

DECREE NUMBER 29-89

**LAW OF PROMOTION AND DEVELOPMENT
OF EXPORT ACTIVITIES AND DRAWBACK**

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

TRANSLATION

The Congress of the Republic of Guatemala

Considering:

That the Political Constitution of the Republic of Guatemala establishes, among others, as fundamental obligations of the State the encouragement of orderly and efficient commerce, as well as, the creation of adequate conditions for the promotion of investment of national and foreign capital;

Considering:

That the State must also guide the national economy so as to achieve the proper use of the natural resources and human potential in order to increase the wealth, achieve full employment and the fair distribution of the national income;

Considering:

That in order to meet the previous objectives it is necessary to promulgate laws that will encourage the export and drawback industry, and thus permit our country to reach an adequate level of competitiveness with respect to other nations.

Therefore,

Exercising the power conferred to it by Article 171 (a) and as provided by Articles 118 and 119 of the Political Constitution of the Republic of Guatemala,

Decreases

The following:

"Law of Promotion and Development of Export Activities and Drawback"

CHAPTER I

SCOPE OF APPLICATION

Article 1.

The purpose of this is to promote, encourage, and develop within the National Customs Territory, the production of merchandise for export to countries outside Central America and also to regulate the export or drawback activity of the companies qualified under the Active Perfecting or Total National Added Component Regimes.

Article 2.

The benefits granted by this law will not be enjoyed by the following products: coffee, in any form; berry, parchment and clean cardamon; undecorticated sesame; fresh bananas; cattle of fine and regular race; fresh refrigerated or frozen beef; refined and unrefined sugar cane and molasses; uncarded cotton; unrefined crude petroleum and timber logs; roundwood and lumber.

Article 3.

For purposes of this law, the following definitions shall be observed:

a) ***Active Perfecting Regime:***

Is a customs regime which permits the introduction of merchandise from third countries into the national customs territory in order to perfect it and export it to countries outside Central America, once it has been processed into a finished product. This merchandise is not subject to taxes or import duties.

b) ***Drawback Industry:***

Is the national added value which is generated through the service of labor and resources, received for the production and or assembly of merchandise.

c) ***Company or Enterprise:***

Is the productive unit owned by individuals or other firms established according to the laws of the Republic.

d) ***Assembly:***

Activity which consists of joining parts, pieces, sub-sets and sets, which when integrated, result in a product with distinct characteristics, different from its components.

e) ***Export:***

Is the exit of national or nationalized merchandise from the national customs territory once legal procedures have been complied with.

f) ***Shortage or Loss:***

Is the part of the merchandise which during the process of perfecting has been destroyed or lost due to evaporation, drying, escape in the form of gas, water, etc,

g) ***Indirect Exporter:***

Is the enterprise which supplies another enterprise, qualified under this law, with merchandise, raw material, semi-manufactured products, material, containers or packaging for their incorporation into merchandise for export to countries outside of Central America.

h) *By-Product:*

Is a useful product obtained through the manufacturing of another principal product.

i) *Waste:*

Includes all cuttings, residues, scrap, or leftovers from the raw material that has been used in the production or assembly of an exported good, which results unusable in this operation.

j) *Re-Export:*

Is the exit of foreign merchandise, which arrived to the country and was not nationalized, once the legal procedures have been complied with.

K) *National Customs Territory:*

Is the territory over which Customs exercises its jurisdiction and within which the provisions of tariff and national customs legislation are fully applicable.

Article 4.

The benefits provided by this law, will be enjoyed by those firms which in their activity use national and / or foreign merchandise which in the productive process is identifiable. The by-products, shortages and wastes resulting from this process shall also enjoy the same benefits.

Article 5.

For the purpose of the application of this law, the merchandise may be subject to any of the Active Perfectioning Regimes, as defined Below.

a) *Temporary Admission Regime:*

This regime permits admission, to the national customs territory, merchandise that is destined for export within a year of being perfected or transformed, without being subject to customs duties, import taxes or value added tax (VAT).

b) *Reimbursement of Duties Regime:*

Once export or re-export has taken place, this regime permits the reimbursement of customs duties, import taxes and VAT, assessed as a deposit on incorporated merchandise, and on products contained or consumed during the productive process.

c) *Replacement with Tariff Privilege Regime:*

This regime permits, free of customs duties and import taxes, the import of merchandise of the same value as that of the customs duties paid by the indirect exporter. This privilege shall be used for the replacement of raw materials, semi-manufactured and intermediate products, materials, containers, packaging and labels which are directly related with their production process.

d) *Export of Total Added Component Regime:*

Is applicable to those firms which exclusively use national or nationalized merchandise in their manufacturing or assembly process of export products.

Article 6.

According to this law, firms may be classified as follows:

- a) Drawback firm under the Temporary Admission Regime,
- b) Export firm under the Temporary Admission Regime.
- c) Export firm under the Reimbursement of Duties Regime.
- d) Export firm under the Replacement with Tariff Privilege Regime.
- e) Export firm under the Total Added National Component Regime.

Article 7.

Drawback activity under the Temporary Admission Regime, shall be understood as the activity geared toward the production and /or assembly of goods, which in monetary terms, contain the minimum of fifty-one percent (51 %) of foreign merchandise, which is destined to be exported to countries outside Central America. It is also necessary, however, that the stay of temporarily admitted merchandise be guaranteed to the Treasury by a bond or specific guarantee authorized by the Ministry of Public Finance, a bank guarantee, or by general warehouses and which constitute specific bond for this type of operations.

Article 8.

Export activity under the Temporary Admission Regime, shall be understood as the activity geared toward the production of goods for export to countries outside Central America, provided that the stay of the temporarily admitted goods is guaranteed to the Treasury by a bond or specific guarantee authorized by the Ministry of Public Finance, a bank guarantee, or by general warehouses authorized to operate as bonded warehouses and which constitute specific bond for this type of operations.

Article 9.

Export activity under the Reimbursement of Duties Regime, shall be understood as the activity geared toward the production and / or assembly of goods destined to be Exported or re-exported to countries outside Central America, provided that the stay of the temporary admitted merchandise is guaranteed to the Treasury by a cash deposit.

Article 10.

Export activity under the Replacement with Tariff Privilege Regime, shall be understood as the activity geared toward the production of merchandise destined for sale to export firms. which have integrated, incorporated or added it to other merchandise previously exported to markets outside of Central America.

Article 11.

Export activity under the Total National Added Component Regime, shall be understood as the activity which exclusively uses national and / or nationalized merchandise for the assembly or production of goods destined for export to countries outside Central America.

CHAPTER II

BENEFITS

Article 12.

The firms belonging to individuals or other enterprises, which are involved in export or in drawback industry under the Temporary Admission Regime, will enjoy the following benefits:

- a) Temporary suspension of payments of customs duties and import taxes, including the VAT, on raw material, semi-elaborated and intermediate products, materials, containers, packaging and labels needed for the export or re-export of merchandise produced in the country, in accordance with the listings authorized in the qualifying resolution announced by the Ministry of Economy. The payments shall be suspended up to two years from the date of acceptance of each import permit.
- b) Temporary suspension of payments of customs duties and import taxes, including the VAT, on samples, engineering samples, instructions, patterns and models necessary for the production process or for demonstration, investigation, and instruction purposes, for up to one year starting on the date of acceptance of the respective import permit. This term may be extended by the General Directorate of Customs only for the same length of time, provided that the request for extension is presented thirty (30) days prior to expiration of the term.
- c) Total exemption of income taxes on income obtained exclusively from the export of goods assembled or elaborated in the country and exported outside of Central America. This exoneration will be granted for ten (10) years from the first tax period immediately following the date of notice of qualification by the Ministry of Economy.

For purposes of application of this exemption, the beneficiary taxpayers shall carry out a system of cost accounting and perpetual inventories, separately identifying the export outside Central America, and the costs and expenses attributable to them, or in their defect, the cost by unit of operation.

The persons or firms domiciled abroad who have branches, agencies or permanent establishments in Guatemala, which export merchandise originated from drawback or export, will not enjoy this income tax exemption, if their country of origin grants a credit for the income tax paid in Guatemala.

- d) Temporary suspension of customs duties and import taxes, including VAT, on machinery, equipment, parts, components and accessories necessary for production, which are duly identified in the qualification resolution of the Ministry of Economy, for up to one year starting on the date of acceptance of the respective import permit. This term may be extended by the General Directorate of Customs, only once for the same length of time, provided the request for extension is presented thirty (30) days prior to expiration of the term.
- e) Total exemption of customs duties and import taxes, including VAT, on the import of machinery equipment, parts, components and accessories necessary for production, duly identified in the qualification resolution of the Ministry of Economy.
- f) Total exemption of ordinary and / or extraordinary export taxes.

Article 13.

In accordance with the Reimbursement of Duties Regime, the firms owned by qualified individuals or enterprises, will be reimbursed for the customs duties, import taxes, and VAT, paid on deposit to guarantee the entry of raw material, semi-elaborated and intermediate products, materials, containers, packaging and labels used in the production or assembly of exported merchandise. The period for the request of the reimbursement will be six months, starting on the date of acceptance of the import permit. In addition, these firms will enjoy the following benefits.

- a) Total exemption from income taxes, on the income obtained exclusively from the export of goods elaborated or assembled in the country and exported outside the Central American area. This exoneration will be granted for a period of ten (10) years, starting on the first tax period immediately following date of notice of qualification by the Ministry of Economy.

For the purposes of application of said exemption, the beneficiary taxpayers shall carry out a system of cost accounting and perpetual inventories, separately identifying the exports outside the Central American area and the cost and expenses attributable to them, or in their defect, the cost by unit of operation.

The persons or firms domiciled abroad who have branches, agencies or permanent establishments in Guatemala which export merchandise originated from drawback or export, will not enjoy this income tax exemption if their country of origin grants a credit for income tax paid in Guatemala.

Article 14.

In accordance with the Replacement with Tariff Privilege Regime, the firms owned by qualified individuals or enterprises which have used as inputs merchandise for which the corresponding customs duties and import taxes were paid, and which used such inputs to manufacture goods exported to others, will enjoy a franchise equivalent to the value of the duties and taxes paid. This franchise shall be used for the replacement of raw materials, semi-elaborated products, materials, containers, packages and labels directly related with their production.

The period for imports with franchise under this regime, will be of one year, starting on the date of issue of the franchise.

Article 15.

In accordance with the Export of Total National Added Component Regime, the firms may enjoy the following benefits:

- a) Total exemption of customs duties and import taxes, including VAT, on the import of machinery equipment, parts, components and accessories necessary for production, duly identified in the qualification resolution of the Ministry of Economy.
- b) Total exemption from income taxes, on the income obtained exclusively from the export of goods elaborated or assembled in the country and exported outside the Central American Area. This exoneration will be granted for a period of ten (10) years, starting on the first tax period immediately following the date of notice of qualification by The Ministry of Economy.

For purposes of application of said exemption, the beneficiary taxpayers shall carry out a system of cost accounting and perpetual inventories, separately identifying the exports outside the Central American area and the costs and expenses attributable to them, or in their defect, the cost by unit of operation.

The persons or firms domiciled abroad who have branches, agencies or permanent establishments in Guatemala, which export merchandise originated from drawback or export, will not enjoy this income tax exemption if their country of origin grants a credit for income tax paid in Guatemala.

c) Total exemption of ordinary and/or extraordinary export taxes.

Article 16.

The firms qualified under the Temporary Admission Regime may subcontract the productive services of other firms, whether qualified or not, previously requesting authorization from the Industrial Policy Management of the Ministry of Economy, which shall decide and notify the General Directorate of Customs.

Article 17.

The firms qualified under the Temporary Admission and total National Added Component Regimens may transfer to other firms machinery, equipment, parts, components and other accessories used in the productive process, as long as, previous authorization from the Directorate of Industrial Policy has been granted, and provided that the acquiring firm enjoys similar or greater benefits than the transferring firm and it proves that the goods to be transferred are directly involved in the production activity of the firm. The Industrial Policy Directorate will notify this to the General Directorate of Customs.

Article 18.

The Benefits of this law, granted by the Ministry of Economy, may not be transferred, except with previous authorization from said Ministry. For this purpose, the firms belonging to individuals or other enterprises qualified under this law, may transfer benefits if the transferring firm has met the same requisites as the transferee. The corresponding request must be submitted to the Directorate of Industrial Policy of the Ministry of Economy which will process and issue a decision. This law will establish the requisites and procedures for the transfer of benefits.

Article 19.

One firm may qualify under two different regimes. For this purpose, the interested party must present the respective request, according to the provisions in the following chapter. The foregoing does not imply duplication of benefits under this law.

CHAPTER III

PROCEDURE

Article 20.

In order to qualify and enjoy the benefits of this law, the interested parties must submit a request to the Directorate of Industrial Policy of the Ministry of Economy, along with a technical economic study which meets the requisites indicated by said office. The study must be signed by an economist or industrial engineer who is an active member of this profession's association.

Article 21.

Once the request for qualification has been submitted, the Directorate of Industrial Policy will issue a decision within thirty (30) days from the date of submission.

Article 22.

Based on the decision, the Ministry of Economy will decide within fifteen (15) days from the date of its issuance, whether the application qualifies. A copy of the resolution will be sent to the General Directorate of Customs.

Article 23.

The firms qualified in accordance with this law, may request an amendment to the respective decision, basing their request on justifying reasons. The procedure and time limits shall be as specified above.

Article 24.

Once the request for qualification under the Temporary Admission, Reimbursement of Duties, and Total National Added Component Regimes, has been submitted, and before a decision is taken, the entry of the required merchandise will be allowed, provided, customs duties, import taxes and VAT are guaranteed with a bond or cash deposit.

If qualification is denied, the cash deposit will go to the Common Fund of the Government of Guatemala, or the bond will be cashed in favor of the State.

Article 25.

If the Directorate of Industrial Policy should request additional information for a request and obtain no answer within sixty (60) days, it will deem the request abandoned and it will be filed.

Article 26.

The interested party may request the Industrial Policy Management for cancellation of the benefits granted in the decision of qualification. The said office will immediately notify the General Directorate of Customs.

CHAPTER IV

GUARANTEES AND OBLIGATIONS

Article 27.

The sum of customs duties, import taxes, and VAT of the merchandise that enters the national customs territory, will be guaranteed to the Treasury as follows.

- a) Under the Temporary Admission Regime, through a bond, specific guarantee, authorized by the Ministry of Public Finance, bank guarantee or through general warehouses authorized to operate as bonded warehouses. and which constitute specific bond for this kind of operations.
- b) Under the Reimbursement of Duties Regime, through a cash deposit.

Article 28.

The General Directorate of Customs will totally or partially release the guarantee or the cash deposit, once it has been established that the merchandise admitted to national customs territory has been used for the requested purpose or re-exported or nationalized.

Article 29.

For purposes of the prior article, the interested party must submit a request to the General Directorate of Customs within forty-five (45) days from the date of acceptance of the export or re-export permit, along with the documents required by this law.

If the request is not timely submitted, the deposit will go to the Common Fund of the Government of Guatemala, or the guarantee will be cashed in favor of the State.

Article 30.

Customs duties, import taxes, and VAT that have been guaranteed with a cash deposit, will be reimbursed by a drawn check issued by the General Directorate of Customs, within thirty (30) days of the submission of the request, which must be accompanied by the documents provided by this law.

Article 31.

Based on the report of the General Directorate of Customs, the Ministry of Public Finance will issue a resolution that permits firms owned by individuals and other enterprises, qualified as exporters under the Temporary admission and Replacement with Tariff Privilege Regimes. the import of raw materials, intermediate and semi-elaborated products, materials, containers, packaging and labels, directly related to the production process, with the exemption of customs duties, and import taxes within the ninety (90) days following submission of the request by the exporter.

Article 32.

In cases where raw materials, intermediate and semi-elaborated products, materials, containers, packaging and labels to be used by firms qualified under the Temporary Admission and Reimbursement of Duties Regimes, arrive damaged or unusable for the incorporation to export products, they may be re-exported with previous inspection and proof of these circumstances by the General Directorate of Customs so that they may be released or the corresponding duties returned, or otherwise, nationalized applying to them the percentage of the damage.

Article 33.

The firms qualified as exporters or drawback industries under the Temporary Admission or Reimbursement of Duties Regimes, must comply with the following requirements:

- a) Start production of the goods for export or drawback, within the term indicated in the respective qualification resolution, or extension granted.
- b) Submit to the office of the Directorate of Industrial Policy, within the first twenty (20) days of the month, a sworn statement certifying the corresponding account of merchandise regulated under this law, a copy sealed by the General Directorate of Customs, and a photocopy of the import and export permits.
- c) Keep accounting records a perpetual inventory system of the temporarily admitted merchandise, as well as, the quantity used in the exported and re-exported merchandise.
- d) Submit to the Directorate of Industrial Policy and to the General Directorate of Customs, the necessary information for the determination of merchandise required for production or assembly of the export products, as well as, to determine the resulting shortages, by-products and waste.

- e) Provide any other pertinent information necessary for the proper application of this law. Firms must also allow inspections which, in the view of the Directorate of Industrial Policy, are necessary.
- f) Comply with the laws of the country, particularly with labor laws.

Article 34.

Firms qualified under the Replacement with Tariff Privilege Regime, must comply only with sections d), e), and f) of the foregoing article.

Article 35.

Firms qualified under the Total National Component Regime must comply with sections a), e), and f) of Article 33 of this law. In addition, they must submit a photocopy of the import permit for machinery, equipment, parts, components and accessories within forty-five (45) days of the date of liquidation of the respective permit.

Article 36.

The by-products and waste that result from the productive process of the export or drawback firms, qualified under the Temporary Admission and Reimbursement of Duties Regimes, may be nationalized, destroyed, re-exported or donated to charitable institutions with prior authorization of the General Directorate of Customs.

The same procedures may be followed for defective products, or for products which do not meet the standards of the markets for which they are destined.

CHAPTER V

CONTROL

Article 37.

The General Directorate of Customs will be encharged of controlling the guarantees and deposits given by the export and drawback firms qualified under the Temporary Admission and Reimbursement of Duties Regimes. The said office will also control the vouchers issued to the firms qualified under the Replacement with Tariff Privilege Regime

Article 38.

The General Directorate of Customs will be encharged of the management of an account on the amount of merchandise entering the national customs territory under the Temporary Admission and Reimbursement of Duties Regimes, as well as, on the amount of merchandise used for the manufacture or assembly of the exporter or re-exporter products.

CHAPTER VI

PROHIBITIONS AND SANCTIONS

Article 39.

Export and drawback firms qualified under the Temporary Admission Regime are prohibited from alienating in any form the national territory and the temporarily admitted merchandise, unless the corresponding customs duties

and taxes are paid. Donations to charitable institutions are excluded from this prohibition and may be made with previous authorization of the Ministry of Public Finance.

Article 40.

Machinery, equipment, parts, components and accessories imported under this law, may not be alienated or used for a different purpose than the one for which they were authorized, unless customs duties, import taxes, and VAT are paid. However, after five (5) years from the date of acceptance of the import permit, they may be alienated with previous authorization of the Directorate of Industrial Policy, which shall notify the General Directorate of Customs.

Article 41.

Any kind of alienation of merchandise admitted under this law, or its use for purposes other than the one for which they were admitted, will be punished with a fine of the value of 100% of the unpaid applicable taxes without detriment to other sanctions under the Customs Law. In cases of non-compliance, the transferor and the transferee will be responsible for payment of the amounts not received by the State.

Article 42.

In cases of destruction of temporarily admitted merchandise which is not located within the principal zone of Customs' jurisdiction, it will be subject to payment of duties and taxes not received by the State, except in fortuitous cases and cases of "force majeure", duly proven by the Ministry of Public Finance.

Article 43.

In the following cases, the Ministry of Economy shall automatically revoke the resolution of qualification and send a copy of the revocation to the General Directorate of Customs and to the General Directorate of Internal Revenue:

- a) When a firm does not start production within the period established in the resolution or the corresponding extension.
- b) When a firm closes down its activities, is dissolved or bankrupt.
- c) When a firm does not comply with the obligations set out in the respective resolution of qualification.

Article 44.

When this law comes into effect, firms which are beneficiaries of Decree Number 21-84 will continue to be covered by it until its expiration. However, the firms that wish to be so covered, must qualify themselves within twelve (12) months following the date of enactment of this law. The years of exemption granted to the qualified firms will be deducted from the new benefits.

CHAPTER VII

TRANSITORY AND FINAL PROVISIONS

Article 45.

The qualification requests under Decree Number 21-84 which are in process, must be decided within thirty (30) days from the date of publication of this law by the Ministry of Economy.

Article 46.

If the interested party is not satisfied with the resolution of the competent authority, he/she may appeal as provided under Customs and Administrative law.

Article 47.

Cases not provided for in this law. will be resolved by the Ministry of Economy, Ministry of Public Finance or Both, according to the case and competence.

Article 48.

The Ministries of Economy and Public Finance shall see to the strict compliance of this law.

Article 49.

Decree-Law Number 21-84 and any other provisions contrary to this law, are hereby repealed.

Article 50.

The executive branch, through the Ministries of Economy a