the JSC, which will then deal with it in accordance with the provisions of the Treaty.

Upon submitting the case to the JSC, the affected Party shall also send the other Signatory State a written report of the problem.

Article 15: If one of the Parties modifies its exchange system, it shall formally notify the other Party in writing as expeditiously as possible.

If one of the Parties believes that an enterprise or branch of industry is affected by such measures, it shall so inform the JSC, which must meet within ten days to adopt any pertinent measures to correct the situation.

In the meantime, the affected Party can take provisional measures designed to normalize trade or the existing overall balance of trade.

The JSC's measures can be provisional and in no case shall they go further than strictly necessary to re-establish the competitive balance that existed prior to the exchange measures or to re-establish the existing overall balance of trade.

CHAPTER V: THE JOINT STANDING COMMITTEE

Article 16: The Joint Standing Committee shall be composed of the Minister of the Economy and Commerce of Costa Rica and the Minister of Commerce and Industry of Panama or their respective representatives, and any advisors from the public and private sectors that the Contracting Parties may name.

All members of the JSC must be duly accredited.

Upon the request of one of the Parties, other individuals, such as those affected by the matters before the Committee, may participate in meetings in order to inform the JSC and contribute to the best possible decision being taken.

Article 17: The Joint Standing Committee shall have the following powers and duties:

- a. To administer the Treaty and these Rules of Procedure, and any norms emanating from them;
- b. To approve the lists of goods to be included in the free trade regime and any additions or modifications to them;
- c. To approve the lists and percentages of goods subject to preferential tariffs.
- d. To examine and approve import quotas or controls and other quantitative measures on goods that benefit from the free trade regime or preferential tariffs;
- e. To study and resolve any problems and disputes related to the implementation of the Treaty and these Rules of Procedure, and any unfair trade practices that may affect the trade regime established by the Treaty;
- f. To propose to the Signatory States:
 1. modifications to or broadening of the Treaty
 2. modifications to these Rules of Procedure
- g. To meet whenever convened by one of the Parties, alternating venues between the States.
- h. To meet every two years to review the results of the free trade regime, in accordance with Article 7 of the Treaty.
- i. To set the criteria and standards to be used for determining the origin of goods;
- j. To recommend ways to promote joint investment in order to develop new activities of special interest to both countries.
- k. To foster complementary industries agreements in order to facilitate and increase reciprocal trade;

l. To take pertinent measures to ensure the sound functioning of the Agreement on Reciprocal Clearance and Credit between the Parties.

m. To carry out any functions, tasks and studies assigned to it by the Signatory States, as well as those emanating directly from the Treaty or these Rules of Procedure.

n. To evaluate and oversee compliance with any agreement undertaken by the Parties in order to maintain or enhance trade carried out under the provisions of the Treaty.

Article 18: The JSC must meet when petitioned by one of the Contracting Parties. Once the date of the meeting has been set, it can be changed only by mutual agreement and for a well-founded reason, except in those instances for which these Rules of Procedure establish other specific terms.

Article 19: Convocations for JSC meetings shall be sent by certified letter, telegram or telex, or made over the phone. In the last three instances, however, the convocation must be confirmed by certified letter received at least 48 hours prior to the meeting date. Convocations and confirmations shall state the matters to be treated.

Article 20: The Minister of the host country or his representative will chair meetings of the JSC and perform the duties of the chair in a way to ensure that the meeting runs smoothly.

The Administrative Authority of the host country will act as secretariat for JSC meetings.

Article 21: Advisors to the respective Ministers of the Contracting Parties or their duly accredited representatives will have the right to speak in JSC meetings. Representatives of companies affected by the matter at hand will be allowed to speak when given the floor by the chair or when asked to do so by the Minister of the other Contracting Party or his Representative.

Article 22: The Ministers or their representatives must sign all decisions and agreements made by the JSC. Such decisions and agreements are binding on the Signatory States and will take effect as of an exchange of notes between the Ministries of Foreign Affairs when so stipulated by the Treaty. When not so stipulated, they will enter into force on the date set by the JSC.

Article 23: The JSC can create and appoint members to Standing or Ad Hoc Working Groups charged with carrying out studies or performing other tasks. The individuals deemed most qualified by the JSC will be appointed to such groups, which must report to the JSC in the time period allotted and according to any instructions given.

Article 24: For each and every JSC meeting, minutes will be issued in duplicate, each of which must be signed by the respective Ministers of the Contracting Parties or their representatives. Any correction or amendment to the minutes must be made before the minutes are signed.

Article 25: The Joint Standing Committee must meet every two (2) years to examine the evolution of trade over the previous biennium, evaluate the results of the system established by the Treaty and review the lists so that, if necessary, any measures needed to increase reciprocal trade or to ensure compliance with the spirit of equity at the heart of the Treaty can be instituted.

Such meetings shall take place in the second semester of the year in question.

Article 26: To facilitate trade growing out of the Treaty and to improve competitiveness between the two countries, the Contracting Parties shall appropriately establish any mechanisms needed to achieve full use of financial, transport, storage and duty-free zone facilities. They shall also move to improve their reciprocal clearance and credit system.

CHAPTER VI: RESOLUTION OF DISPUTES

Article 27: Any differences and disputes between the parties regarding the interpretation or implementation of the Treaty and Rules of Procedure shall initially be resolved by the Administrative Authorities in direct contact with each other.

If they cannot reach agreement, the matter will be sent to the JSC. Any person with a direct interest in the question shall not sit on the Committee when it hears the case.

Article 28: The Administrative Authorities may frame the matter and handle it in any of the following ways:

a. Through oral, telephone or any other analogous communication to be ratified in writing by certified mail;

b. In any meetings that the Administrative Authorities may decide to hold.

Article 29: The requested Administrative Authority must attend to a matter brought to its attention by its counterpart and respond within fifteen (15) calendar days counting from the date of the written communication.

If no satisfactory solution has been reached in that time period, either Party can refer the matter to the JSC for examination in accordance with the provisions of these Rules of Procedure.

Article 30: All agreements reached through direct contact of the Administrative Authorities, as well as matters pending resolution and the arguments of the respective Administrative Authorities, must be put in writing.

Such account must include a brief history of the facts and the legal foundations of the matter.

Article 31: If the JSC cannot reach agreement on the question through the procedures herein established, the Contracting Parties agree to appoint an Arbitration Board for final resolution of their differences regarding interpretation or implementation of the norms regulating trade carried out between them under the provisions of the Treaty.

The Arbitration Board shall be composed of three (3) members. The governments of the Contracting Parties shall each name one and those two members shall then name a third arbitrator, who shall act as chairperson.

While waiting for the judgement, the matter in dispute will be put on hold for all effects and purposes.

CHAPTER VII: CUSTOMS FACILITIES

Article 32: The Contracting Parties, through the Administrative Authorities, agree to provide the facilities needed to ensure that present and future trade between them can be carried out smoothly and discriminatory practices of an administrative or customs nature are avoided.

The Parties shall exchange up-to-date information on all matters related to the Treaty and its Rules of Procedure and any activities growing out of them.

CHAPTER VIII: TRANSPORT

Article 33: Each Signatory State shall grant freedom of transit through its territory for goods going to or coming from the other State. Such transit shall not be subject to any discriminatory treatment or restriction, with exception made for health, security and law enforcement controls applicable in the territories of the Contracting Parties.

When faced with freight back up or situations of *force majeure*, the Contracting Parties will provide equitable treatment for the movement of goods to its own population and to goods in transit to the other State.

Transit operations will be effected through the legally approved channels and be subject to the laws and customs regulations in effect in the transit territory. Nonetheless, efforts will be made to streamline procedures for goods in transit.

Goods in transit, wherever they are going and even if not included in the free trade and preferential treatment agreement, will be exempted from payment of any kind of duties, taxes or national and municipal fees. They will, however, be subject to fees for services and to compliance with all health, security and law enforcement requirements.

Article 34: Commercial and private seagoing vessels and airplanes of one Contracting Party shall receive the same treatment as domestic ships and airplanes in the ports and airports of the other Party. In like manner, any land vehicles registered in one of the Signatory States shall receive equal treatment in the territory of the other.

Cabotage vessels will also receive equal treatment in ports of both Parties. Presentation of the bill of lading by the ship's captain shall be sufficient for customs purposes and a visa issued by a consulate will not be required.

Article 35: The stipulations of Article 34 do not imply that the registration and control procedures that a country has in place regarding the entry, circulation, stay or exit of ships, air planes and vehicles for health, security, law enforcement and protection of public interest reasons need not be complied with. Equally it does not imply that air planes have the right to make commercial stopovers without the corresponding authorization and it in no way affects Article VII of the Chicago Convention on International Civil Aviation.

CHAPTER IX: FINAL PROVISIONS

Article 36: These Rules of Procedure shall enter into force once they have been promulgated by each Signatory States in accordance with its domestic legislation, and the relevant diplomatic notes have been exchanged.

The Joint Standing Committee can recommend to the Signatory States any changes that it deems necessary. Such changes will enter into effect once the procedures outlined in the previous paragraph are completed.

These Rules of Procedure have been approved by the Joint Standing Committee of the Treaty on Free Trade and Preferential Trade Practices between the Republics of Costa Rica and Panama meeting in Panama City on the twenty-third day of April Nineteen Hundred and Eighty Six (23 April 1986).

FOR THE REPUBLIC OF PANAMA
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