

DECREE No. 65-89

FREE TRADE ZONES LAW

THE CONGRESS OF THE REPUBLIC OF GUATEMALA

The Congress of the Republic of Guatemala

Considering:

That it is of national interest to guide the national economy towards the integral development of the country, through the strengthening of production and trade in general, generation of employment, and better use of technological transfer, and comparative advantages that the country offers to efficiently compete in the world market, in which the establishment of Free Trade Zones will significantly contribute.

Considering:

That it is necessary to offer new national and international investment options within a secure framework and provide the benefits and tax incentives necessary for the establishment of Free Trade Zones and activities carried out in these.

Considering:

That it is necessary to dictate clear and defined regulations for the establishment and operation of Free Trade Zones, with the purpose that their users and promoters rely on the legal backing that will foster the promotion of this activity.

Therefore,

Exercising the power conferred to it by Article 171 (a) of the Political Constitution of the Republic of Guatemala.

Decrees

The Following:

"Free Trade Zones Law"

CHAPTER I

GENERAL PROVISIONS

Article 1.-

The purpose of this law is to encourage and regulate the establishment within the country of Free Trade Zones which will promote national development through their activities, particularly those tending to strengthen foreign trade, employment generation, and transfer of technology.

Article 2.-

Free Trade Zones, shall be understood as the area of land physically circumscribed, planned, and designed, subject to a special customs regime, set out in this law, in which persons and enterprises indiscriminately carry out the production or commercialization of goods for export or re-export as well as the offering of services which are related to international commerce. The Free Trade Zones will be guarded and controlled by the customs' authority.

Free Trade Zones may be public or private and may be established in any region of the country, according to the existing legal provisions. Within the Free Trade Zones, the industrial and a service enterprises will be physically separated from the commercial enterprises.

Article 3.-

Administrative Agency, shall be understood as the firm legally registered and authorized to operate in the country, in charge of organizing, developing, administrating and investing in Free Trade Zones.

Article 4.-

Permit-Holder, shall be understood as the person or enterprise authorized to operate in the Free Trade Zones by the Ministry of Economy, once the requisites established in the Commerce Code and this law and its regulations, have been complied with. According to the activity carried out by the Permit-Holders, these may be classified as follows:

- a) Industrial Permit-Holders: Are those which assemble or produce goods for export outside the national customs territory, re-export or technological research and development;
- b) Service Permit-Holders: Are those which offer services related to international commerce; and
- c) Commercial Permit-Holders: Are those which commercialize merchandise to be exported or re-exported outside the national customs territory, without carrying out activities that change the characteristics or alter the origin of the product.

Article 5.-

In order to regulate the possession and negotiation of foreign currency within the jurisdiction of each Free Trade Zone, the Administrative Agencies and the Permit-Holders will be subject to a specific Currency Exchange Regulation.

CHAPTER II

AUTHORIZED AGENCIES IN THE MATTER OF FREE TRADE ZONES

Article 6.-

According to their respective prerogatives and to this law, the Ministries of Economy and Public Finance shall be the authorized agencies in the matter of Free Trade Zones.

Article 7.-

The Ministry of Economy, shall have among others, the following prerogatives:

- a) To authorize or deny the establishment of Free Trade Zones;
- b) To authorize or deny the operation of Free Trade Zones;
- c) To authorize or deny individuals or enterprises to become Permit-Holders of the Free Trade Zones;
- d) To participate along with other ministries or institutions, in coordination with the Ministry of Foreign Affairs, in the negotiations of international agreements related to the activities of the Free Trade Zones and to further compliance with these agreements;
- e) To be aware of violations of this law and its regulation which are within its jurisdiction and to impose the proper sanctions;
- f) To establish the administrative conditions for the application of this law; and
- g) To be aware and resolve any other matter within its jurisdiction.

Article 8.-

The National Council for the Promotion of Export -CONAPEX-, shall be the consulting body on the subject of Free Trade Zones.

CHAPTER III

ESTABLISHMENT AND ADMINISTRATION OF

FREE TRADE ZONES

Article 9.-

The public Free Trade Zones shall be decentralized entities, established according to the laws of the Republic.

Article 10.-

The Administrative Agencies of private Free Trade Zones, whose only object shall be what is expressed in Article 3 of this law, shall be juridical persons established by public document. Their establishment, development, and operation will be authorized by a resolution issued by the Ministry of Economy.

Article 11.-

In order to obtain authorization for the establishment and development of Private Free Trade Zones mentioned in the prior Article, and thus enjoy the tax benefits offered by this law, the Administrative Agency must submit its request to the Directorate of Industrial Policy along with a financial and economic study signed by a professional economist who is an active member in his/her profession's association, and any other documents required by this law.

Article 12.-

The Directorate of Industrial Policy shall issue a decision within thirty (30) days from the date of submission of the request for authorization.

Article 13.-

Based on the decision mentioned in the prior Article, the Ministry of Economy shall decide whether the request qualifies within fifteen (15) days from the date of its issuance.

Article 14.-

In accordance with this law, the Administrative Agencies may request an amendment of the respective resolution, basing their request on justifying reasons. The procedure and time limit shall be as set out in Articles 12 and 13 of this law.

Article 15.-

If the Directorate of Industrial Policy should request additional information for a request and obtain no answer, or if the request is not further processed within (60) days, it will be deemed abandoned and filed accordingly.

CHAPTER IV

PERMIT-HOLDERS

Article 16.-

The authorized Administrative Agency, is directly responsible for the management, administration and direction of the Free Trade Zone. It will have the following prerogatives:

- a) Process requests, submitted by interested parties, for authorization of operation within the Free Trade Zone its administration, according to Article 17 of this law;
- b) Reach agreements with the persons or firms on the conditions of their establishment within the Free Trade Zone;
- c) Set the rental prices on the premises for the Permit-Holders, as well as, the sale prices of the real estate and services of the Free Trade Zone;
- d) Any other obligation related to the management, administration and direction of the Free Trade Zone.

Article 17.-

The Administrative Agency shall request from the Directorate of Industrial Policy the operation authorization for the Permit-Holder. For this purpose, the Administrative Agency must submit the corresponding request in the official form established for this purpose, along with a copy of the documents indicated by this law.

Article 18.-

The Directorate of Industrial Policy shall issue a decision within thirty (30) days of the date of submission of the request of authorization of the Permit-Holder.

Article 19.-

Based on the decision mentioned in the Ministry of Economy shall decide whether the request for operation qualifies, within a period no longer than fifteen (15) days from the date of its issuance.

Article 20.-

The Permit-Holders Authorized in accordance with this law, may request an amendment of the respective resolution through the Administrative Agency, basing their request on justifying reasons. The procedure and time limit shall be as indicated in Articles 18 and 19 of this law.

CHAPTER V

TAX INCENTIVES AND BENEFITS

Article 21.-

The duly authorized Administrative Agencies of the Free Trade Zones, will enjoy the following tax incentives;

- a) Total exemption from taxes, import duties and other import charges on machinery, equipment, tools and materials destined exclusively to the construction of infrastructure, buildings, and facilities used for the development of the Free Trade Zone, duly identified in the resolution of authorization for its establishment and development;
- b) Total exemption from income taxes, on the income obtained exclusively from the activity as Administrative agency of the Trade Zone, for a period of ten (10) years starting on the date of the decision of authorization mentioned in Article 6 b) of this law. The Administrative Agency domiciled abroad which operates in Guatemala, will not enjoy this income tax exemption if its country of origin grants a credit for income tax paid in Guatemala;
- c) Exemption from the Unified Real Estate Tax, corresponding to the Central Government, for a period of five (5) years, on all real estate destined exclusively to the development of a Free Trade Zone;
- d) Exemption from tax on the sale and transfer of real estate (excise tax), destined exclusively to the development and expansion of the Free Trade Zone;
- e) Exemption from taxes on stamped paper and revenue stamps required for the documents of transfer to the Administrative Agency of the title of real estate destined to the development and expansion of the Free Trade Zone;
- f) Exemption from taxes on stamped paper and revenue stamps for the documents by which real estate is transferred to Permit-Holders of the Free Trade Zone;
- g) Total Exemption on import taxes, custom duties and any other charges on import and consumption of fuel oil, bunker, butane and propane gas, used exclusively for the functioning and offering of services to Permit-Holders of the Free Trade Zone, from the date of authorization of its operation; and,

The incentives mentioned in this article in paragraphs a), c), d), and e), will be effective starting on the date of authorization by the Ministry of Economy, to establish and operate the Free Trade Zone.

Article 22.-

The industrial or service Permit-Holders authorized to operate in the Free Trade Zones will enjoy the following tax incentives.

- a) Equipment, machinery, tools, raw materials, inputs, semi-elaborated products, containers, packaging and in general in goods used for production or the offering of services, are not subject to taxes, custom duties, and import charges;
- b) Total income tax exemption on income obtained exclusively from the activity as an industrial Permit-Holder, for a period of ten (10) years, starting from the date of the first tax period immediately following the date of issuance of the authorization referred to in Article 6 c) of this law. The industrial and service Permit-Holders domiciled abroad which operate in Guatemala, will not enjoy this income tax exemption if their country of origin grants a credit for income tax paid in Guatemala;
- c) Exemption from the Value Added Tax, in the transfer of merchandise within and between Free Trade Zones;
- d) Exemption from the tax on sale and transfer (excise tax), of real estate located within the Free Trade Zone, in the transactions carried out with the Administrative Agency or With Permit-Holders of the Free Trade Zone; and
- e) Exemption from taxes on stamped paper and revenue stamps required for the documents by which real estate located within the Free Trade Zone is transferred.

The incentives mentioned in paragraphs a), c), d), and e), of this article, will be effective starting on the date of authorization of the decision issued by the Ministry of Economy.

Article 23.-

The commercial permit-Holders authorized to operate in the Free Trade Zones, will enjoy the following tax incentives:

- a) Merchandise and components stored in the Free Trade Zone for their commercialization, are not subject taxes, custom duties and import charges;
- b) Income tax exemption on income obtained exclusively from the activity as a commercial Permit-Holder of the Free Trade Zone, for a period of five years, starting from the date of the first tax period immediately following the date of issuance of the authorization referred to in Article 6 c) of this law. The commercial Permit-Holders domiciled abroad which operate in Guatemala, will not enjoy this income tax exemption if their country of origin grants a credit for income tax paid in Guatemala;
- c) Exemption from Value Added Tax, in the transfer of merchandise within or between Free Trade Zones;
- d) Exemption from the tax on sale and transfer (excise tax) of real estate located within the Free Trade Zone, in transactions carried out with the Administrative Agency or with Permit-Holders of the Free Trade Zone;
- e) Exemption from taxes on stamped paper and revenue stamps required for the documents of transfer to the Administrative Agency of the title of real estate destined to the development and expansion of the Free Trade Zone;

The incentives mentioned in paragraphs a), c), d), and e) of this Article, will be effective starting on the date of the decision of authorization issued by the Ministry of Economy

Article 24.-

For purposes of what is established in Articles 21, 22, and 23, paragraphs b), the dividends or profits distributed by the Administrative Agencies and the Permit-Holders of Free Trade Zones to individuals of firms domiciled in the country, shall also be considered tax exempted income.

Article 25.-

The industrial Permit-Holders established under the Free Trade Zones Regime, may export to the national customs territory up to a maximum of twenty percent (20%) of their total production with previous authorization of the Directorate of Industrial Policy, which will notify the General Directorate of Customs.

In such case, each sale may not be less than the equivalent of five thousand \$5,000 U.S. dollars in national currency, and it shall have only one consignee in the national customs territory. The products exported under this provision, will be subject upon their entry, to the definitive import regime applied to countries outside Central America.

The industrial Permit-Holders referred to in the prior paragraph will not enjoy the benefits granted in Article 22 b), for the income obtained from their export to the national customs territory.

Article 26.-

In order to determine the portion of income tax exempted according to Article 22 b), the industrial Permit-Holders which export to the national customs territory, shall distribute proportionately the tax corresponding to all their activities, between the total income obtained from their exports and re-exports as industrial Permit-Holders, and the total income which correspond to their other activities. The proportion corresponding to the first activity, will be tax exemted, and the proportion which corresponds to the second activity will be subject to taxation.

Article 27.-

Foreigners working for Administrative Agencies and Permit-Holders of the Free Trade Zones, may remain and work in the country according to the provisions of the Immigration Law and the Labor Code.

CHAPTER VI

CUSTOMS REGIME

Article 28.-

Merchandise of any kind which enters or leaves Free Trade Zones, will be subject to the requirements of transit of merchandise provided by national law.

The Ministry of Public Finance, through the General Directorate of Customs, will establish a committee and the necessary mechanisms for the verification of merchandise at its entry and exit of each Free Trade Zone.

Article 29.-

Merchandise produced or entered by a Permit-Holder of the Free Trade Zone, may be transferred to another permit-holder of the Free Trade Zone, by complying with the corresponding customs transit requirements under the control and supervision of the General Directorate of Customs.

Article 30.-

The Export of goods or services by persons or firms established in the national customs territory, to an Administrative Agency or a Permit-Holder of the Free Trade Zone, shall be considered a customs transaction of definitive export to countries outside Central America. The persons or firms located in the national customs territory, which produce, process, export or re-export, merchandise to the Free Trade Zones, may resort to the specific laws which provide incentives for exports. The value in foreign currency of the incorporated national added component, shall be deposited in the Bank of Guatemala.

Article 31.-

Merchandise may temporarily be exported from the national customs territory to a Free Trade Zone for the purpose of subjecting it to operations of perfecting, transformation, elaboration or repair. The maximum period for its re-export to the national customs territory will be six (6) months, starting on the date of the permit of export to the Free Trade Zone. Said merchandise, when re-exported to the national customs territory must pay custom duties and other taxes applicable to imports, only for the part corresponding to the national added component incorporated in the process, considering this operation an import from a country outside the Central American Area.

Article 32.-

If the maximum term for re-export to the national customs territory is not complied with, the temporary export to the Free Trade Zone will be considered final and the foreign currency corresponding to the component of the merchandise must be deposited in the Bank of Guatemala. If the temporarily exported merchandise is re-exported after six (6) months, it will be considered merchandise coming from third countries, and thus, will be subject to payment of import taxes, customs duties, Value Added Tax (VAT), and other taxes, fines, and corresponding assessments.

Article 33.-

Temporary export of merchandise from a Free Trade Zone to the national customs territory, is permitted for the purpose of being subject to operations of perfecting, transformation, elaboration or repair, provided that the stay of the merchandise is guaranteed to the treasury by a specific bond authorized by the Ministry of Public Finance or by a cash deposit. The maximum term for re-export to the Free Trade Zone will be six (6) months. Said transaction will be considered an export to countries outside Central America.

The General Directorate of Customs will partially or totally release the constituted bond, or return the cash deposit, once it has determined that the merchandise, temporarily admitted to the national customs territory, was re-exported to a Free Trade Zone or abroad.

Article 34.-

The by-products resulting from the productive process of firms located in the Free Trade Zone, may be nationalized or donated to charitable institutions. If donated to these, previous authorization from the Ministry of Public Finance is required.

Article 35.-

Defective products resulting from the productive activity of the firms, which are rejected for not meeting the standards of the market of their destination, may be nationalized or donated to charitable institutions with previous authorization from the Ministry of Public Finance.

CHAPTER VII

OBLIGATIONS AND PROHIBITIONS

Article 36.-

The Administrative Agencies of the Free Trade Zone are obligated to:

- a) Physically separate the areas where commercial Permit-Holders are located from the areas where the industrial and service Permit-Holders are located;
- b) Install, authorize, administer, supervise, control, and maintain the services destined for the permit-holders of the Free Trade Zones;
- c) Constitute a bond or a bank guarantee of immediate liquidity or a specific guarantee authorized by the Ministry of Public Finance, to guarantee compliance with their obligations. This bond or guarantee must be equal to ten percent (10%) of their total assets;
- d) Anticipate in the design of the Free Trade Zone the availability of service areas for the personnel which work in the Free Trade Zone so as to meet the legal and social welfare requirements;
- e) Make a monthly contribution to the Ministry of Public Finance for the Specific Fund for the development and promotion of Free Trade Zones, and support and encouragement of export, of the equivalent in national currency of 10 U. S. dollar cents (\$0.010) for each square meter of area occupied, rented or sold to Free Trade Zone Permit-Holders. The annual technical and economic plan of the Specific Fund, will be proposed by CONAPEX;
- f) Submit the information related to their operations as required by the Ministries of Public Finance and Economy;
- g) Establish with their Administrative organization a system of merchandise operation which is coordinated with the delegation of the General Directorate of Customs;
- h) Notify the Directorate of Industrial Policy of the Ministry of Economy and the Ministry of Public Finance of the notices of close down of operations it receives from the Permit-Holders within a maximum period of fifteen (15) days from the date of notice by the Permit-Holder.

- i) Any other obligation which is related to the direction, administration, and management of the Free Trade Zone.

Article 37.-

The design, plan and function of the Free Trade Zone, must meet the requirements of tax security to the satisfaction of the Ministry of Public Finance. The Administrative Agency must create the installations, provide facilities, and cover operating costs, so that the General Directorate of Customs delegation can function.

Article 38.-

The obligations of the Permit-Holders of the Free Trade Zones are the following:

- a) Submit to the Industrial Policy Directorate the information related to their operations, which is required through the Administrative Agency; and
- b) Notify the Administrative Agency sixty (60) days before the close down of operations.

Article 39.-

Administrative Agencies and Free Trade Zone Permit-Holders are obligated to comply with the laws of the country, particularly with labor laws.

Article 40.-

Persons and firms which dedicate themselves to the following activities, may establish themselves in a Free Trade Zone without previous authorization from the Ministry of Economy but will however, not enjoy benefits and incentives provided by this law:

- a) Travel agencies and airlines;
- b) Transportation by air, sea or land;
- c) Activities which are regulated by the banking and finance laws of the country; and
- d) Services not related with international law. in accordance with this law.

Article 41.-

The following activities may not be developed, commercialized or produced in the Free Trade Zone:

- a) Extraction of petroleum and natural gas;
- b) Fishing or raising of maritime or sweetwater species;
- c) Recreational centers and hotels;
- d) Timber, logs roundwood and lumber;
- e) Refined and unrefined sugar cane and molasses;
- f) Berry, parchment and clean coffee;
- g) Berry, parchment and clean cardamom;
- h) Uncarded cotton;
- i) Fresh bananas;
- j) Undicorticated sesame;
- k) Natural rubber;
- l) Reproduction, raising, and fattening of cattle;
- m) Extraction of minerals;
- n) Contaminating merchandise;
- o) Processing and handling of explosives and radioactive materials;

- P) Raising, cultivating and processing of animal and floral species protected or prohibited by agreements or special laws; and
- q) Packaging, labeling and filling of products for which Guatemala is subject to a quota.

Article 42.-

Permit-Holders of the Free Trade Zone are prohibited from importing under this law the following products:

- a) Fire weapons, gunpowder, ammunitions and, in general, any war articles;
- b) Jewels, wrist watches, and non-industrial photographic cameras;
- c) Industrial wastes and other residues whose contaminating effect jeopardizes health and environment;
- d) Merchandise originating outside Central America for the use or personal consumption of those who work or enter to the Free Trade Zones.

Article 43.-

Administrative Agencies and Permit-Holders are prohibited from transferring, in any form, within the national territory, merchandise which entered the Free Trade Zone and was exempted or not subject to the payment of custom duties, import taxes. and Value Added Tax.

Article 44.-

The machinery, equipment, parts, components, and accessories which enter under the protection of this law to be used by the Administrative Agency or the Free Trade Zone Permit-Holders, may not be transferred or destined for a purpose other than the one for which they were authorized in the resolution by the Ministry of Economy.

Article 45.-

The carrying and possession of fire weapons in the Free Trade Zone must follow the laws on the matter.

CHAPTER VIII

SANCTIONS

Article 46.-

Machinery, equipment, parts, components, and accessories, under this law, transferred or used for a different purpose than the one for which the benefit was authorized, will be punished with a fine of one hundred percent (100%) of the value of the unpaid applicable taxes, without detriment to other sanctions under customs laws. In cases of non-compliance, the transferor and the transferee will both be responsible for payments not received.

Article 47.-

In cases where merchandise enters or leaves the Free Trade Zone without complying with the corresponding formalities, the infractor will be punished with of the value of one hundred percent (100%) of the unpaid applicable taxes, without detriment to any other sanctions under customs laws or specific applicable laws in civil and criminal matters.

Article 48.-

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

- a) When it does not comply with the obligations set out in the respective resolution of qualification;

- b) When it does not start operations, due to its own fault, within the period in the resolution or the corresponding extension;
- c) Due to illicit merchandise trafficking; and
- d) When merchandise which endangers the environment or health of the population is entered to the Free Trade Zone.

For the purpose of b) and d) above, the Directorate of Industrial Policy may warn the Administrative Agency only once, sending a copy of said warning to the General Directorate of Customs and to the General Directorate of Internal Revenue.

Article 49.-

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

- a) When it does not comply with obligations set out in the respective resolution of qualification;
- b) Due to illicit merchandising trafficking;
- c) When merchandise which endangers the environment or health to the population is entered to the Free Trade Zone.

For the purpose of c) above, the Directorate of Industrial Policy may warn the Administrative Agency only once, sending a copy of said warning to the General Directorate of Customs and to the General Directorate of Internal Revenue.

Article 50.-

In the cases described in Articles 48 c) and 49 b), the authorized authority will seize the merchandise and make it available to the courts in order to deduct the corresponding liabilities; the sanction does not exempt the infringer from the civil and criminal obligations that may be imposed according to other laws. In the cases described in Articles 48 d) and 49 c), the corresponding authority shall decide immediately as required.

Article 51.-

When the payment referred to in Article 36 e) of this law is not made or is made late, a fine of fifty percent (50%) of the value of the same will be imposed to the Administrative Agency, without detriment that without a required, indemnifying interest will be charged of each day of delay, calculated by applying the highest active interest rate in the bank market.

In the cases referred to in the above paragraph, the General Directorate of Internal Revenue of the Ministry of Finance, will automatically determine the length of the delay. The Administrative Agency will be summoned for hearing, so that it submits the omitted liquidation and effects the payment, within the next ten (10) working days from the notice of the respective decision.

If said term expires and payment has not been effected, the General Directorate of Internal Revenue will declare the decision final and start an economic-coercive claim for the collection of the payment. This determination will be considered a payment on the account out of the fiscalization or liquidation actions carried out by the Administrative Agency.

CHAPTER IX

TRANSITORY AND FINAL DISPOSITIONS

Article 52.-

If the development needs of the Free Trade Zones require it, the Ministry of Economy may create a specific administrative unit in charge of assuming the functions conferred in this law or the Directorate of Industrial Policy of said Ministry.

Article 53.-

For persons or firms who qualify under this law and enjoy benefits under Decree-Law 21-84 or Decree 29-89 of the Congress of the Republic at the time this law comes into force promulgated, the years of income tax exemption already granted will be deducted from the new benefits.

Article 54.-

If the interested party were not satisfied with the decision of the competent administrative authority, he/she may appeal as provided by the laws on the matter.

Article 55.-

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

Article 56.-

The Monetary Board shall issue the Specific Currency Exchange Regulation which is referred to the Article 5 of this law, within a period of ninety (90) days, starting on the date this law comes into force.

Article 57.-

The Ministry of Public Finance shall assign to the Ministry of Economy the necessary resources for the compliance of the prerogatives set out in this law, with previous submission of the corresponding activities and budget plan.

Article 58.-

The Executive Organism, through the Ministries of Economy and Public Finance, shall issue regulation for the application of this law with a period of ninety (90) days from the date of its publication.

Article 59.-

This decree will come into force thirty (30) days from its publication in the official journal.

Let it pass to the Executive Organism for publication and compliance.

Given in the Palace of Legislative Organism in Guatemala

City on November 14, 1989.

José F. Lobo Dubón
President

Ramiro García de Paz
Secretary

Claudio Coxaj Tzun
Secretary