



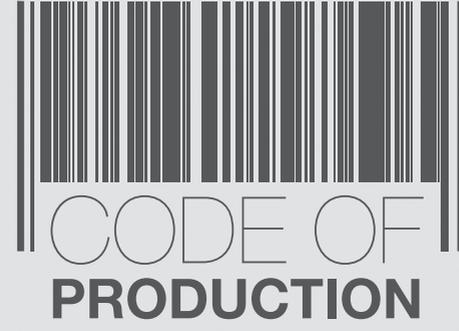
CODE OF PRODUCTION

Econ. Rafael Correa Delgado
President of the Republic of Ecuador
Registro Oficial™

Quito, wednesday, december 29th, 2010

351





SUPPLEMENT

Supplement # 351.



SUMMARY:

NATIONAL ASSEMBLY

CODE:

- Organic Code of Production, Commerce and Investment.

NATIONAL ASSEMBLY

Of. No. SAN-010-2038
December 22nd, 2010

Engineer
Hugo Del Pozo
DIRECTOR OF THE OFFICIAL REGISTRY
In your office.

Mr. President:

The NATIONAL ASSEMBLY, in accordance to the attributions that the Constitution of the Republic of Ecuador and the Organic Law of the Legislature, discussed and approved the Project of the ORGANIC CODE OF PRODUCTION, COMMERCE AND INVESTMENT.

In the session of 16th of December 2010, the Plenum of the National Assembly was aware of and pronounced itself on the partial objection presented by the Constitutional President of the Republic of Ecuador.

By what has been stated, and as determined Article 138 of the Organic Law of the Legislature, we submit the original and certified copy of the text of the approved Project of Law, as well as the certification of the dates of its discussion for its publication on the Official Registry.

Respectfully, signed) Dr. Francisco Vergara O.,
Secretary General.

NATIONAL ASSEMBLY

CERTIFICATION.

In my condition of Secretary General of the National Assembly, I certify that the the Project of Law- ORGANIC CODE OF PRODUCTION, COMMERCE AND INVESTMENT, was discussed and approved in the following dates:

FIRST DEBATE:	04-Nov-2010
SECOND DEBATE:	16-Nov-2010
PARTIAL OBJECTION:	16-Dic-2010

Quito, December 21st, 2010
Dr. Francisco Vergara O., Secretary General.

COMPLETE NATIONAL ASSEMBLY**THE PLENARY**

Bearing in mind:

That numerals 2, 15, 16, 17, 26 and 27 of Article 66 of The Constitution of the Republic of Ecuador, establish Constitutional guarantees for persons, said guarantees require a normative that regulates its practice;

That, in accordance with numeral 2 of Article 133 of The Constitution of the Republic of Ecuador, the organic laws have to regulate the exercise of the Constitutional rights and guarantees as the ones determined on the above item;

That numeral 2 of Article 276 of The Constitution of the Republic of Ecuador establishes that the economic system has among its objectives the building of a fair, democratic, productive, supportive and sustainable economic system, based on the equitable distribution of the benefits of progress, of the means for production and the creation of dignified and stable work;

That numeral 5 of Article 281 of The Constitution of the Republic of Ecuador, establishes the responsibilities of the State in order to attain alimentary sovereignty, responsibilities among which it is included the establishment of preferential financing mechanisms for the small and mid-size producers, aiding them in the acquisition of means for production;

That Article 283 of The Constitution of the Republic of Ecuador establishes that the economic system is social and supportive; recognises a human being as the individual and the aim; tends towards a dynamic and balanced relationship between society, State and market, in harmony with Nature; and has as objective guaranteeing the production and reproduction of the pertinent conditions that make possible the well-living;

That Article 284, of The Constitution of the Republic of Ecuador establishes the objectives of the economic policy, amongst which are included the stimulation of national production, systemic productivity and competitiveness, the accumulation of scientific and technological knowledge, the strategic insertion in the world's economy and the complementary productive activities in regional integration;

That numerals 1, 2 and 3 of Article 285 of The Constitution of the Republic of Ecuador prescribe as objects of fiscal policy: 1) the financing of services, investments and public properties; 2) the redistribution of income through transferences, duties and adequate subsidies; 3) the generation of incentives for investment in different sectors of the economy, and for the production of sociably desirable and environmentally responsible goods and services;

That Article 304 of The Constitution of the Republic of Ecuador establishes the objectives of the commercial policy; amongst which are included developing, strengthening and making dynamic the internal markets of the strategic objective established in the National Development Plan;

That article 306 of The Constitution of the Republic of Ecuador mandates the State's obligation for promoting environmentally responsible exports, preferring those that generate more employment and added value, and in particular those exports from small and intermediate producers and from the artisan sector;

That Article 319 of the Magna Carta recognises diverse production organisation forms in the economy, amongst others the community, cooperative, public or private enterprise, associative, family, domestic, autonomous and mixed, so that it will encourage the production that will satisfy internal demand and guarantee an active participation of Ecuador in the international context;

That Article 320 of our Constitution establishes that production in any of its forms will be subject to principles and quality standards, sustainability, systemic production, to giving value to work and economic and social efficiency;

That in Article 334 of the Constitution of the Republic of Ecuador dictates that the State should promote equitable access to the components of production, evading concentration or stockpiling of elements and resources for and of production, redistribution and suppression of privileges or inequalities of access to them;

That Article 335 of the Constitution of the Republic determines that the State shall regulate, control and intervene whenever needed, in interchanges and economic transactions; and will sanction exploitation, usury, stockpiling, speculative simulation, intervention of goods and services, as well as any form of detriment to the economic rights and to the public and communal goods. Also determines that the State shall define a price policy directed to the protection of national production; shall establish the mechanisms for punishment to prevent the practice of private monopoly or oligopoly, or of abuse of market dominance and other disloyal competition practices;

That Article 336 of the Constitution of the Republic of Ecuador imposes on the State the duty of encouraging and keeping vigilance for fair trade as a means of accessing to quality goods and services, promoting the reduction of intermediation distortions and promoting its sustainability, thus assuring market transparency and efficiency, through the encouragement of competition in equality of circumstances and opportunities;

That article 304, numeral 6, of the Constitution of the Republic of Ecuador establishes that the economic policy shall have as its goal the avoidance of monopoly and oligopoly practices, especially in the private sector, and any others that might affect the functioning of the markets;

That in virtue of the faculties conferred under Executive Decree 103, published in the Official Registry Supplement No. 26 from February 22nd, 2007, and the Secretary for National Planning has made and set in motion the National Plan for Well-Living which considers that,

in face of the indicators of migration unemployment and poverty, an economic revolution that leads to a reactivation of production, generation of employment becomes necessary, thus making us a society of owners and producers which overcomes the present system of social exclusion; in face of that, a proposal is made to democratise the means for production as “a necessary condition to promote equality and cohesion from the perspective of integral territorial development, which promotes an economically social and supportive system”;

That Objective number 11 of the National Plan for Well-Living, published in the Supplement of the Official Registry N° 144 of March 5th, 2010, is “to establish an economic social system that has solidarity and sustainability”; and, in conformity with the attributions and competence of the National Assembly, and of exercising its Constitutional faculties issues the following:

De conformidad a las atribuciones y competencias de la Asamblea Nacional, y en ejercicio de sus facultades constitucionales expide el siguiente:

ORGANIC CODE OF PRODUCTION, COMMERCE AND INVESTMENT

PRELIMINARY TITLE

Of the Objective and Scope of its Application

Art. 1. - Scope. - All natural persons, legal entities and other forms of association that perform a productive activity, in any part of the National Territory, shall be guided by the present normative.

The scope of said normative shall include in its application the productive process as a whole, starting with making good use of the elements for production, the productive transformation, the distribution and commercial exchange, the consuming, the taking advantage of positive externalities and policies that discourage negative externalities. As well it shall encourage at the national level all productive activities in all its levels of development; shall encourage the actors of the popular and supportive economy, as well as encourage the production of goods and services done by the various forms of association for production in the economy, recognised by the National Constitution.

In the same manner, it shall be ruled by principles that allow an international strategic linkup, through commercial policy, including its instruments for application and those that facilitate external commerce through a modern, transparent and efficient customs system.

Art. 2. - Productive Activity. - The Productive Activity shall be considered as the process through which human activity transforms supplies into licit goods and services, socially necessary and environmentally sustainable, including commercial and any other activities that generate added value.

Art.3. - Purpose. - The present code has as its objective regulating the productive process on its stages of manufacture, distribution, interchange, trade, consuming, handling of externalities and productive investments leaning towards the execution of the Plan for Well-Living.

This normative also seeks to generate and consolidate the regulations that boost, move forward and incentivise production with more value added; seeks to establish the conditions for increasing productivity and for promoting the transformation of the productive matrix; seeks to aid in the implementation of instruments for productive, fair, ecologically efficient development and sustainable in the care of Nature.

Art. 4. - Ends. - This legislation has as its main ends the following:

- a. The Transformation of the Productive Matrix, so that it shall have more added value, shall boost services, shall be based on knowledge and innovation, as well as on sustainable and ecologically efficient environs.
- b. The Democratization of access of the means for production, with special emphasis on micro, small, and intermediate businesses, as well as the democratization of the actors of the popular and supportive economy.
- c. The Fostering of national production, trade and sustainable spending of goods and services, with social and environmental responsibility, as well as fostering its commercialisation and the use of new environmentally clean technologies and alternative energy.
- d. The Generation of quality and dignified

employment that contribute to value all forms of work and that abide with the labour rights of workers.

- e. The generation of an integral system for innovation and enterprise, so that science and technology generate a change of the productive matrix, and in helping build a society of owners, producers and entrepreneurs;
- f. The guaranteeing of the exercise of rights of the people to have access, use, and enjoyment of the goods and services in equality, optimum quality and in harmony with Nature;
- g. The enticement and regulation of all forms of private investment in productive activities and socially desirable and environmentally acceptable services;
- h. The regulation of productive investment in strategic sectors of the economy, in keeping with the National Plan for Development;
- i. The promotion of technical and professional labour and civil competences, which shall allow that everyone will obtain results of the change;
- j. The strengthening of state control to assure that productive activities will not be affected by the abuse of market share, like monopolistic and oligopolistic practices, and in general all those that will affect the functioning of the market;
- k. The stimulation of the country's productive development through a view of systemic competitiveness, with an integral vision, which shall include territorial development and shall articulate in a coordinating fashion the macroeconomic targets, the basic principles and patterns of society's growth, the actions of the producers and enterprises, and the judicial-institutional environs;
- l. The impulse of productive growth in zones of lesser economic expansion;
- m. The establishment of the fundamental principles and instruments for articulation of Ecuador's international commercial policy;
- n. The promotion of the strategic substitution of imports;

o. The encouragement and diversification of exports;

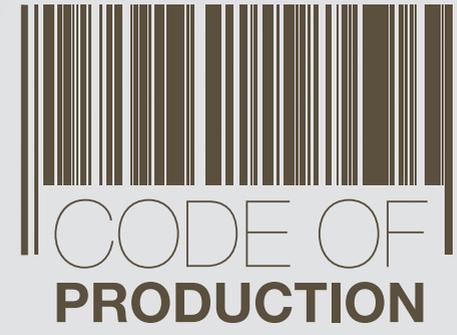
p. The expediting of foreign trade operations;

q. The advancement of activities of popular, supportive and communitarian economy, as well as the worldwide strategic insertion and promotion of its productive offer, in accordance with the Constitution and the Law;

r. The incorporation in all production policies, as a transversal element, of the view of gender and of the view of inclusion of economical activities of all people and nationalities;

s. The boosting of mechanisms that shall allow fair trade and a transparent market; and,

t. The encouragement and support for industrial and scientific research, as well as for innovation and technological transfer.



BOOK I

PRODUCTION DEVELOPMENT, MECHANISMS AND PUBLIC BODY OF COMPETENCE.

BOOK I**PRODUCTION DEVELOPMENT,
MECHANISMS AND PUBLIC BODY OF
COMPETENCE****TITLE I****Productive Development and its Institutionalise****Chapter I****The role of the State in the Production
Development**

Art. 5.- Role of the State.- The State shall encourage productive development and change of the production matrix, through determining of policies and defining and implementing instruments and incentives that shall leave behind the specialised pattern of dependency of primary products of low added value.

For the transformation of the production matrix, the State shall encourage productive development through fostering:

- a. The economy's systemic competitiveness, by providing public goods such as education, health, infrastructure and by assuring the provision of the necessary basic services, such as to boost the productive vocation of the territories and the human talent of the Ecuadorians.
- b. The establishing and use of a regulatory frame that shall guarantee that no economic party will abuse its market share, and this shall be established in the law for this matter;
- c. The productive development of sectors with strong, positive externalities, so as to add to the general level of productivity and the development of the this Code faculties for innovation of all economies, through the strengthening of the establishment that this Code determines;
- d. The generation of an innovative, entrepreneurial and associative ecosystem through the drafting and coordination of public, private, popular and supportive initiatives for innovation and transferring of productive technology, and tying of investigation to the productive activity;

e. The implementing of a political policy at the service of the development of all productive parties of the country in particular; of the parties of popular and supportive economies, and of the micro, small and mid size enterprises, and guaranteeing food and energetic sovereignty as well as economies of scale, fair trade and its strategic establishing in the world;

f. The deepening of access to financing all productive actors, through adequate incentives and the regulation of the private, public and the popular and supportive financial system, as well as the encouragement and development of public banking destined to the developmental service of the country;

g. The betterment of the productivity of all parties of the common and supportive economy and of the micro, small and mid size enterprises, so as to participate in the internal market, and eventually reach economies of scale and levels of quality production that will allow the internationalization of their productive offer;

h. The development of logistics and of infrastructure that boosts the productive transformation, for which end the State shall generate the conditions to promote the efficiency of maritime, air and land transportation under an all encompassing focus and a multimodal operation;

i. The sustainable production through the implementation of technologies and practices for clean production; and

j. The expansion through the national territory, of public productive policies so as to eliminate the territorial disequilibrium in the process of development.

Chapter II**Institutionalise Productive Development**

Art. 6.- Sector Councils.- It belongs to the Executive the definition of the policies pertaining to productive development and the promoting of investments through the Sector Council of Production, which shall be constituted and shall function according to what is established in the Regulations of this Code, framing its directives within the National System of Planning.

This body shall have a Technical Secretary's Office that shall be under the Ministry that presides over the Sector Council of Production and which duties shall be the ones established in this Code and in the rules. This Secretary's Office shall have the necessary technical areas for designing public policies and a policies program for productive fostering and investment, amongst others linked to the productive sector.

Art. 7.- Inter-Sector Participation.- The Inter-Sector Participation in the development of said policies, shall be guaranteed by the Conductive Council of Productive Development and Foreign Trade; body strictly for the purposes of consultation and obligatory institutional summons by who presides the Production Sector Participation Council, in the way dictated by the rules.

This Consultive Council shall be made up of, amongst others, representatives of the private, mixed, popular and supportive productive sectors, workers and autonomous decentralised governments. The Consultive Council shall have ample and plural representation that reflects the different sectors, territories and sizes of production. The Consultive Council shall not have public resources for its functioning, but the Technical Secretary's Office of the Sector Council for Production, shall provide logistical support for its functioning and for the participation of its members.

The Consultive Council could propose or suggest technical positions for the creation of policies that shall be adopted by the entities responsible for policies of production development, investment and foreign trade. This Consultive Council's integration and functioning shall be normed in the rules of this code, and in whatever not provisioned for in said Rules, through a ruling of the Sector Council for Production.

TITLE II**The Productive Sector.****The Promotion of Dignified Productive Work**

Art. 8. - Honourable Salary. - The monthly Honourable Salary shall be that which will cover the basic needs of a worker as well as of his/her family, and shall be according to the Basic Family Basket cost, divided by the number of recipients at home. The cost of the Basic Family Basket and the number of recipients at home, shall be determined by the official ruling agency of Statistical and National Census of the country, on an annual base, which shall help as the basis for determining of the established Honourable Salary, decided by the Ministry of Labour Relations.

Art. 9.- Components of the Honourable Salary.- The following components shall be added, only and exclusively for the purpose of calculation, to determine if a worker gets the monthly Honourable Salary:

- a. The monthly salary;
- b. The Thirteenth Salary divided by twelve, which period of calculation and payment shall be coherent with that determined in Art. 111 of the Code of Work;
- c. The Fourteenth Salary divided by twelve, which period of calculation and payment shall be coherent with that determined in Art. 113 of the Code of Work;
- d. The variable commissions that follow legitimate and usual market practices and which the employer pays the employee;
- e. The worker's amount of share in profits of the company, according to the law, divided by twelve;
- f. The additional benefits received by the worker, acquired in money, due to collective contract, that do not constitute legal obligations, and the periodical voluntary contributions by the employer to his/her workers, made in currency; and;
- g. The Reserve Funds;

In case a worker had done labour for a period less than one year, the calculation shall be proportional to the time of employment.

The above mentioned calculation, in no way means the proportional monthly payment of the thirteenth and fourteenth salaries, and the workers' share of profit, which amounts shall be paid in full and in the dates assigned in accordance with the law.

Art. 10.- Economic Compensation for the Honourable Salary.- From the start of fiscal year 2011, the employers mentioned below who have not paid all of their workers an amount equal to or above the monthly Honourable Salary shall calculate an additional obligatory economic compensation that will be paid to achieve the Honourable Salary to those workers who have made less than outlined in Art. 9.

The economic compensation mentioned in the above subsection, shall be compulsory for those employers who:

- a. Are persons or legal entities that are required to keep accounting;
- b. At the end the fiscal year had any profits; and,
- c. In the fiscal year had paid anticipated income taxes.

This calculation for the amount of the economic compensation shall be based through the thirty first of December of that fiscal year and it may be paid up until March, once a year, amongst those workers that did not receive the Honourable Salary during the previous fiscal year. If needed, for this economic compensation the employer shall destine an amount equivalent of up to a hundred per cent of the profits of the fiscal year.

In case the amount described before does not cover all of the Honourable Salary of all workers with rights to the Economic Compensation, the latter shall be proportionately divided amongst said workers, this compensation coming from the difference between the components of a Honourable Salary and the Honourable Salary as stated in Art. 8 of this Code.

This Economic Compensation is additional, shall not be an integral part of the salary, does not constitute taxable income for Social Security nor for the

worker's income tax, and shall strictly be temporary in nature until the Honourable Salary is achieved.

TITLE III

Generating an Integral System for Innovation, Technical Training, and Entrepreneurship

Art. 11.- System for Innovation, Technical Training and Entrepreneurship.- The Productive Sector Council shall annually design a plan for technical training, which shall become a link in planning the system for innovation, technical training, and entrepreneurship, as per the Productive Transformation Agenda and the National Development Plan.

This system shall link the work of various public and private institutions, in their different stages of growth and with their different tools, in a One-Stop-Customer-Service virtual window, decentralized so it aids in disseminating information on: training for entrepreneurial initiative, financial instruments, risk capital, development banking geared to the finance of enterprises, the National Guarantees Fund, technical assistance and linking of decentralized, autonomous governments, not-for-profit organizations, and universities, amongst others.

Art. 12.- Risk Capital.- The State may give funds for risk capital through legal and financial mechanisms. The temporary nature of investments made by the State shall have been previously agreed upon both for time and form; giving priority to the disinvestment of the State in companies where it is partial or total owner, in favour of the employees and workers of said companies, as well as in favour of the community where those companies work, within the conditions and times established for each project.



BOOK II

THE DEVELOPMENT OF PRODUCTIVE INVESTMENT AND ITS INSTRUMENTS.

BOOK II

THE DEVELOPMENT OF PRODUCTIVE INVESTMENT AND ITS INSTRUMENTS

TITLE I

Promotion, Encouragement, and Regulation of Productive Investments

Chapter I

Productive Investment

Art. 13.- Definitions.- The following definitions are for the purposes of the present regulation:

- a. Productive Investment. - Productive Investment shall be understood, irrespective of the type of property, as the cash flow destined to produce goods and services, to enlarge productive capacity, and to generate employment sources in the national economy.
- b. New Investment. - For the incentives to apply to new investments, with the understanding that new investments are cash flow destined to increment economic capital, it has to be through effective investment in productive assets, which will enlarge future production capacity, generate a larger production of goods and services, or generate new employment sources, in the terms provisioned for in the regulations. The mere change of proprietorship of productive assets that are already in production, as well as the credit obtained to acquire said assets, under this Code does not constitute new investment.
- c. Foreign Investment. - Investment that is property of foreign national citizens or that is run by foreign legal entities domiciled abroad, or that implies money not generated in Ecuador.
- d. National Investment. - Investment that is property of Ecuadorean national citizens or that is run by legal Ecuadorean entities, or by expatriates residents of Ecuador, unless they demonstrate that it is capital not generated in Ecuador; and,

- e. Persons or legal Ecuadorean entities owners that exercise control of an investment made in Ecuadorean territory. Also included under this concept are national citizens or legal Ecuadorean entities, or from the cooperative, associative and community Ecuadorean sectors made in Ecuadorean territory. The national Ecuadorean citizens that have dual citizenship, or expatriates residents of this country for the purpose of this code, will be considered national investors.

It shall not be considered a national investment that made by a national or foreign company whose shares, participation property or control, both total or majority, belongs to a national citizens or legal Ecuadorean entity.

Art. 14.- Application.- The new investments shall not require authorizations of any nature, with the exception of those that the Law expressly determines and that are derived from the corresponding territorial arrangement, having to comply with the requisites that this regulation demands to benefit from the incentives stated here.

The benefits of this code shall not apply to those investments by citizens or legal entities domiciled in tax havens. The Code shall regulate the parameters of incentive application for all and any sector that request it.

The benefits and guarantees recognised by this Code shall be applied with no detriment to the Constitution of the Republic and of other laws, as well to other international agreements duly ratified by Ecuador.

Art. 15.- Competent Law Body.- The Productive Sector Council will be the State's supreme governing organ in investment matters.

Art. 16.- Manners for Investments.- The ways for investments and its exceptions shall be established in the regulations of this norm.

Chapter II

General Principles

Art. 17.- Non-Discriminatory Conduct.- National and foreign investors; societies, companies or entities from the cooperative, popular, and supportive economy, in which these partake as well as well as their legally established investments in Ecuador, with the limitations provided by in the Constitution of the Republic, shall have equality of conditions with respect to administration operation, expansion, and transfer of their investments, and shall not be the subject of discriminatory or arbitrary measures. Foreign investors and investments shall have full protection and equal protection of the law, in such way that they shall have the same protection that Ecuadorean nationals receive within the national territory.

The State in all its governmental levels, exercising their public authority, could give differentiated treatment, as a way of incentives, in favour of new and productive investments, which will be given in function of sectors, geographical location, or other parameters which they will have to comply with, according to the terms provisioned in this Code and its Regulations.

Foreign investments shall have a direct complementary role in the strategic sectors of the economy that require investment and financing to reach the objectives of the National Development plan, and subject to applicable legislation. In the rest of the economy's sectors, foreign investors can directly participate without the need of previous or additional authorisation provided for national investors.

Governmental entities shall promote in a priority way the attraction of direct foreign investment according to the needs of, and priorities defined in, the National Plan for Development, the Productive Transformation Agenda, as well as in the different developmental plans of the decentralised autonomous governments. Additionally, the investments made in other sectors of the economy will have the same benefits from State policies of productive stimulus, in terms of the present norm.

Art. 18.- Ownership Rights.- The property of investors shall be protected in the terms established in the Constitution and other pertinent laws. The

Constitution prohibits all manners of confiscation. Therefore, confiscation of national or foreign investments shall not be decreed or executed.

The State can declare, exceptionally and in accordance with the Constitution, the expropriation of real state with the sole purpose of executing social development plans, environmental sustainable management, and collective well being, following the legally established procedures in a non-discriminatory way, with previous assessment of value, and the payment of fair and adequate indemnification in compliance with the law.

Chapter III

The Rights of the Investors

Art. 19.- Rights of the Investors.- The following rights shall be recognised to the investors:

- a. Freedom of production and commercialisation of licit goods and services, socially desirable and environmentally sustainable, as well as freedom of pricing, with the exception of those goods and services which production and commercialisation are regulated by the law.
- b. Access to administrative and control actions that the State establishes to avoid any speculative practice of private monopoly or oligopoly, or abuse of market dominance and other disloyal competition practices;
- c. Freedom of import and export of goods and services, with the exceptions of those limits established in the norm and in accordance with the international agreements in which Ecuador partakes;
- d. Free transfer abroad, in currency, of the periodical earnings or profits that come from registered private investment, once the duties concerning the workers' share, tax obligations, and others established in this code are complied with.
- e. Freedom to send resources that are obtained through total or partial liquidation of the companies in which the registered foreign investment was made, or through the sale of shares, participations, or acquired rights because of investments made, once the

tributary obligations as well as other pertaining responsibilities, as established in legal norms;

- f. Freedom to acquire, transfer or transfer ownership of shares participations or rights of ownership to third parties, in the country or abroad, abiding by the formalities provided in the law;
- g. Freedom of access to the national financial system and to the stock market, to obtain long, mid- or, long term financial resources.
- h. Freedom of access to the mechanisms for promotional, technical, cooperation, technological assistance and other equivalents; and,
- i. Access to the rest of general benefits and incentives provided for in this Code, other laws and applicable normative.

Art. 20.- Tributary Regime.- In tax matters, national and foreign investments shall be subject to the same Tributary Regime, with the exceptions provided for in this Code.

Art. 21.- Obligatory Standards.- National and foreign investors and their investments, in general shall be subject to observance and faithful compliance of the laws of this country, and especially the ones relating to the labour, environmental, tributary and social security aspects in use.

TITLE II

Productive Development of the Popular, Supportive and Community Economy

Art. 22.- Specific Measures.- The Council of Sector Production shall establish policies for boosting the popular, supportive and community economy, as well as democratic access the elements of production, without detriment to the competence of decentralised, autonomous governments and the specific institutionalising created for the entire development of this segment, in accordance to what the law regulates on this matter.

Additionally, to foster and strengthen the popular, supportive and community economy, the Productive Sector Council, shall execute the following actions:

- a) Draw up plans and projects for the development and national advancement of national, regional, provincial and local production, in the frame of the Intercultural and Plurinational State, guaranteeing the rights of persons, community and nature;
- b) Support and consolidate the Community Productive Partner, for which it shall make programmes and projects with public financing to recuperation, support and technological transfer, investigation, training and commercialization and public purchases mechanisms, amongst others;
- c) Promote equality of opportunities through the giving of benefits, incentives and production means;
- d) Promote Nourishment Insurance through preferential financing mechanisms for the micro, small, mid-, and big ventures of the communities, peoples, indigenous, Afro-Ecuadorean and montubios nationalities;
- e) Finance productive projects of the communities, peoples, indigenous, Afro-Ecuadorean and montubios nationalities that propel the agricultural, livestock, artisan, fishing, mining, industrial, tourist production and others of this segment.

The Branches of the Ministries or national Secretary Offices that have competence to foster the popular, supportive and community economy, shall present at the end of the annual economic activity, to the Ministry that presides over the Council for Sector Production, reports on the money invested in programmes for the generation of aptitudes, innovation, entrepreneurship, technology, betterment of productivity, associativity, fostering and promotion of exportable supply, commercialization, amongst others, with the objective of fostering this segment of the economy.

TITLE III

Incentives for Productive Development

Chapter I

General Rules about Incentives and Stimulus for Economic Development

Art. 23.- Incentives.- The incentives of the tributary nature that this norm recognises shall be incorporated as reforms to the pertinent tributary norms as stated in the Corrective Dispositions at the end of this Code.

Art. 24.- Classification of the Incentives.- The tax incentives that this code establishes are of three sorts:

1. General: Those that apply to investments that are carried out in any part of national territory. They consist of the following:
 - a. The progressive reduction of three percentage points of Corporate Income Tax;
 - b. Those established for special growth zones, providing they comply with the criteria for their conformation;
 - c. The additional deductions for calculating Corporate Income Tax, as mechanisms to encourage the improvement of productivity, innovation, and eco-efficient production;
 - d. The benefits for companies opening the social capital in benefit of its workers;
 - e. The facilities of payment in foreign commerce taxes;
 - f. The deduction for calculating Corporate Income Tax from the additional compensation on payment of the Honourable Salary;
 - g. Exoneration of the Currency Transfer Tax for operations with external financing;
 - h. Exoneration, for five years, of Anticipated Income Tax Payment for all new investment;
 - i. Reforms on calculation of the Anticipated income Tax Payment.

2. Sector and for fair regional development: For sectors that contribute to the change of the energy matrix, strategic substitution of imports, fostering of exports, as well as for rural development in all of the country and urban zones, as specified in the second corrective disposition (2.2), total exoneration, for five years, of Corporate Income Tax to new investment that might develop in these sectors.

3. For Economically Depressed Zones: besides from these investments benefiting from the general and sector incentives afore mentioned, new investment in these zones shall be given priority, giving, for five years, an additional tax benefit by deducting 100% of the cost of contracting new employees.

Art. 25.- The Contents of Investment Contracts.- Upon the investor's initiative, investment contracts may be signed, which shall be held through a Public, in which shall appear the treatment given to investment, under the scope of this Code and its Regulation.

Investment contracts may give stability over tax incentives, during the time the contract is valid, as per the prerogatives of this Code. In the same manner these investments contracts shall detail the supervision and regulation mechanisms for the compliance of the investment parameters expected in each contract. The Council for Sector Production shall establish the parameters that investments that ask to be subjected to this regime, must comply with.

Art. 26.- Validity.- Investment contracts shall have validity up to fifteen (15) years from the date of its inception, and its validity shall not limit the authority of the State to exercise control and regulation, through its appropriate organisms.

Upon request by the investor, and as long as the Council for Sector Production considers pertinent, according to the type of investment that is evolving, investment contracts may be extended for one time, up to the same originally awarded time period.

Art. 27.- Solution of Conflicts.- In the investment contract with foreign investors, arbitration clauses may be agreed upon to solve controversies that might happen between the State and the investors.

The controversies between a foreign investor and the Ecuadorean State, which had been pursued and exhausted through administrative routes, shall try to be resolved in an amicable manner, with direct dialogue within a period of sixty (60) days. If a direct solution between the parties is not arrived at, there shall be a compulsory mediation instance within the three (3) following months from the inception of the formal beginning of direct negotiations.

If after this mediation instance the controversy still exists, the conflict may be subjected to national or international arbitration, in accordance to the valid treaties, of which Ecuador is a party. The decisions of this Arbitration Tribunal shall be of law, the applicable legislature shall be the Ecuadorean one, and the binding judgment in arbitration, shall be definitive and binding to all parties.

If after six (6) months the administrative route has been exhausted, the parties have not arrived to an amicable agreement, neither have subjected to arbitral jurisdiction for the solution of their conflicts, the controversy shall be brought to the attention of the Ordinary National Justice. Tax issues shall not be subject of arbitration.

Art. 28.- The application of incentives.- The Technical Secretary Office of the Council for Sector Production /Productive Sector Council, shall coordinate with the pertinent control bodies, the appropriate execution of the benefits recognised for each investment project, not being able to demand from the investors other requisites besides from the ones established in this legislation.

Art. 29.- Monitoring.- The monitoring of the duties taken on by the investors, be them legal or contractual, shall be in charge of Secretary Office of the Council for Sector Production /Productive Sector Council.

The Internal Revenue Service shall send to the Technical Secretary Office, a quarterly list of the new companies that have applied for the incentives, so that the latter entity shall make an electronic registry with this information.

The Technical Secretary Office, in conjunction with the Internal Revenue Service, may make controls to verify compliance of the criteria that caused the incentive, related to the investment made, be applied. The regulations shall establish the parameters for execution of this monitoring.

If the beneficiary does not comply with what is required, the Technical Secretary Office shall put into knowledge of the Council for Sector Production /Productive Sector Council, a detailed report with respect to the seriousness of the identified non-compliances, which were not fixed, as well as recommending the implementation of the pertinent punishment, depending on the gravity of said non-compliances.

Art. 30.- Special Ineligibilities.- The President of the Republic, the Vice president of the Republic the Ministers and secretaries of the nation, and the public servants of the governing entity of the production policy, neither directly nor through a third party, even on partnership companies that have direct or indirect participation of its capital assets, as well as those who had had direct or indirect connection in any stage of the process of access to the incentives, or that may have a degree of responsibility in the procedure, and for whose activities or functions, it may be reasonably presumed that they have privileged information of these processes, as well as the spouses of the dignitaries, public official and employees aforementioned, and anyone not up to date with their tax, labour, environmental and Social Security duties.

Chapter II

Infringements of and sanctions for the investors

Art. 31.- Infringements.- The following shall constitute causal of infringements by investors who benefit from the incentives provisioned by this ruling:

- a. Non-compliance on the side of the investors, of making timely contributions or acquisitions to which they have committed themselves, within the planned period of time for the respective investment project;
- b. Total or partial withdrawal of the investment, as long as this implies non-compliance of legal or contractual obligations;

- c. Non-compliance on the investor's side to execute the minimum conditions for the authorised investment within the provided time period for the respective investment project;
- d. Transfer of the investment, without abiding by the requisites and conditions provided for in the regulations.
- e. Deceitful non-compliance of labour regulations, Social Security taxes, or environmental laws of the country, verified by the competent authority;
- f. Judicially proved deceit in the documents or information provided, which served to obtain the incentives for investment;
- g. Obstructing or hindering the verification by the State's entities competent in this matter, or resorting to any means to induce these entities or their public official to err, with the intent of benefiting from the benefits that the State acknowledges;
- h. Bribery or intention of bribery of public officials in charge of control and supervision of the benefits acknowledged by this rulings, upon conviction by the competent judicial authority, without detriment to the penal actions that might ensue; and,
- i. Benefit from the incentives of those who have been forbidden by law.

Art. 32.- Revocation.- - Without detriment to the civil or penal actions that might ensue performing any of the causals provided for in the previous Article, shall generate the revocation of the granted benefits. The revocation provided for in this chapter, shall be decided through a resolution motioned by the Technical Secretary Office of the Council for Sector Production /Productive Sector Council. The investor, upon whom sanctions were imposed, can present an administrative appeal before this Council, following the procedures established in the Statute of the Executive's Judicial and Administrative System.

Art. 33.- If the grounds for revoking are any of the established in literals e, f, g, h, i, of Art. 31, it shall be additionally determined what are the reimbursements of the given incentives, and the

payment of taxes plus the corresponding interest, that would have had to be paid, had there not been access to the tax incentives acknowledged by this rulings, for the time period in which the non-compliance took place; excepting fortuitous circumstances or force majeure, properly documented and accepted by the Council for Sector Production /Productive Sector Council. All of the above are without prejudice to the assessment rights of the Tax Administration, in compliance with the law.

TÍTULO IV

Special Economic Development Zones (ZEDE)

Chapter I

The Making up of and the Purpose of Special Economic Development Zones

Art. 34.- The National Government may authorise the establishing of Special Economic Development Zones (ZEDE), as a customs destination, in especially determined spaces within the national territory, for setting up new investment, with the incentives that are detailed in the present norm, which shall be conditioned to the compliance of the specific objective of this Code, in compliance with the parameters set by the regulations and those provisioned for in the Plan of Territorial Order.

Art. 35.- Location.- Special Economic Development Zones (ZEDE) shall be located in especially determined spaces within the national territory, taking into account conditions such as environmental preservation, territoriality, potential of each site, road infrastructure, basic services, connectivity to other parts of the country, amongst others, previously determined by the ruling body in productive development matters, and in coordination with the body in charge of National Planning, and shall be the subject of special treatment in regards to foreign trade, tax and financial reporting.

Art. 36.- Types.- Special Economic Development Zones (ZEDE) may be the following types:

- a. For carrying on activities for transfer and disaggregation of technology and innovation. In these zones all types of ventures and projects for technological development,

electronic innovation, biodiversity, sustainable environmental or energy improvements;

b. For executing operations of industrial diversification, that may be of all types of innovative industrial enterprises, especially directed towards the export of goods with the use of quality employment. In these zones, it is allowed to carry on all types of active perfecting activities like: transformation of, manufacturing of (including assembly, and adaptation to other merchandise) and repair of merchandise, (including its restoration or conversion) especially of all types of goods for export and the strategic substitution of imports; and;

c. For developing logistical services, such as: storing of cargo with consolidation and deconsolidation, classification, labelling, packaging, repackaging, refrigeration, inventory management, dry ports management or inside cargo terminals, coordination of national and international distribution of merchandise, as well as maintenance or repair of vessels, airplanes and land transportation vehicles for the transport of merchandise. Preferably these type of zones shall be set up inside of or adjacent to seaports and airports, or near border zones. Exclusive storage of cargo or stocking shall not be authorised within this type of zones. The logistical services shall be directed to promote the physical facilities of seaports, airports and border crossings, that shall serve to further the positive net value of foreign trade and local supplying under allowed parameters, in compliance with the requirements established on the Regulations of this Code.

The goods that shall be part of these processes, shall serve to diversify the supply of exports; however, its nationalization shall be authorised for consumption within the country in those percentages of production that the ruling of the present Code determines. These limits shall not apply to the goods obtained from the processes of transfer and innovation of technology.

Private individuals or legal entities that establish themselves in the special zones, may operate exclusively in one of the aforementioned ways, or may diversify their operations within the same territory, as long as the variations of activities befit the expedition of productive linking of the economic

sector that is taking place in the authorised zone, and that the ZEDE has, within its constituent instrument, the authorisation to operate under the typology that corresponds to the activity that may be installed.

Art. 37.- Customs Controls.- The people and transportation means that go in or out of a ZEDE, its boundaries, and the entry and exit points of the ZEDE, shall be under vigilance of Customs Administration. Custom control may be carried out before entering, during the stay of the merchandise in the zone, or after its exit.

The procedures for control that shall be established Customs Administration, shall not constitute an obstacle for the flow of productive processes taking place in the ZEDE, and shall be simplified for the entering and exiting of the merchandises from these territories.

Art. 38.- Administrative Statute for Settlement.- The Special Economic Development Zones (ZEDE), shall be created through authorization from the Council for Sector Production /Productive Sector Council, taking into account the potential economic growth of the territories where the especial zones are set up, the objectives, plans and strategies of the National Development Plan, the Productive Transformation Agenda, and any other regional plans, based on the requirements and formalities that shall be determined in the regulations of this code.

Authorization shall be granted for a period of twenty (20) years, which can be extended, subject to the evaluation established in the Regulations, and may only be revoked before the time period convened upon by having verified any infringements that as a result revoke the authorization.

Art. 39.- Public Jurisdiction.- The following shall be the attributions of Council for Sector Production /Productive Sector Council, for the establishment of ZEDE:

- a. Dictate the general policies for functioning and supervision of the ZEDE;
- b. Authorise the set up of Special Economic Development Zones (ZEDE) that comply with the provided legal requirements;
- c. Qualify and authorise administrators and operators of ZEDE;

d. Resolve the queries that might arise with respect to the application of this code in regards to the Special Economic Development Zones;

e. Impose sanctions set in this regulation to those administrators and operators that do not comply with the convened upon dispositions for its functioning;

f. Provide the general and specific requirements, including those of national origin and value added, so that transformed manufactured goods (including assembly, joining and adaptations to other merchandise) or repaired (including its restoration or conditioning) within Special Economic Development Zones (ZEDE) may be nationalised, with or without total payment or partial payment of duties. To the effect of establishing this procedure, the customs value of the merchandise that may be nationalised shall be taken into account, having to subtract the national added value and/or the value of national or nationalised goods that have been incorporated to the production process of the good to be nationalised, the compliance to the regulations on origin of national products for export, amongst other, should it be appropriate. These procedures will be exclusively for the calculation of tariff rights. To the effect of payment and collection of Value Added Tax (VAT), the IRS's established procedures shall be followed;

g. Verify, in coordination with the environmental entity in charge, that the management in the Special Economic Development Zones (ZEDE) are not creating environmental impacts that gravely affect the region;

h. The rest that the Regulation of this Code establishes.

To carry on supervision and operative controls of the running and compliance with the objectives of the Special Economic Development Zones (ZEDE), the Ministry responsible for industrial fostering, shall provide an executive authority of the policies that may be established by the Council for Sector Production /Productive Sector Council, in relation to the ZEDE.

Art. 40.- Request for ZEDE.- To set up a Special Economic Development Zone (ZEDE),

the interested party may ask, under the initiative of public sector institutions or of decentralised, autonomous governments.

Investment used for the growth in these zones can be public, private, or mixed. Also, the managing company as well as the operators that set up in said zones can be private individuals or legal entities, private, public, mixed, national, or foreign.

In order to evaluate the convenience of authorising the set up of a Special Economic Development Zones (ZEDE), a general description shall be required, which will include the requisites established in the rules of this norm.

A ZEDE shall not be created in spaces that are part of the National System for Protected Areas, or of National Forestry Heritage, or that have been declared Protected Woods or Protected Vegetation or that are fragile ecosystems.

In the license to operate the ZEDE, there may be an itemization of the incentives that apply to each particular case, both for managers as well as for operators.

Chapter II

Managers and Operators of the Special Economic Development Zones (ZEDE)

Art. 41.- Managers of ZEDE.- The legal entities private, public, or of mixed economy, national or foreign, that may make a request for it, may constitute themselves in managers of Special Economic Development Zones (ZEDE), as long as they obtain permission to do one of the activities described in Art. 36 of the present Code. Its function shall be the growth, management and operational control of the ZEDE, in congruence with the duties of the by-laws of this Code and the ones that shall be determined by the Productive Sector Council.

The responsibilities and control processes with which the managers shall comply, shall be established by the Productive Sector Council

Art. 42.- Operators of ZEDE.- Operators of ZEDE are individuals or legal entities, public, private or mixed, national or foreign proposed by the ZEDE's managing company and authorised by the Productive Sector Council, which may perform authorised activities in these zones of national territory, for which boundaries have been set.

Operators of ZEDE may exclusively perform the activities for which they were authorised in their corresponding qualification, under the terms of this Code, its by-laws, in the befitting customs legislation and the norm passed by the Productive Sector Council.

In the same manner, they shall ascertain that their activities comply with the parameters that the labour and environmental norm, national and international, through licensed environmental processes if needed, technology transfers and local personnel training.

Art. 43.- Prohibited Links.- The managers shall not have simultaneously the license of operator, neither shall they have any economic or company links with the rest of ZEDE's operators, under penalty of revocation.

Art. 44.- Support Services.- Any individuals or legal entities, public or private, that want to set up a Special Economic Development Zones (ZEDE), to provide support services, or support to the operators set up in the authorised zone, shall present the request to the respective management company, which will approve or deny the request upon a previous favourable ruling from the Technical-Operational Unit, responsible for exercising supervision and control of the ZEDE.

The companies that want to set up support services for the operators of Special Economic Development Zones (ZEDE) shall comply with all security and control regulations that are a by-product of this Code, its regulations, as well as the directives that Sector Productive Council shall issue. In the case of private financial institutions, national or foreign, they shall obtain authorisation from the Superintendent of Banks, which shall set the requirements with which these companies must abide.

Art. 45.- Responsibilities- The operators and managers of Special Economic Development Zones (ZEDE), with regards to income, possession, maintenance and final destination of all merchandise introduced or processed within the authorised zones, shall have solidarity responsibility and shall legally be held accountable for the adequate and legal use and destination of said merchandise. The established solidarity responsibility applies to unmet Customs Tax duties, and the monetary punishments

imposed for infractions made, according to this Code and its Applicable Regulations.

Art. 46.- Customs and Foreign Trade Treatment. Because it is an exceptional judicial structure, Special Economic Development Zones (ZEDE) both for managers as well as for operators, shall receive the Customs treatment that the legal Customs Regime grants them, exempting duty payments on foreign merchandise that enter said zones for the performance of the authorised processes. The procedures for entry and exit of ZEDE's merchandise, as well as the usage of waste, shrinkage and surplus, their possible nationalisation, re-export or destruction of deteriorated merchandise, shall be regulated by the rules of this Code.

To the effect of operations, this Code shall establish the parameters in which the entry of merchandise to Special Economic Development Zones (ZEDE), shall be considered an export, and also for when goods coming from Special Economic Development Zones (ZEDE) enter the national customs territory, shall be considered an import

Art. 47.- Entry to another regime.- Capital assets entering the country through a temporary or free zone of foreign trade may finish its regime with the re-export of the assets to a Special Economic Development Zones (ZEDE), as long as the operator has requested its respective entry for use in authorised activities.

Art. 48.- Valuation of Capital Assets.- The assets of foreign origin used in an authorised zone, for nationalization effects, shall be valued considering the state in which they are at the moment of registering documents for the Statement of Use.

Chapter III

Infringements and Sanctions for Special Economic Development Zones (ZEDE)

Art. 49.- Infringements.- Infringements for non-compliance of provisions for Special Economic Development Zones (ZEDE) shall be classified as minor or serious. The punishments provided for shall be applied by the controlling Technical Operative Unit of special zones or by the Productive Sector Council in accordance to their competence and considering the gravity and consequences of

the deed or omission done, without prejudice of civil and penal actions that take place.

Art. 50.- Minor Infringements.- The following are considered minor infringements punished with written reprimand or fine.

- a. The non-compliance of duties of the manager, which shall be in the authorisation and that do not constitute serious infringements;
- b. When the Operator does not inform the Manager of entry, use, and exit of goods and products to be manufactured, transformed, processed, commercialised, or used, as well as the use of labour and sale of currency that are made in the country, within the time period provided for in the Regulations.
- c. For not presenting the Internal Regulations for the operation of each Special Economic Development Zones (ZEDE) within the stipulated time period;
- d. When the Administrators do not keep the following information through organized, computerised systems, on line with the Internal Revenue System, the Ecuadorean Customs Service, and the Special Economic Development Zones (ZEDE):
 1. Entry and exit of merchandise of Special Economic Development Zones (ZEDE) with origin and destination identification;
 2. The charts of contents of raw materials that shall be converted into intermediate or final products in the Special Economic Development Zones (ZEDE),
 3. The partial processing operations to which the Norm refers;
 4. The authorised change of regime;
 5. The inventories of its Operators;
 6. The tax-free transactions made; and
 7. Sales made within de territory of Special Economic Development Zones (ZEDE), with the buyers' identification.

e. Not compliance of established procedures for entry and exit of merchandise of the Special Economic Development Zones (ZEDE);

f. For non-compliance of the chronograms regarding work, equipment and investment, which shall be carried out in the times determined in the documents that were the base for qualifying a Special Economic Development Zones' (ZEDE's) Operator, or for the granting of authorisation as Manager;

g. The non-compliance of any other regulation not provided for as a serious infringement.

Art. 51.- Serious Infringements.- Serious infringements shall be those behaviors that imply a performance inexcusably lacking in thoroughness and carefulness, or those in which there is a relapsing of a minor infringement.

The following are serious infringements punished with interruption, cancellation of qualification as operator, or the revocation of authorisation:

- a. Non-compliance of any of the objectives indicated in the authorization for Special Economic Development Zones (ZEDE), within the stipulated time period;
- b. The non-compliance with the prohibition of non linkage provided for Managers and Operators;
- c. When the Managers do not verify and control the activities of their Operators, using the established legal mechanisms in this Code, its Regulation and the other norms applicable, informing of infringements to the pertinent bodies, such as to adopt pertinent administrative and legal measures;
- d. Refusal to, admit entry to, verification of, or audits of Special Economic Development Zones (ZEDE) by its appropriate administrative bodies, or by the agreements for each case, or obstruction of these practises;
- e. The entry into Special Economic Development Zones (ZEDE) of merchandises such as: arms, explosives and ammunition, illegal drugs of any nature, or products that are against health, environment, and public safety, or morals, that do not have express authorisation from

the technical Operative Unit of the Special Economic Development Zones (ZEDE), without prejudice to penal or civil actions that these infringements imply; and,

- f. When the activities that Operators make cause environmental damage or incur in non-compliance of the National Plan for Environmental Handling, in case they occur;

The carrying out of any of these causal's, as well as the repetition of a minor infringement, shall be monetarily punished or by stoppage of the Manager or Operator up to three (3) months. In case of relapse, they shall be punished with the cancellation of the Operator authorisation, or by revoking said authorisation whether it is a Manager or Operator.

To application of the penalties for the above-described infringements shall not be in detriment of any other legal responsibilities.

Art. 52.- Sanctions. - The Managers and Operators of Special Economic Development Zones (ZEDE), shall be sanctioned for infringements of this Chapter depending on the seriousness of each case, with:
For Minor Infringements:

- a. Written reprimand; and,
- b. Fine shall be of a minimum of ten (10) and a maximum of one hundred (100) Unified Basic Salaries for workers.

For Serious Infringements:

- a. Fine shall be of a minimum of fifty (50) and a maximum of two hundred (200) Unified Basic Salaries for workers;
- b. Suspension of authorization granted to carry out its activities, for a time period of up to three (3) months;
- c. Final cancelation of authorisation given as Operator, within Special Economic Development Zones (ZEDE).
- d. Revoking authorisation for Special Economic Development Zones (ZEDE).

In the case of environmental damage, the responsible parties, apart from the established

punishments, are bound to perform the remedial process in accordance with the Environmental Norm in use, and with adherence to Constitutional norms and to the law.

The units may apply the provisioned punishments for Minor Infringements with legal capacity for operative control of Special Economic Development Zones (ZEDE). The Sector Production Councils shall adopt the sanctions provisioned for Serious Infringements. For applying sanctions detailed in this article, the pertinent administrative process shall be set up and whose procedure shall be established the Regulations of this Code. Suspension of authorisation, cancellation, or revoking, entail the suspension or termination of the tax incentives granted, for the same time period as the duration of the sanction.



BOOK III

ENTREPRENEURIAL DEVELOPMENT OF MICRO, SMALL, AND MID-SIZE
BUSINESSES, AND THE DEMOCRATIZATION OF PRODUCTION.

Book III

ENTREPRENEURIAL DEVELOPMENT OF MICRO, SMALL, AND MID-SIZE BUSINESSES, AND THE DEMOCRATIZATION OF PRODUCTION.

TITLE I

Fostering the micro, small and mid-size businesses

Chapter I

Fostering the micro, small and mid-size businesses (MIPYMES)

Art. 53.- Definition and classification of (MIPYMES).- Micro, small and mid-size businesses are any private citizen or legal entity, that as a productive unit, does a production, commercial and/or services activity and that abides with the number of workers and gross value of annual sales, determined for each category, in conformity of the ranges that may be established in the regulations of this Code. In case of inconformity of the variables applied, gross value of annual sales shall prevail over number of workers for the purpose of determining the category of a business. Artisans that qualify the criteria of Micro, small and mid-size businesses, may receive the benefits of this code, upon previous compliance of the requirement and conditions in the Code.

Chapter II

The Bodies Regulating MIPYMES

Art. 54.- Institutional and Competence.- The Productive Sector Council shall coordinate policies for fostering and growth of the micro, small and mid-size businesses, with the sector Ministries in the scope of their competences. For determining cross policies of MIPYMES, the Productive Sector Council shall have the following rights and duties:

a. Approve the policies, plans, programmes and projects recommended by the executing organ, as well as monitor and evaluate the management of the bodies in charge of execution, taking into account the individual cultural, social and environmental peculiarities, and taking the

appropriate measures for financial and technical support;

- b. Formulate, prioritize and coordinate actions for the sustainability of the MIPYMES, as well as establish the annual budget for carrying out all of its prioritized programmes and plans;
- c. Authorize the creation of, and supervise the growth of new infrastructure specialized in this subject, like: development centres MIPYMES, technological research and development, enterprise stimulators, transfer nodes or laboratories, required to foster, facilitate and give impulse to productive development of these businesses, in accord with the laws pertinent to each sector;
- d. Coordinate with the public and private specialized sectors, creation of programmes for training, information, technical support and commercial promotion, geared towards promoting the participation of MIPYMES in international commerce;
- e. Propitiate participation of universities and local education centres, national and international, in the development of entrepreneurial and production programmes linked to the productive sectors, with the purpose of strengthening MIPYMES;
- f. Promote the application of principles and criteria needed for the Quality certification of MIPYMES, determined by the authority competent in this subject;
- g. Give impulse to implementation of programmes for clean production and for social responsibility by MIPYMES;
- h. Foster application of information tools and organizational development, that support the links between public and private institutions that participate in the entrepreneurial growth of MIPYMES;
- i. Coordinate with public and private institutions, linked with entrepreneurial financing the actions to facilitate access of MIPYMES to credit;
- j. The rest established in the law;

Chapter III

Mechanisms for productive development

Art. 55.- Public institutions are bound to apply the principle of inclusion in their purchases. To foster MIPYMES, the National Institute of Public Acquisitions shall foster and monitor that all the contracting entities comply with the following:

- a. Establish criteria for inclusion of MIPYMES in the procedures and in the proportions established by National System for Public Contracting;
- b. Grant MIPYMES all the support so that they shall have timely and adequate information about the processes in which they can take part;
- c. Strive towards simplification of the paperwork required to take part as purveyors of the State; and,
- d. Define within the Public Sector annual plan of contracts, the goods, services, and work that can be provided and made by MIPYMES.

The National Institute for Public Acquisitions shall keep an up-to-date registry of purchases made to the popular and supportive economy of the MIPYMES, and shall make it known to the public such benefits, as well as future plans for public purchases to be made by the State and its Institutions. To benefit parts involved in the popular, supportive and community economy, the same duties and technical parameters for inclusive acquisitions shall apply.

Chapter IV

Of the Registry for MIPYMES and Simplification of Procedure

Art. 56.- Registry for MIPYMES.- The Registry for MIPYMES is created as a database of the Ministry that heads the Sector Productive Council, which shall manage it and for which purpose all the Ministries of the sectors shall be under obligation to provide timely information needed for the database creation and its continual update.

This registry shall help identify and categorize MIPYMES as producers of goods or services, according to concepts, parameters, and criteria defined in this Code. It shall also make a database with information from the sector and about MIPYMES that participate in public programs for production and support of their growth, or that benefit from the incentives of this Code, so that the pertinent authority shall direct and define public policies, as well as adequately assist and advice MIPYMES.

Solely for the purpose of monitoring public policies that are of this sector, the Ministry managing the Registry may ask for information related to the categorization of the MIPYMES in the database, in terms to be determined in the Regulations.

TITLE II

Democratization of the Productive Transformation and the Access to the Means for production

Art. 57.- Productive Democratization.- In accordance with the Constitution, Production Democratization shall be understood as the policies, mechanisms, and instruments that generate the de-centralization of productive means and resources, and aid in accessing finance, capital, and technology for carrying out their productive activities.

The State shall protect family and community agriculture as the guarantors of Food Sovereignty, as well as protect craftsmanship, the urban informal sector, and the micro, small, and mid-size businesses, establishing policies that shall regulate its interchanges with the private sector.

The State shall promote specific policies to eradicate inequality and discrimination of women producers, in regards to access to the factors of production.

Art. 58.- Implementation of Processes for the Democratization of Productive Transformation.

Productive Sector Councils shall make and control effective implementation of the policy for the Democratization of Productive Transformation, through the design and application of specific programmes that allow access to the means of production, as are land and capital, amongst others.

Art. 59.- Objectives of Democratization.- The policy for the Democratization of Productive Transformation, shall have the following objectives:

- a. Foster and expedite for Ecuadorean nationals access to proprietorship and transformation of the productive means;
- b. Expedite the access of citizens to shares of State businesses, by designing and putting into effect the tools that allow this;
- c. Aid the growth of MYPES and productive groups and entities, through innovation for developing new products, markets, and productive processes;
- d. Foster compliance with the business ethics that the Government promotes, by creating a publicly acknowledged Seal of Operations, that shall give incentives and encouragement to those businesses that work with respect towards the environment; show observance of labour and Social Security duties owed to its workers and employees; and to the community, by timely payment of their tributary obligations according to applicable law;
- e. Support the growth of innovative processes of Ecuadorean businesses by designing tools that shall allow businesses to be more efficient and attractive, both in national and international markets;
- f. Give incentives and attract investment that shall generate local and territorial growth, larger chains of production with equality, strategic insertion in international markets, quality employment, technological innovation and democratization of capital;
- g. Territorialize public policies;
- h. Promote decentralization of productive means and resources;
- i. Implement measures directed towards family farmers, women, communities, peoples and nationalities, to eradicate inequality and discrimination;
- j. Provide incentives for redistribution and elimination of inequality of access to the means

of production, for the discriminated sectors;

- k. Promote specific measures to eradicate inequality and discrimination from access to the means of production, towards women producers;
- l. Foster development and dissemination of knowledge and technologies directed to production processes;
- m. Foster national production in all sectors, especially to guarantee Sovereign Nourishment and Energy Sovereignty that generate employment and added value; and
- n. Develop financial public services for democratization of credit, to make access to financing, capital and technology easy, for the carrying on of productive activities of groups traditionally excluded from said financial services.

The initiatives that these mechanisms seek to foster shall be those that do productive transformation and add value. The Regulations of this Code shall establish the technical parameters and requirements that shall be complied with by the persons and business involved in these processes.

Art. 60.- Incentives for Opening Business' Capital.- For compliance with the mentioned objectives above, the Directive Body in Productive Development Policy matters, shall give impulse and control, in coordination with the Internal Revenue System (SRI), the governing Ministry of Labour policy, the Superintendent of Companies, the Superintendent of Banks and Insurance Companies, amongst other Government entities, shall implement the following mechanisms:

- a. Diversification of shareholding of exclusive State-owned businesses or in which it owns part of the social capital, in favour of the workers of said businesses. The purchase of share packages may be made through the National System of Stock Markets or other mechanisms recognised in the law. This mechanism does not apply to public businesses.
- b. The State may temporarily intervene, in the capital structure of production transformation, private or mixed, for financing workers in the

purchase of shares with credits and preferential financial programmes; and,

- c. Give impulse to opening up of capital of private companies, in favour of the workers of said companies, through approval of fiscal and financial incentives that are created in this Code.

The Regulations of this Code shall establish the parameters that the companies and workers that participate in the processes of opening up of capital shall comply with, especially in regards to the mechanisms that limit any link between the actors and any action that simulates the massification of the business capital. Equally, special faculties shall be granted to the competent authorities, so as to guarantee the transparent diffusion of these processes, to society in general, and to guarantee the proper evaluation of the achieved objectives.

Chapter I

Of Land

Art. 61.- Access to Land and its Integral Fomentation.- The State, through its appropriate governmental bodies, shall foster and make easy the access to land to rural communities and families lacking thereof, granting them preferences in the redistribution processes, through mechanisms that provide Property Titles, transfer of State-owned property, mediation for the sale/purchase of land in the market, reversion, or other mechanisms established in the Constitution and the Law. To guarantee that these actions contribute in productive improvement and access to markets, the following shall be done:

- a. Boost alternative ways of commercialization so that the supply of local and regional markets is guaranteed, while improving productive rural family income;
- b. Supporting Food Sovereignty of the country, through fostering food production for national use, as well as productivity and manufacturing goods that favour proper nutrition to Ecuadorean families, especially its children; and,
- c. Promote productive practises that assure sustainable land preservation and handling, especially of its fertile layer, so as to prevent its degradation, in particular that provoked by contamination and erosion.

The resources for these programmes shall be assigned yearly from the State National Budget.

Chapter II

Financing and Capital

Art. 62.- Access to Public Banking.- The Productive Sector Council shall determine and watch over access of all productive sectors to public bank financing; establish the guidelines and incentives to support access to private financing, in particular for those actors of the economic social supportive system, from micro, small, and mid-sized businesses, and shall determine the ways to boost the deepening of the stock market, to foster access for all involved in production, and try to reduce the costs of such financial intermediation.

The competent authority in matters of public financing may establish special credit programmes with the participation of the private financial System.

Art. 63.- Registration.- Public and private financial entities must create and keep a registry of the operations of the businesses qualified as MYPYMES and shall periodically report to the executing entities of the policies of the MYPYMES.

Art. 64.- Guarantees.- The regulating financial authority shall establish a special guarantees system for public and private financing of MYPYMES and for initiatives for risk capital, public as well as private.

Art. 65.- National Guarantees Fund.- The National Guarantees Fund shall be created to facilitate access of MYPYMES to finance their operations. For financial purposes, the guarantees that this fund backs shall be considered as self-liquidating and whose coverage with respect to the guaranteed credit shall be one for one. The Fund shall be part of the System of Credit Guarantees of Ecuador, under regulation of the Superintendent of Banks and Insurance. The operations of this Fund shall be determined by the Regulations.

Art. 66.- Norms for MYPYMES.- The regulating authority of the stock market shall develop a special norm for MYPYMES individuals and associative access to financing through the stock market. The institutional public investors shall determine a facilitating and special norm that allows the

purchase of securities generated by MYPYMES.

Art. 67.- Other forms of financing.- The pertinent body for Fostering and regulation of popular micro-finances shall establish the mechanisms for boosting the financing of the micro and small businesses in all national territory, but mostly in the regions that have less financial coverage, and to improve the access to and efficiency of specialized technologies of the private operators of the system.

The national government shall implement a programme that allows MYPYMES of these types, necessary for innovation and productive transformation, as well as a whole programme for entrepreneurship for pre-investment and investment cycle.

Art. 68.- Credit for the opening of capital structure and investment.- Private businesses that require financing to develop new investment and that also may want to carry out a programme of opening their capital structure under the terms of this regulation, may benefit from flexible credit programmes of the national government for the massification of these processes, with preferential interest rates and long-term credit.

TITLE III

Of Equal territorial Development

Art. 69.- Territorial Priorization.- The Productive Transformation shall seek to dynamize all national territories; however, it shall give priority investment in productive development in Economically Depressed Zones, taking into account other elements such as: high indexes of unsatisfied basic needs, amongst others, that shall be determined jointly with the National Planning Secretary's Office, the Productive Sector Council and the Autonomous Decentralised Governments. These entities shall evaluate and monitor that the policy is complied with.

Art. 70.- National Planning Secretary's Office, the Productive Sector Council, and Autonomous Decentralised Governments may define policies to drive mechanisms for promoting endogenous economic development in the territories, and for integration into national and international markets.



BOOK IV

FOREIGN TRADE, REGULATING ENTITIES AND INSTRUMENTS.

BOOK IV**FOREIGN TRADE, REGULATING ENTITIES AND INSTRUMENTS****TITLE I****Intentionality in Foreign Trade Matters**

Art. 71.- Institutionalise.-The body that shall approve national public policy in foreign trade matters, shall be a collegial entity of a public inter-sector type, in charge of the regulation of all matters and processes linked to this subject, which shall be called Committee for Foreign Trade (COMEX), and that shall be made up of designated or delegated persons from the following institutions:

- a. The Ministry directing Foreign policy;
- b. The Ministry directing agricultural policy;
- c. The Ministry directing industrial policy;
- d. The Ministry in charge of coordinating economic development;
- e. The Ministry in charge of coordinating economic policy;
- f. The Ministry in charge of national financing;
- g. National Planning Body;
- h. The Ministry in charge of coordinating strategic sectors;
- i. IRS;
- j. The National Customs Authority (SNA);
- k. The rest of institutions that the President of the Republic shall determine through Executive Decree.

The delegates should have at least the rank of Under Secretary.

The Committee shall function under established norms for professional associations of the Executive, as well as the following provisions:

1. The Committee for Foreign Trade shall be presided by the Ministry that the Executive shall determine, and this shall also work as the Technical Secretary's Office; and,
2. Technical Secretary's Office of the Committee for Foreign Trade shall have the needed technical areas to design public policy and foreign trade policy, as well as its evaluation and monitoring.

Art. 72.- Attributions.- Duties and attributions of the governing body in trade matters shall be the following:

- a. Make and approve general and sector policies and strategies in foreign trade matters, fostering and promotion of exports, as well as designation of executive bodies;
- b. Give prior opinion for beginning negotiations of international agreements and treaties in foreign trade matters and economic integration, as well as the strategies and alignments for negotiations. Within the framework of commercial negotiations, the State might give preferential tax or tariffs for the entry of products that are in its commercial interest, with special emphasis to environmentally responsible goods;
- c. Create, modify and abolish tariffs;
- d. Review non tariff rates, different from customs ones, linked to foreign trade processes;
- e. Regulate, facilitate or restrict the export, import, circulation, and transit of non-national or nationalized merchandise, in the cases provided by this Code and in international agreements, duly ratified by the Ecuadorean State;
- f. Issue norms over registries, Authorisations, previous document control, licenses, and procedures for import and export, different from those of customs, general and sector, including the requisites that shall be abided by, different from customs processes;
- g. Approve and publish the nomenclature for classifying and describing merchandise for import and export;

- h. Establish international commercial negotiations parameters in matters of origin;
- i. Adopt the necessary measures for administrative efficiency and simplification in foreign trade matters, different from customs processes;
- j. Adopt norms and necessary measures to counteract disloyal international trade practises that affect national production, export, or in general the Country's commercial interests;
- k. Be aware of the investigative authority reports and adopt commercial protections according to national and international norms in use, in the face of internationally disloyal practices or the increment of imports that may cause or threaten national production;
- l. Approve import contingencies or restrictive measures for foreign trade operations, when commercial conditions, harm to local industry, or the economic circumstances of the country, or the countries economic circumstances so require;
- m. Resolve jurisdictional conflicts that may be difficult to solve between different public sectors in foreign trade matters;
- n. Promote financial assistance programmes of public banking for national producers, with flexible credits that facilitate the implementation of adequate environmental practises for clean and competitive production, and for fostering the export of environmentally responsible goods;
- o. Promote the creation of environmental certification for agricultural and industrial products for the effect of accessing international markets, in coordination with the national environmental authority;
- p. Approve the required norm that is required in foreign trade to foster the trade of environmental responsibility standards;
- q. Defer temporarily, the application of general tariff duties or for specific sectors of the economy, as convenient to national production or the State's economic needs;
- r. Promote environmentally responsible exports and imports; and the rest established in this Code.

Art. 73.- Resolutions.- The norms of general and obligatory compliance that the governing entity in commercial trade approves shall be adopted through Resolutions that shall be published in the Official Registry. The form and effects of the other matters that the Committee approves shall be regulated by the dispositions of this Code, and by international agreements, duly ratified by Ecuador.

Carrying out the decisions adopted by the governing body in commercial policy matters, as well as its control, shall be the responsibility of the competent Ministries and public entities, in accordance with the functions and duties established in the Regulations, as well as the resolutions issued by that same entity. The Technical Secretary Office of COMEX, shall supervise the compliance of its dispositions.

Art. 74.- Coordination.- The ministries and public entities responsible for administering authorisations or procedures previous to import or export of merchandises, in matters of public health, environmental, animal and plant health technical and quality regulations, cultural heritage, illegal drug control and psychotropic substances, and other measures related to commerce, shall execute those functions in accord with the directing body in commercial policy matters. These bodies shall not apply administrative or technical measures related to commerce, which had not previously coordinated with the directing body on commercial policies.

Art. 75.- Investigating Authority.- Is the body determined by the regulations of this Code that shall manage the investigative procedures in matters of defence in foreign trade.

TITLE II

Of Tariff and Non-Tariffs measures for regulating Foreign Trade

Chapter I

Foreign Trade Tariff Measures

Art. 76.- Ways of expressing tariffs.-Tariff rates may be expressed in percentage terms of customs' valuing of merchandise (ad-valorem), in monetary terms of unit measurements (specific), or as a combination of both (mix). Other ways that are in international commercial treaties, duly ratified by Ecuador, may also be acknowledged.

Art. 77.- Type of Custom Duties.- Custom Duties may be adopted under different technical modes, such as:

- a. Fixed duties. When a unique tariff is established for a subentry of customs nomenclature and of foreign trade; or,
- b. Contingent Custom Duties, when a Custom Duties is establish for a certain quantity or value of imported or exported merchandise, and a tariff to imports or exports that exceed such amount.

Other means shall also be recognised that are contemplated in international trade treaties, duly ratified by Ecuador. National Custom Duties shall respect all commitments that Ecuador acquires in international trade agreements that are duly ratified by Ecuador, without prejudice to the right to apply safeguards or of commercial defence that may be applicable, that go over the Custom Duties.

Chapter II

Foreign Trade Non- Custom Duties Measures

Art. 78.- Non- Custom Duties Measures.- The Foreign Trade Committee shall establish Non-Custom Duties regulatory Measures for import and export of merchandise like:

- a. When needed to guarantee a fundamental right recognised by the Constitution of the Republic;
- b. To comply by international treaties or conventions of which Ecuador is part;
- c. To protect the life, people's health and national security;
- d. To guarantee preservation of the environment, biodiversity and animal and plant health;
- e. When measures are needed to be imposed as an answer to restriction of Ecuadorean exports, which were unilateral and unjustified by other countries, in compliance with the provided norms and procedures in international trade agreements, and the orders that the Regulating entity establishes in foreign trade matters;
- f. When temporary measures are required to correct trade balance disequilibrium;
- g. To avoid illicit trafficking of drugs and psychotropic substances; and,
- h. To achieve compliance with rules and laws compatible with international commitments in subjects such as customs control, intellectual property rights, consumer rights defence, quality control, or the commercialisation of products destined to foreign trade, amongst others.

Art. 79.- Besides the provided cases, in the following instances regulatory and restriction of non-custom duties measures may be applied:

- a. To avoid shortage of food products or other products vital to the country, as well as to control price adjustment of this type of products.
- b. To insure national producers with supply of raw materials, as execution of a governmental plan for industrial development.

- c. To protect non-renewable natural resources, national cultural, artistic, historical, or archaeological heritage; and,
- d. In the rest of cases that the governing entity establishes in this matter, for being convenient to commercial and economic policies of Ecuador, according to what is established in duly ratified international agreements.

Art. 80.- Rates.- The rates that shall be applied in order to arrange permits, registries, authorisations, licences, analysis, inspections and other applicable procedures to import and export of merchandise, or in connection with them, different from ordinary custom procedures and services, shall be fixed in proportion to the cost of services rendered, at local or national level.

This way, only the above mentioned rates shall be applied, as well as the requisites and formalities applicable to import and export of merchandise, from the inception by the ruling entity on foreign trade, through the pertinent legal instrument published in the Official Registry.

The required formalities and requisites of these procedures shall be only those strictly needed to reach the objective's purpose.

Art. 81.- Procedures.- The electronic procedures for approval of requests, notifications, and procedures related to foreign trade and custom facilitation, shall be recognized as valid.

The State shall promote the interconnecting electronic system amongst all institutions of the private and public sector that have relation with foreign trade, to expedite and make easy the import and export procedures related to merchandises, and which shall be executed by the National Customs authority, and who shall be in charge of its implementation and development.

Art. 82.- Mechanisms.- Amongst the non-custom duty measures that this norm provides for, the non-custom duty contingencies, import licenses, sanitary and phytosanitary measures, technical regulations, and any other mechanism that is recognised in international agreements duly ratified by Ecuador. Requisites and procedures for application of these measures shall be established in the rules of this code.

Art. 83.- Nomenclature.- For applying non-custom or customs measures for export and import of merchandise as well as for foreign trade statistics, it shall be used the nomenclature that the ruling body in foreign trade matters shall decide, in compliance with the Agreement over the Harmonised System for designation and merchandise codification (Harmonised System) as well as any other recognised system duly ratified in international agreements.

The ruling body may create additional or supplementary codes for application of specific trade measures, with respect to the products that cannot be totally or partially classified in the nomenclature in use.

Chapter III

Certification of the origin of merchandises

Art. 84.- Norms of Origin.- The norms governing the origin of merchandise shall be understood as the technical parameters established with the purpose of determining the customs territory or region of a product. The origin of merchandise may be national, if only one country is considered o, or regional, if is more than one country.

To benefit from tariff preferences, contingencies, special custom regimes, and other specific commercial measures where it is required to establish commercial origin, merchandise shall be subject to compliance by an origin of merchandise norm.

Art. 85.- Certification of origin.- It shall correspond to the governing entity that designs this code to regulate and administrate the certification of origin of national merchandise. Administration of the certification may be done directly or through public or private entities enabled to the effect, and the competent authority may act by appointed or by petition of the national or foreign interested party, in the investigation of questions about the origin of a product exported from Ecuador.

To this effect, the competent authority shall also certify to the origin of merchandise subject to active perfecting that takes place in a ZEDE; that abide by the established norms for recognition of origin of the processed product; or in conformity with applicable international agreements, for its export as well as for its entry to national customs territory.

Art. 86. - Verification of origin.- National Customs authority shall be in charge of control and verification of compliance of the rules of origin of imported merchandise when it pertain to foreign origin goods, independently of the customs regime from where they are imported. To this effect, it may make use of all lawful attributes and international agreements for the control of imported goods, including verification in the factory of the production processes of imported goods.

Art. 87. - Discrepancies about origin. - When doubts exist about the authenticity of certification of compliance with applicable origin norms, or when the certificate of origin is not presented, has errors, or is incomplete for nationalisation of foreign origin merchandise, the customs administration may accept a guarantee for the corresponding amount of the tariff, rights, and taxes, according to applicable regulations.

TITLE III

Commercial Defence Measures

Chapter I

Art. 88.- Trade Defence.- The State shall give promote transparency and efficiency in international markets and foster equality of conditions and opportunities, for which effect, in agreement with this norm, as well as with the respective international instruments, shall adopt trade measures for:

- a. Prevention or remediation of damage or threat of damage to national production, derived from disloyal practises of dumping and subsidies;
- b. Restrict or regulate imports of similar or directly competitive products that add significantly to and are performed in conditions that cause or threaten to cause grave damage to national producers;
- c. Answer in kind to commercial, administrative, monetary, or financial measures adopted by a third country, that affect the rights and commercial interests of Ecuador, as long as they may be considered incompatible or unjustified in light of international agreements, or annul or undermine advantages derived from international trade agreements;
- d. Limit imports or exports of products because of social needs, stability of internal prices, or protection of national production and national consumers;
- e. Restrict import of products to protect the balance of trade payments; and,
- f. Counteract any negative effects to national production, as provided in international agreements duly ratified by Ecuador.

Through international trade agreements, the application of these measures may be limited, or other specific mechanisms for commercial defence may be established, like origin of goods.

Within the trade defence measures that the governing entity of economic policy may adopt, the following are included: antidumping measures, compensation rights, safeguard measures, and

any other mechanism provided for in international agreements duly ratified by Ecuador.

The requisites, procedures, mechanisms for application and execution of commercial defence measures, shall abide by what is determined in the regulations of this Code; including the retrospective application of measures stipulated, after abiding by the formal investigation process detailed in the regulations; as well as determining to which type of products, exceptions, and measures may be applied.

Art. 89.- Rights.- The antidumping and compensatory rights shall remain in use, during the time and amount needed to counteract the harm to national production.

However, those rights shall be eliminated in five years, starting on the date of their inception, as established in the terms of these norms.

In the case of safeguards, these shall be in force for four years and may be extended for four more years, as long as the need to keep them is justified, taking into consideration the compliance to the National Programme for Production Adjustment.

Economic taxes that will be imposed as result of these processes may be less than the antidumping margin or that amount of proven subsidy, as well as that they are enough to discourage the imports resulting from disloyal international commercial practise.

When retroactive payment of these taxes is resolved, customs authority shall determine the procedures for collecting the overcharges established for these cases, in the terms of these regulations.

Art. 90.- Devolution.- The amounts charged for provisional measures of antidumping, compensatory rights, or provisional safeguards, shall be given back if at the end of the investigation it is not determined that the increase in imports has caused or threatened grave harm to any branch of national production.

Art. 91.- Review.- The antidumping, definitive compensatory rights, or safeguards may be periodically reviewed and modified, by party or court appointment, at any time previous to the Investigative Authorities report, independently that

those rights may be subject to an administrative or judicial controversy, national or international.

In any case, resolutions that declare the beginning and end of the review shall be notified to the known interested parties. Interested parties shall have the right of participating.

Chapter II

Art. 92.- Competencies.- In matters of commerce defence, in the face of commercial measures applied by other countries, it shall be the responsibility of the governing entity in commercial matters, to:

- a. Resolve or recommend the necessary commercial policy measures to guarantee respect of the Ecuadorean state rights, according to international commerce norms;
- b. Without prejudice to the attributions of the General Procurator of the Nation, this entity shall decide if a foreign commerce controversy should be submitted to a panel, special group, arbitration tribunal, international tribunal, or any entity of appeal, established in conformity with international agreements;
- c. Adopt appropriate measures compatible with international agreements and treaties, when another country starts internal or international procedures of financial, commercial, currency, or administrative processes, which results may affect production, export, or the commercial interests of Ecuador;
- d. Adopt the necessary measures to ensure compliance of the decisions by entities of commercial resolution, as established in this Code and in pertinent international agreements;
- e. The rest that this norm establishes.

TITLE IV

Export Promotion

Art. 93.- Promotion of exports.- The State shall foster production destined to export, and shall promote them through direct application and general order mechanisms, with no detriment to those stated in the legal norms of government programmes:

- a. Access to tariff preferences or other types of preferences derived from mutually beneficial commercial agreements, to the signing countries, be them regional, bi-lateral, or multilateral, for the goods and services that comply with the applicable origin requisites or that enjoy said benefits;
- b. Right to conditional refund, total or partial, of taxes paid for import of supplies and raw materials incorporated into products that are exported, in compliance of this Code;
- c. Right to make use of special customs regimes, with postponement of payment of tariff rights, import taxes, and tributary charges, of goods destined for export, as established in BOOK V of this Code;
- d. Financial support provided in the general or sector programmes that are established in agreement with the National Development Pro

Art. 94.- Insurance.- The financial body from the public sector, which shall be determined by the Executive, shall establish and manage the mechanism of Credit Insurance for Exports, with the objective of, within the parameters of financial, covering the risk of non-payment of the value of goods or services sold overseas.

Art. 95.- Non-financial promotion of exports.- The Institute for Export Promotion and Foreign Investment will be an entity of the Ministry that directs foreign trade policies and shall be structured and function under its regulations.



BOOK V

SYSTEMIC COMPETITION AND CUSTOMS SIMPLIFICATION.

BOOK V**SYSTEMIC COMPETITION AND CUSTOMS SIMPLIFICATION****TITLE I****Fostering and Promotion of Strategic Sectors Key to Productive Infrastructure**

Art. 96.- Investment in Strategic Sectors.- The State may exceptionally delegate to the private sector and the popular, supportive economy, investment in strategic sectors in the cases established in each sector's laws and therefore in this Code.

Without prejudice to what corresponding sector laws say, national and foreign investors that develop projects in strategic areas determined in the Constitution, and any other judicial resolution, may receive additionally what is provided in this chapter.

Art. 97.- Need for Habilitating Titles.- The investment contract shall not be interpreted as authorisation for development of activities in strategic sectors, in which other specific habilitating titles defined by sector laws, are required, such as contacts, permits, authorisations, concessions, etc. The existing of an investment contract shall not limit regulation and control from the State through its appropriate entities.

Art. 98.- Non-discriminatory Treatment in the Electrical Sector.- In the electrical area, new national private companies projects, shall have the same treatment, mechanism, and guarantee condition and/or payment for purchase of power, as the ones applied to international power transactions, in compliance with Andean Community decisions and norms given by the electrical sector directing entity, after favourable reports from the Ministry of Electricity, and The Ministry of Finance.

Art. 99.- Simplification of Administrative Processes.- In keeping with the objectives of the National System of Public Data Registry, State entities, institutions, in the scope of their competence, shall simplify administrative processes. Within this context, entities, institutions, and bodies, shall implement automated databases, and shall not require certified copies or photocopies

that entities, institutions and bodies have, or that they may legally and operatively have access to.

Public entities and institutions shall try to limit the requirements for certified current copies of public documents that may be obtained through legal or operative means, by interconnecting with the public sector database.

Art. 100.- Exceptions.- As an exception duly decreed by the President of the Republic, when it is necessary and adequate for the collective or general public interest, when there is no technical or economic capacity or when demand for service cannot be covered by public or mixed companies, the State or its institutions may delegate to the private or popular and supportive economy sectors, the management of strategic sectors and the provision of public electricity, roads, sea or airport infrastructure, train or others.

What is decreed in the Constitution shall be guaranteed and forewarned that prices and rates for services shall be just and that State institutions establish their control and regulation.

Delegation forms may be concession, association, strategic alliance, or other lawful contractual forms, taking into account the proceedings for public contracting that the regulation determines, except in the case when it pertains to state property of through countries that are part of the international community, in which case delegation may be made directly.

Art. 101.- Efficiency in Public Services.- The State shall adopt specific measures to support systemic competitiveness, through reduction of transaction costs, elimination of unnecessary procedures, as well as promoting a public culture of quality service. The use of information and telematic services shall be encouraged for obtaining, validating, and exchanging information and other measures for electronic government; to that effect, Central Government entities as well as decentralised autonomous ones, shall establish specific programmes to guarantee permanent in-line services, agile and efficient.

Art. 102.- National Aggregate Value.- The Ministry in charge of industrial policy with the regulating entity for public acquisitions shall develop appropriate control mechanisms to watch

over national aggregate component in acquisition of goods and services, in public purchases, and investments in strategic sectors.

TITLE II**Customs Procedures Simplification Significance to Customs****Chapter I****Fundamental Norms**

Art. 103.- Scope of Use.- This title regulates the legal relationships between persons and legal entities that have, directly or indirectly, activities related to international merchandise traffic. For customs effects, merchandise shall be understood as personal property, of material nature. All that is not expressly provided for in this title, tax Code and other legal norms shall apply.

Art. 104.- Fundamental Principles.- Aside from that established in the Constitution, the following shall be Fundamental Principles of this norm:

- a. Simplifying foreign commerce. - Custom processes shall be quick, simple, expeditious, and electronic, trying to secure the logistic chain so as to boost national competitiveness and productivity;
- b. Customs Control. - In all foreign trade operations, precise controls shall be applied through risk management, to ensure respect of law and order and for tax interests.
- c. Cooperation and exchange of information. - Exchange of information and integration on a national and international level, between private and public entities, shall be aimed for.
- d. Good faith. - Good faith shall be assumed in all customs proceedings;
- e. Publicity. - All dispositions of the National Customs Service shall be public;
- f. Use of good international practice. - The best custom practices shall be applied to reach international standards of service.

Art. 105.- Customs Territory.- It is the national territory in which the dispositions of this code shall be applied, and its primary and secondary zones.

The custom borders coincide with national borders provided in this Code.

Art. 106.- Custom Zones.- For customs administration, customs territory zones shall be divided in the following zones, corresponding to each Customs district:

- a. Primary. - Made up by the area within sea and airports, custom areas and habilitated premises within land borders, as well as other places that Customs management shall designate, where shall take place loading, unloading, and movement of merchandise entering from outside or with foreign destination.
- b. Secondary. - That shall comprise the rest of national territory, including territorial waters and air space.

Chapter II**Custom Tax Obligations**

Art. 107.- Custom Tax Obligations.- The customs tax obligations is the personal law link between the state and the people who operate international merchandise traffic, therefore they are under customs authority to present their respective taxes, when the act is verified, and the compliance with the rest of formal duties.

Art. 108.- Taxes on Foreign Trade.- They are:

- a. Tariff rights;
- b. The established taxes on ordinary and organic law, and those activities that have a relationship with the entry and exit of merchandise; and,
- c. Customs services taxes.

National Customs Service of Ecuador, through resolution, shall create, eliminate, and fix the rates for customs services and regulate their collection. Tariff over charges and the rest of economic taxes that shall apply for national commercial security or those of a similar nature, shall not be considered as taxes in the terms established by this Code, and therefore shall not be regulated by Tributary Law.

Art. 109.- Actions that Generate Customs Tax Duties.- The entry and exit of foreign merchandise from customs territory under control of Customs Authority. With no detriment to the above, there is no generation of customs taxes, even when under the control of customs, merchandise that crosses the national customs territory, in international transit under applicable norms or those that enter customs territory as part of an international merchandise traffic operation, with overseas destination, including transshipment regimes. There is no generation of tax obligations, although there is the obligation to submit to customs controls, with regards to merchandise that arrives unexpectedly, unless the person that has rights to make use of said merchandise expressly states the intention of entering them to national customs territory.

Art. 110.- Tax base.- The tax base of tariffs is the value of the merchandise. The merchandise valuation in Customs shall be the same as its transactional value plus transportation and insurance costs, as determined by customs valuation dispositions. The cost of insurance shall be part of customs value, but the insurance policy shall not be an obligatory document to support customs declaration.

When tax base of tariffs cannot be determined, in conformity of imported merchandise value, it shall be estimated by secondary valuation methods that regulate the value of merchandise in customs.

For calculation of the tax base, the values expressed in foreign currency shall be converted to legal currency used to the exchange rate in use at the moment of customs declaration.

Art. 111.- Subject to Custom Tributary Obligations.- The following are active and passive subjects of customs tax obligations:

- a. Active obligation: The State through national Customs Service
- b. Passive obligation: is who in condition of contributor or responsible party, shall satisfy the respective tax.

A person or legal entity that exports or imports, must register at the national Customs Service, as to the dispositions issued by the Director General. In imports, the contributor is the owner or consignee of the merchandise, and in exports is the consigner.

Art. 112.- Norms and Applicable Taxes.- The applicable norms for customs obligations are the one in use at time of acceptance of the customs declaration.

However, applicable taxes are the ones in use at the date of presentation the customs declaration for the import of merchandise and for exports shall be the ones in use upon entering primary zone

Art. 113.- Customs Tax Obligation Demands.-

- a. In the balance and substitutive import or export declaration, from the date payment is authorised;
- b. In the rates, from asking for service;
- c. In the rest of cases from the next working day of notification of liquidation of balance due, tax rectification, or corresponding administrative action.

Art. 114.- Exemption of Tax Obligations.- Customs tax duties disappear by:

- a. Payment;
- b. Compensation;
- c. Prescription;
- d. Total loss or destruction of merchandise; and,
- e. Legal or administrative seizure of merchandise.

Art. 115.- Payment methods.- The methods to pay customs tax obligations shall be established in the regulations of the Code.

Art. 116.- Deadlines for payments.- Foreign trade tax duties shall be paid in the following time periods:

- a. Two work days after authorisation for payment, of the substituting declaration and liquidation;
- b. On rates, the following working day when tax is due;
- c. In the rest of the cases, within twenty working days after notification of or determination of Customs tax, or its administrative action.

In case of not paying within the deadlines, there shall be generation of interest calculated from due date.

It will be conceded easy payment terms for all foreign trade taxes on the import of capital goods, as per the Tax Code. Authorised self-liquidation of payments, complimentary liquidation as a result of appraisal and tax corrections, shall be enough ground to execute collection through coercive procedure.

On notes of credit given by the National Customs Service, as a consequence of credits in favour of Customs, all taxes on foreign trade and the interest that they generate in accordance to the Regulations of This Code and prescribed by Custom Authority, shall be included. It may be refunded the economical taxes of a commercial nature charged for imports or exports, because of commercial defence adopted by the government. When the National Customs Service, makes refunds for taxes on exports, as established in literal b), Art. 108 of this Code, it shall periodically notify IRS for the respective control.

Art. 117.- Collection.- Collection of money that for any reason belongs to National Customs Service shall be done through entities of the national Financial System. For this, Customs Director may sign special agreements with the national Financial System.

Art. 118.- Coactive action.- The National Customs Service shall exercise a coactive action to collect money owed it for any concept. Tax Code or Civil Procedures Code shall apply depending on the nature of the debt. To execute this action, it shall be enough to pay the liquidation, complimentary liquidation, tax corrections, or administrative action that issues fines.

Art. 119.- Compensation.- Tax debts of customers shall be paid to the National Customs Service, with tax credits, recognised by any central tax administration, as long as they have not expired.

Art. 120.- Prescription.- Administration actions to collect, shall prescribe after five years from their due date. In case of liquidation, complimentary liquidation done by appraisal, the prescription shall be interrupted with a coactive process notification of payment. In the subsequent control, interruption

of payment shall enter into action after notification of tax rectifications, before of the deadline.

The right to demand a refund of money for excess or wrongly collected money, prescribes in five years, from the day of payment verification; prescription shall be suspended from the date of the claim. Prescription of custom matters shall be expressly asked by who might benefit from it and shall be executed by proper law or administrative authority.

Art. 121.- Express Abandonment.- Is the written renunciation of merchandise property done in favour of the State, for which it can be done. Its acceptance by any public official of Customs district, extinguishes custom tax obligation.

Express abandonment does not proceed after assessment of presumed abandonment or law offense.

Art. 122.- Customs.- Tax obligations prescribe when there is total destruction or loss of merchandise, prior to its arrival or when in temporary storage in customs or in any other installations authorised by it, as long as said events are fortuitous or of force majeure, and accepted by Customs.

Without prejudice to the above said, robbery, theft, and subtraction of merchandise do not extinguish custom duties

Art. 123.- Administrative Confiscation.- Confiscation of merchandise proceeds when the authorised public official declares that:

- a. Merchandise left behind, even in primary zones, when the cosignatory, consignee, or owner are not known;
- b. Lost at sea merchandise;
- c. Merchandise that have been the subject of robbery, stealing, subtraction in Customs or in its transport, when the cosignatory, consignee, or owner are not known; and,
- d. Merchandise that has been ordered re-embarked and it did not take place within the deadline; shall not cause a Customs taxes obligation

Art. 124.- Claims and Administrative Resources.- Anyone whose rights as a person may be directly threatened, may present an administrative claim to the Director General or District Directors of the National Customs Service of Ecuador, within twenty days of having been notified of said action.

Claims shall be supported and resolved by Tributary Code, within sixty days of the Plaintiff's presentation of claim.

The District Director of the National Customs Service of Ecuador is the competent authority for this procedure and plaintiffs may ask for review of resolutions in accordance to norms of Tax Code.

Chapter III

Exemptions

Art. 125.- Exemptions.- The following merchandise shall be exempt of all taxes, except those for customs services:

- a. Personal effects that travel with the person;
- b. Household goods and work equipment;
- c. Merchandise sent as humanitarian aid in favour of the State or of private organizations for aid or charity;
- d. The imports of the State, public institutions, companies and entities, including decentralised autonomous governments, associations which own at least 50% of its capital, a public institution, Junta de Beneficencia of Guayaquil and the Society for the Fight Against Cancer (SOLCA). Mixed economy companies are exempt to the percent that corresponds to the public portion.
- e. Donations coming from abroad that go to public or private sector not for profit entities, destined to health, food, technical support, charity, medical assistance, scientific and cultural investigation, as long as they have cooperation agreements with the public sector.
- f. Coffins or vials that have body remains or corpses;

g. Samples without commercial value, to the extent authorized by the National Customs service.

h. Those provided for in Immunity, Diplomatic Privileges and Franchises, which include diplomatic, consular delegations and representations, international organizations and other foreign governmental organizations recognized by Ecuador.

i. The medical equipment, technical help, special tools, raw materials for the elaboration of prosthetics and orthopedics for the use by handicapped people or the law entity in charge of these persons' protection. The vehicles for these ends, within the provisions of the Law for the Disabled.

j. Postal parcels within the limits established by the code and laws and agreements signed by Ecuador.

k. Human fluids, tissues, and organs for medical procedures according to the law;

l. Objects and pieces belonging to the Cultural Heritage of the State, imported or repatriated by the State within the regulations;

m. Merchandise waste under special regimes that shall be destroyed by Customs.

The exemptions provided here shall be given by a public official, excepting literals a), b), c), d), f), g), j), k) and l), which shall not require administrative resolutions and shall be regulated by this Code.

Art. 126.- Return or Re-import of Merchandise.- Overseas total or partial return and re-import of merchandise imported as consumer goods, are free of taxes, with the exception of tariffs for services, as provided by this Code.

Shall there be a return of money in favour of the exporter for merchandise re-imported into the country, as in the case of Drawback, first total payment must be assessed, and a coactive measure can be used for collection.

Art. 127.- Transfer of Control.- Merchandise imported with total or partial tax exemptions, may be subject to Transfer of Control, previous to the

authorization by district director in the following cases:

- a. Free of taxes after 5 years, from the day in which the benefit was given;
- b. Before those five years, previous to monthly payment, taking into account the time remaining from the five years;
- c. Tax-free when the transfer of control is done in favour of entities and persons that have the same benefits.

In the case of transfer of control of exempted merchandise the same conditions shall apply.

Chapter IV

Customs Operations

Art. 128.- Customs Operations.- These and the rest of activities derived thereof shall be established and regulated by this Code and Customs norms.

Art. 129.- Customs Border Crossing.- Entering or exiting of people, merchandise, transportation shall be done only through those places, times, and dates established by Customs.

Any transportation means shall be under control of Customs

Art. 130.- Receiving Transportation Vehicles.- TAll transportation vehicles shall enter to the primary customs zone and shall present electronic or hardcopy required documentation.

Art. 131.- Loading and Unloading.- Merchandise coming from abroad, through any way, shall be described in the Cargo Statement.

Whether because of weight, volume, or type of merchandise it becomes necessary to unload, it may be authorised by the customs official to do so in other places as the ones normally assigned for this.

Export merchandise shall be subject to Customs until such time when the air, naval or land authority gives permission of exit of the transportation vehicle.

Art. 132.- Cargo Units.- Those cargo units that arrive to the country while transporting merchandise as part of international trade practices, shall be under Customs control, but shall not be treated as merchandise, therefore not generating any taxes.

Cargo transport vehicles that will be used for other ends, shall make a Customs declaration and if they intend to stay indefinitely in the country, shall be nationalised; all documentation for such purposes shall be the ones required by Customs.

Art. 133.- Arrival Date.- The Customs arrival date is that on which merchandise gets to the first Customs post.

Art. 134.- Temporary Storage.- Unloaded merchandise shall be passed from the transporter to Customs for temporary storage as prescribed by Customs.

Customs shall have the jurisdiction to authorise the operation of temporary storage, as per the needs of foreign trade.

Art. 135.- Responsibilities for Merchandise Storage.- While in storage, the following responsibilities shall exist, without prejudice to civil or penal responsibilities that might ensue:

- a. Responsibilities for entities in charge of temporary storage or custom storage facilities shall be.
 1. Indemnization to the owner or consignee for loss or damage to their merchandise;
 2. Payment to the State of dues that may have generated merchandise subjected to robbery, stealing and subtraction from entry port to storage facility.
- b. It is the responsibility of the merchandise's owner, cosignatory, or consignee, indemnification for damages caused by said merchandise when they did not expressly disclose the nature or danger of it, to the owner or authorised companies of storage and temporary storage facilities.

Art. 136.- Rights of the Owner, Cosignatory, or Consignee of Merchandise.- Before customs declaration the afore mentioned entities may require from the Customs authority, verification of merchandise to establish its nature and quantity.

Art. 137.- Transfer.- Refers to the customs operation by which merchandise is moved from one customs point to another customs point.

Chapter V

Customs Declaration

Art. 138.- Customs Declaration.- Customs declaration shall be presented according to Customs Director General.

Customs may declare the merchandise release in those cases provided for by the regulations of this code, and when abiding by all dispositions issued by Customs Director General. In these cases, Customs declarations may be presented afterwards.

Exceptions for Customs declarations are imports and exports made exclusively by the Armed Forces and Police for qualifying military materials.

Customs may change, eliminate, or regulate the simplified customs declarations and its application when so needed by trade.

Art. 139.- Release and its Types.- Release is the administrative procedure to which all exiting and entering merchandise shall be subject; this procedure starts with presentation of the Unified Customs Declaration (DAU) and ends with dispatch. Its types and procedures shall be the ones in this Code.

The Customs' Risk profile System shall determine the ways of release applicable to each declaration, based on international norms that the Customs Director shall decide upon. In the case of courier transportation, it shall be normed by Customs regulations.

Art. 140.- Appraisal.- Done by Customs in regards to merchandise and done through electronic, physical, or documentary verification of origin, nature, quantity, value, weight, measurements and tariffs classification.

Art. 141.- Tariffs Classification Consultations.- Any person may consult the Customs Director for a Tariffs classification, when abiding by this Code and Tax law. Its determination shall be binding for the Administration, with respect to the person who asks, and shall be published in the Official Registry.

Art. 142.- Tacit Abandonment.- Shall operate when any of the following takes place. -

- Non-presentation or transmission of the Customs Declaration within the set time period;
- No tax payment of foreign trade, within twenty days of due date, except when facilitation of payments was granted;
- When the period of stay in Customs is over.

In case of incurring in any of the above-mentioned scenarios, the person or his customs agent shall have twenty-five days to remedy said non-compliances, after which the Abandonment state shall be lifted, after paying a fine

Art. 143.- Definitive Abandonment.- The Customs official may declare definitive abandonment when they may fall under:

- If within the twenty five working days stated above, the tacit abandonment status is not remedied;
- Non-appearance of the merchandise's owner or its delegate on the second date for appearance;
- In the case of travelling personal effects or taxable goods detained at International Arrivals site, which have not been retrieved within five days of its entry to the country.

On the same Definitive Abandonment declaration, the initiation process for the public action, adjudication, or destruction of the merchandise shall be asked in accordance to this Code.

Chapter VI

Customs Control

Art. 144.- Customs Control.- This shall apply to entry, stay, transfer, circulation, storage, and exit of merchandise, cargo vehicles, and transportation means in and out of the National territory, including merchandise entering or exiting ZEDE zones, for any reason.

Customs control shall be exercised over persons who intervene in foreign trade operations and those who come in and out of customs territory. Customs control should be carried according to international norms and in the following stages: pre, current, and post control.

To this effect Customs may require from the public sector information on the people who operate in international merchandise trade. There shall be neither secrecy nor discretion that shall apply.

Whenever asked by either Customs or the IRS, custom control may be performed post dispatch. In case recurrent control errors are determined in a customs declaration already accepted, any differences shall go to Customs and will be paid in a supplementary declaration. Complementary declarations shall be paid before tax payments; otherwise the procedure shall be subject to subsequent control. The same conditions shall apply, as long as there is no presumption of wrongdoing, excepting those cases established in this Code.

In every case of amendments to a customs declaration, Customs shall keep records of initially presented or transmitted information, of all changes made as well as the name of the customs official handling this matter.

Art. 145.- Subsequent Control.- Within five years from the date of payment of Custom taxes, Customs may submit to verification customs declarations, as well as all information that any person or legal entity may have in relation with imported merchandise. Risk management systems shall be used, for determining Subsequent Control customs declarations. If determined that the declaration had errors that have a monetary difference in favour of Customs, a procedure shall start for the respective corrections, without prejudice to any other legal actions that might ensue, the payment of taxes, and this shall be sufficient for executing a coactive action. The person may present a substitutive declaration, within five years from the acceptance of the declaration, so as to correct errors made in good faith in a customs declaration, when said declaration implies a larger amount of money for Customs, and as long as it has not issued a tax rectification for the same motive or if subsequent control had not formally begun. A substitutive declaration shall be validated and accepted the same manner as a Customs declaration.

If considered necessary, Customs shall order audits for special regimes, within five years from the date of the customs declaration, to which effect all type of verifications may be made, whether they may be documentary, accounting, or physical.

Customs shall also have the right, through its operative units, to investigate any accusations presented, as well as to make the controls it deems necessary within Customs territory, to insure compliance with this Code, adopting preventive and control actions.

The operative unit of Customs in charge of subsequent control may apprehend merchandise and objects that may be elements for conviction or evidence of commission of a customs infraction, and shall immediately make them available to the corresponding Customs official.

Risk profiles. - A predetermined concurrence of risk indicators and based on information obtained, analysed, and put in a hierarchical manner.

Chapter VII

Customs Regimes

Section I

Imports Regimes

Art. 147.- Imports for Consuming.- The customs regime through which imported merchandise from abroad or coming from ZEDE, can freely circulate in Customs territory, with the purpose of definitively staying in it, after payment of import taxes, fees and fines, when there is grounds for such, and after complying with customs formalities and duties.

Art. 148.- Temporary admission for re-export in same condition.- Customs may allow entry of certain merchandise to be used to a specific end, with total or partial suspension of payment of duties, with the exception of normal depreciation because of use, to be re-exported, without having been subjected to any transformation, as determined by the regulation.

Art. 149.- Temporary admission for active improvement.- The regime that allows merchandise to enter customs territory with suspension of duties, taxes, and applicable charges, to be re-exported after an improvement procedure, under the form of compensatory products.

Industrial facilities may, under a general guarantee, be allowed to operate, abiding with this Code's regulations.

Compensatory products obtained under this regime may be allowed to change regime to consumer imports after paying duties on the imputed component of said product.

Art. 150.- Replacement of Merchandise with Tariffs.- Customs regimes that allow import, free of duties and charges, with the exception of applicable rates, identical or similar merchandise because of their kind, quality, and technical characteristics, which having been in free circulation, and have been used to obtain previously exported merchandise of definitive condition.

Art. 151.- Transformation under Customs Control. -The regime that allows merchandise to enter customs territory with suspension of duties, taxes, and applicable charges, having been subjected to transformation that modifies its type or state, for later import and consumption.

Art. 152.- Customs Depository.- Customs regime that allow imported material to be stored for a certain period of time under customs control in an appropriate and recognized site for this purpose, payment of import taxes, duties and charges.

Art. 153.- Re-import in same condition.- Regime that allow importation of consumer goods, with exonerated payment of import taxes, duties, and charges as long as they have not been subjected to transformation, manufacture or repair, and under condition that all due amounts caused by reimbursement or return, or a conditional exonerated payment of duties and taxes, or any other subsidy or amount given at the moment of export, have been paid.

Section II

Export Regimes

Art. 154.- Definitive Export.- Regime that may allow definite exit of merchandise of free circulation, outside common Customs territory or from a ZEDE located in Ecuadorean Customs territory, in accordance to this Code.

Art. 155.- Temporary Export for Re-Import in same condition.- Regime that allows the

temporary exit of merchandise of free circulation with a due date, within which they shall be re-imported without having undergone any transformation, with the exception of normal wear because of their normal use.

Art. 156.- Temporary Admission for Passive Improvement.- The regime that allows merchandise of free circulation in Customs territory to be temporarily exported outside of said territory or to a ZEDE in of said territory, for its transformation, manufacture, or repair, and then re-imported as compensatory products with the exemption of applicable and pertinent taxes.

Section III

Other customs regimes

Art. 157.- Conditioned Returns.- Regime that allows for the return automatically, partially or totally, foreign trade taxes paid for imports of merchandise that will be exported within the time period and percentages set by this Code, in the following cases:

- Those used in the country for transformation processes;
- Those incorporated in merchandise; and,
- Containers or conversions.

The conditioned return process shall be completely managed by Customs. This way, Customs may return all foreign trade taxes that correspond, and later do cross accounting of said amounts with the holders of returned taxes, who shall be part of the integrated system of electronic One-Step Process for foreign commerce.

Customs, through its electronic system shall do the corresponding return, without prejudice of an administrative claim that the contributor may install against said action, if he feels affected by it.

Art. 158.- Duty-Free.- Duty-free is the regime that allows storage and sale of merchandise, national or foreign, to passengers entering or exiting the country in international sea or airports, without export duties.

Art. 159.- Free Zones.- As per applicable international norms, merchandise special free

zones may be authorised for supply, repair, and maintenance of vessels, airplanes and cargo vehicles, destined to public passenger and cargo transportation, and which may include parts and replacement pieces for their repair, conditioning, or adaptation.

For this condition to apply, Customs Director may apply simple formalities.

Art. 160.- International Fairs. .- Special customs regime, by which it may authorised the entry of merchandise with suspension of payment of taxes, for a limited time, destined for exhibiting in already authorised venues, as well as consumer goods for purposes of tasting, promotion, and décor, tax free of foreign trade duties, previous to compliance of requisites set in the norms.

Art. 161.- Customs Transit.- Customs regime, under which merchandise destined abroad, may be transported under customs control from a district office.

Art. 162.- Reshipping.- Customs regime by which declared merchandise is in temporary storage, awaiting a regime assignation or customs destination, shall be reshipped from customs territory.

Even when merchandise had been declared under a regime, reshipment proceeds when under customs control a change in tariff classification demands previous control or other documentation that was not required by the importer, when this obstructs legal merchandise import.

Reshipment shall be not authorised when a founded presumption of transgression of law has been determined. Reshipment shall be compulsory for merchandise prohibited for import, in case of perishables, apparel, and educational material that shall be donated to the Ministry of Social Policy. This regime shall be applied through simplified proceedings, according to this Code.

Art. 163.- Transshipment.- Customs regime under which transfer of merchandise is taken out of the vehicle used upon arrival to customs territory and loaded in the transport used for exit from customs territory, under customs control. This regime shall be applied through simplified proceedings, according to this Code.

Section IV

Regimes of Exemption

Art. 164.- Postal Traffic.- Import or export postal packages, whose value does not exceed that established in the regulations, may be dispatched through simplified formalities, respecting international agreements in accordance to what customs establishes. The packages that exceed the established limits, shall abide by customs general rules.

Art. 165.- Courier.- Correspondence, documents, and merchandise that abide with the norms decreed by Customs director, or Director General of Customs, and that do not exceed the provided limits, transported by courier, may be dispatched by simplified formalities, in accordance to the norms of Customs. The packages that exceed the established limits, shall abide by customs general rules.

Art. 166.- Borders Traffic.- In accordance with international agreements and treaties, interchange of merchandise destined for domestic use amongst border towns, shall be allowed free of formalities and of payment of foreign trade taxes, within limits set by Customs.

Art. 167.- Private Vehicle used by Tourists.- Regime that may allow the entrance of a tourist's vehicle for private use, free of taxes within the time and conditions provided by this Code.

Art. 168.- Other regimes for exceptions.- Passenger baggage, household items, and supplies for sea or air vessels shall abide by the regulations of this code and the norm to this effect decreed by Customs.

Section V

General Laws

Art. 169.- Change of regime.- Merchandise declared under a regime that suspends or frees from taxes foreign trade, may be declared to another regime within the provided time. Upon completion of legal and regulatory requisites, the change may be authorised by a competent public official. Change of regime is prohibited for declared consumer goods.

Art. 170.- Tax Payment. .- In changing regimes from consumer goods to imports, payment of foreign trade taxes shall be made by customs valuation of the goods, applying tariffs and currency exchange rates on the date of acceptance of declaration to consumer goods regime.

Art. 171.- Payment of rates for services.- No special regime shall free, compensate, or suspend payment of rates for services, does not allow its return.

Art. 172.- Transference to third parties. .- Merchandise of temporary admission, for active improvement, shall be the object of transfer of Domain to third parties, previous to customs authorization, as per this Code and dispositions dictated by customs. Under this same procedure, the transfer of this type of merchandise to third parties for export purpose may be regulated.

Chapter VIII

Customs Guarantees

Art. 173.- Right of Pledge.- Customs shall have the special and preferential right of pledge over merchandise under customs authority to guarantee payment of customs tax obligations. This right shall prevail over any other legally or conventionally established.

Art. 174.- Types of guarantees.- Customs guarantees are general and specific, and may be given, approved or executed in the way and time established by this Code.

General guarantees are those that secure any activity of a person that acts in foreign trade of merchandise or in the carrying out of customs operations. Special guarantees are those that secure a customs operation of private foreign trade.

Customs guarantees shall be irrevocable, of total or partial execution, unconditional, and of immediate payment and constitute reason enough for its immediate execution with sole presentation of collection, as disposed by law.

TITLE III

Sanctions for Customs Transgressions

Chapter I

General norms

Art. 175.- Custom Transgressions.-A crime, contravention, or regulatory fault provided for in this code.

For determination of a crime it shall be required the existence of premeditation. For contraventions and regulatory faults, they shall be punished by simple transgression of the norm.

In case that a merchandise non - suitable for human use is imported or exported, the District Director shall order its immediate destruction, and communicate the act to the Customs Director General, at the expense of the owner, consigner, or of the one who declares it.

Art. 176.- Preventive Measures.- When a customs offense is presumed, Customs, in order to assure abidance to customs formalities and obligations, shall dispose the respective preventive and transitory measures to provisionally stop and retain merchandise. In this matter Customs shall have the same competence as national police with respect to the object and instruments of the offense, in regards to the chain of custody.

Immobilization is the act through which the official in charge of the district decrees that merchandise remain in the primary zones or another established place under custody and responsibility of the legal representative of the temporary storage or by whom Customs authority assigns.

Provisional retention is the obligatory seizure of the merchandise in secondary zones and its move to customs storage or another designated place to this effect by customs authority, while the legal situation of the merchandise is determined. Retention may not last more than three working days, after which the respective procedure shall be continued.

At any moment, and as long as it does not imply risk to the merchandise, nor founded presumption of the transporter being involved in the investigated offense, the customs official may require that the

retained merchandise be taken out of the containers they are in to give them back to the transporter or its rightful owner.

The Director general shall regulate the procedure to regulate the enforcement of these measures.

Chapter II

Customs Felonies

Art. 177.- Contraband.- The person who, to evade customs controls and security of merchandise that has a value of over ten basic unified salaries, and performs the following actions, shall be sanctioned with prison from two to five years, fines of up to three times of customs valuation of the merchandise, and seizure of the goods:

- a. Enters or takes clandestinely merchandise from customs territory;
- b. Moving of foreign merchandise in a secondary zone without documentation that sustains legal possession of it, and unable to prove its licit origin within seventy hours following its detection, unless proven otherwise;
- c. Loading or unloading of non-authorized merchandise from the transportation vehicle without authorized customs supervision;
- d. Internment of merchandise from a ZEDE, or subject of a special regime, without abidance of requisites established in this Code;
- e. Unloading, discharging, throwing to land, throwing overboard or to another transportation vehicle, of foreign merchandise before customs controls, excepting inevitable or forced arrival;
- f. Hiding of foreign merchandise in vessels, airplanes, transportation vehicles, or cargo units, without having subjected them to customs controls.

Art. 178.- Customs Fraud.- The person who evades Customs tax collection on merchandise whose value is above one hundred and fifty times the amount of a basic unified salary, and as long as said merchandise has to comply with payment of foreign taxes, shall be sanctioned with two to five years of prison and fines of up to 10 times the taxes evaded, through the commission of these acts:

- a. Import or export of merchandise with false or adulterated documents so as to change the value, quality, quantity, weight, type, age, origin or other characteristics as labels, codes, series, models; in this case, the exercise of a penal action shall not depend on prejudicial matters whose decision is in the competence of statutory civil law;
- b. Simulates a foreign transaction with the purpose of getting an economic incentive or benefit, total or partial, or of any other nature;
- c. Does not declare the correct amount of merchandise;
- d. Hides within declared merchandise other goods subject to declaration;
- e. Unlawfully obtains liberation or reduction of foreign trade taxes on merchandises that under the law do not abide with the requisites to enjoy such privileges;
- f. Improperly sells, transfers, or uses merchandise imported under special regimes or with total or partial exoneration, without due authorisation;
- g. Violates or removes seals, padlocks or other security devices put in transportation units, places, or spaces enabled as temporary deposits, as long as total or partial disappearance of merchandise is determined.

Art. 179.- Attempt.- The mere attempt to commit customs felony, shall be suppressed with half of the provided for punishment, as long as it is within its phase of execution.

Art. 180.- Administrative Sanction and Re-incidence.- When the value of merchandise does not exceed the amounts provided for the configuration of felony and fiscal fraud, the infraction may not constitute a felony and shall be punished administratively as a contravention of law, with the maximum fine provided in this code in the cases where the commission of felony has been determined. However, who has been administratively sanctioned more than once within two years, and the addition of the values on said occasions exceeds half of the amount provided for the configuration of felony and

fiscal fraud established in articles 177 and 178 of this Code, shall be investigated and processed for the corresponding felony.

Art. 181.- Responsibilities of Administrators, Directors and Representatives.-The person, who acts as administrator, director and representative of legal entities that commit fiscal fraud, is personally liable as author, even if tax fraud may result in benefit of the legal entity that he intervenes for.

Persons who exercise control over the legal entities or employees or workers, if who deceitfully commit fiscal fraud for benefit of the legal entity, even though they may have not acted under any order, shall be responsible as perpetrators

When the cession of fiscal fraud has direct relation with the functioning and control of the legal entity, the competent Tribunal of Penal Guarantees, shall dispose at the time of sentencing, the dissolution of all rights of the legal entity, for which it shall send to the Superintendent of Companies certified copies of the process with final judgement, for compliance of what is decreed.

Art. 182.- Customs Reception.- The acquisition of free or paid foreign merchandise, as pledge, for storing, hiding, sale, or any other benefit, without certifying its legal import or acquisition in the country, within the following seventy two hours, from the time of request of by the competent customs authority, shall be reprimanded with a fine twice the customs value of said merchandise.

Art. 183.- Additional Measures.- In case of commission of customs felonies, without prejudice to tax collection, duties, and the imposition of established punishments, the judge shall order the seizure of merchandise subject of the felony and of the objects used for its commission, including the transportation units, as long as they belong to the author and accomplice of the felony. In case the transportation vehicles do not belong to the author or accomplice, prior to its return, a fine equivalent to twenty per cent of the customs value of the merchandise shall be imposed to the owner of said vehicle.

Art. 184.- Aggravated Felony.- Shall be penalized with the maximum sentence of loss of freedom, established in the above articles, with

the maximum fine corresponding to customs fraud and with the rest of the sanctions provided for in the corresponding felony, when any of the typified felonies of this Code has been verified, and occurs in one or more of the following circumstances:

- a. When a public official or servant, who while exercising or on the occasion of his functions, abuses his position;
- b. When a bonded customs agent or an Authorised Economic Agent is participant in the felony, who while exercising or on the occasion of his functions, abuses his position;
- c. When the uncovering or hindering or obstructing the seizure, provisional retention, immobilization, or confiscation of the merchandise material object of the felony, through the use of force, intimidation or power;
- d. When it is made to appear as addressees or suppliers, non-existing civilians or legal entities, or false address in custom regime documents and procedures;
- e. When minors or any other non-attributable person is used;
- f. When the caused taxes are more than three hundred times that of a unified basic salary; or,
- g. When the merchandise subject of this felony is counterfeit or is given a different place of manufacture, so as to benefit from tariff preferences or on matters pertaining to origin of goods.

In the case of literal a), the sanction shall also be permanent disqualification for being in public office; and in the case of literal b) it will as well be punished with final cancellation of license or authorisation for working as a bonded customs agent or to qualify again as an Authorised Economic Operator, personally, through a third party individual or legal entity.

Art. 185.- Procedures.- The penal actions to prosecute custom felonies is public and shall be exercised complying with the Code for Penal Procedures. With respect to customs felony, Customs shall have all the faculties and rights that the Code establishes for the individual accuser, the

same that should be exercised by the competent official from the corresponding jurisdiction, being part of the penal process, even while in the intermediate or trial phase.

Art. 186.- Real Precautionary Measures.- Upon initiation of fiscal instruction, the judge of Penal Guarantees shall obtain Real Precautionary Measures over the goods belonging to the accused and of the legal entity that should presumably benefit from customs felonies.

Art. 187.- Prohibition of Return of Goods Subject of an Investigation.- In any legal procedural or penal process, the return of merchandise object of the felony, including transportation vehicles used for committing it, cannot be ordered, but only in virtue of a procedural action that puts an end to the investigation or to the penal process, with the only exception provided for in the article about accessory measures of the present chapter.

In cases of Customs crimes, from the onset of prosecution instruction, any public entity, including customs, may ask to the judge or tribunal which know the case, that aforementioned goods be adjudicated to them, when they so require for the compliance of the institutional needs. To this effect the value of the merchandise shall be the one declared and with regards to the goods to which this rule does not apply, it shall be determined by Customs.

Prior to signing the adjudicatory act, the requesting entity, or if in the case, the Ministry of Finance, shall certify that the value of the goods appear in the corresponding budget of the beneficiary entity, having to maintain the respective budget line account, for the duration of the penal process.

In the cases where the writ of execution establishes non-existence of customs felony, the judicial entity may decree the return of the values belonging to the owners of said goods; otherwise the judicial entity shall obligatorily notify the respective public entity, so that the corresponding budget line account be closed.

Additionally, the process participants may require from the judge that knows the cause, the auction sale of the consumer goods and fiduciary documents, object of the real precautionary measure.

Art. 188.- Support and collaboration of the Public law-enforcement entities.- The Armed Forces and National Police shall permanently be available to the Customs Administration and its authorities, whenever so required, for control of activities and prevention of the typified felonies in this Code, personnel that shall serve Customs in an integrated way, according to this Code.

Art. 189.- Duty of no interference in Ecuadorean National Customs Service exclusive competencies.- The entities of the judicial system shall not intervene in exclusive competencies given to the Ecuadorean National Customs Service, for the release of goods that are in customs, and that are object of a penal investigation.

Chapter III

Contraventions

Art. 190.- Contraventions.- Customs contraventions are the following:

- a. Allowing entrance of people to primary customs zones, without abiding by the regulations approved by the Director General;
- b. Untimely, total, or partial transmission of the cargo manifest by the transporter and actual operator of the vehicle;
- c. Untimely delivery of merchandise that is compelled for unload;
- d. Disclosing information classified as confidential by the respective authorities, by public officials of Customs, without prejudice to the rest of administrative sanctions that may take place;
- e. Not providing passenger roster, on the side of the transporter, to customs before arrival or prior to departure of vessel;
- f. Not delivering to customs the cargo manifest, unless it has been authorized by customs, in which case merchandise shall be surrendered upon arrival, with pending sanctions for the transporter if he does not comply with delivery;
- g. Obstructing or preventing customs actions controls, be it through actions with the purpose of obstructing customs activity or by refusing to collaborate with on-going investigations;

- h. Non-compliance with schedules for transfer or re-embarking, on the part of the owner, consignor, consignee or transporter;
- i. Non-presentation of accompanying documents with the customs declaration, should this be in conformity with manner of assigned dispatch by the owner, consignor, consignee; excepting cases where documentation can be backed by a guarantee;
- j. Non-complying on the side of the owner, consigner, or consignee, with the deadlines of special regimes;
- k. Over or under- valuating merchandises in a prior control process; the existence of non-declared merchandise when determining duties;
- l. Allowing entry of merchandise in temporary storage, without justification over it;
- m. - Non-delivery of storage inventory in temporary storage, when so required by customs.

Art. 192.- Sanction for non-delivery of information.-Customs officers or the one in charge of district office shall sanction those who do not deliver information required by customs, with closing down of the establishment of the mentioned individual at the beginning of this article. Sanction may be lifted at the moment of compliance. If a person persists with non- compliance of delivering information required by customs within thirty days, Customs shall ask the Judge of Penal Guarantees, with an urgent nature, decree the delivery of said information. The judge, within 48 hours, shall order the release of information with the aid of public enforcement. Copies of all information shall be sent to the Prosecutor, so that pertinent enquiries begin, should that be the case.

Chapter IV

Of Regulations offences

Art. 193.- Regulations offenses are:

- a. Mistake on the part of the transporter in the electronic sending of data of the cargo manifest, which may not be subject of correction, according to this code;

- b. Untimely electronic transmission of the cargo manifest on the side of the international cargo agent or cargo de-consolidator, except in the cases where such untimely transmission of data is on the part of the transporter;
- c. A mistake on the part of the customs agent, the importer, or exporter, in which electronic transmission of data that is in customs declaration, cannot be corrected as decreed by this Code;
- d. Non-compliance with the provisions established in the regulations of this Code, or to the ones decreed by the Director General of Customs, that had been previously published in the Official Registry, as long as it does not constitute a more serious infraction.
- e. The non-compliance or non-observance of any contractual stipulation, whose sanction is not provided for in the respective contract.

Art. 194.- Sanctions for offences of Regulations.- Offenses for regulations shall be punished with a fine equivalent to fifty per cent of the unified basic salary. Except in cases of literal c) of the preceding article, when they pertain to export, re-export or import, when customs value is of less than ten unified basic salaries, sanctions may be ten per cent of the unified basic salary.

Art. 195.- Procedure and Sanctions.- Ecuadorean Customs, previous to proceedings that shall be established in the regulations, shall sanction contraventions and offences of regulations. Ecuadorean customs may notify through its informatics all actions issued in this proceeding.

Chapter V

Administrative actions applicable to Operators of Foreign Trade

Art. 196.- Incumbency.- The Director General shall have incumbency to establish administrative responsibility and sanction with suspension or revocation of the concession, authorisation or respective permits of foreign trade operators, custom agents, and authorised economic operators, as prescribed by law.

Art. 197.- Procedures.- When the Director General has knowledge of an infraction, he shall initiate an administrative process, in conformity with the norms of the administrative judicial regime of the Executive.

Art. 198.- Suspension Sanctions.- Shall be punished with up to sixty days of suspension:

1. Temporary deposits when:
 - a. The use unauthorised areas for storing merchandise subjected to customs authority;
 - b. Have not indemnified the owner or cosignatory for the amount of loss or damage to merchandise,
 - c. When they not keep up to date physical and electronic inventory of merchandise,
 - d. Give or dispose of merchandise under his custody without following the procedure established by customs; and,
 - e. Does not notify to customs authority abandoned merchandise.

As a consequence of suspension, the authorised authority will not be able to enter merchandise in this manner, without prejudice to those that have entered may be nationalised.

2. Customs storage and authorised installations that usually operate under the regime for temporary import for active improvement when,
 - a. Store merchandise in non- authorised customs storage site, designated as such;
 - b. Store in the area authorised as customs storage, unauthorised merchandise of forbidden import or without justification of its possession;
 - c. Do not justify the use of merchandise destined to storage processes, transformation, manufacture, or repair;
 - d. Have not compensated the owner or consignee for the amount equivalent to the loss or damage of merchandise; and,

- e. Give or dispose of merchandise that is under their control without the authorization of Customs.

3. Duty-free stores, when:

- a. They sell merchandise in a special regime when the beneficiaries are persons different from passengers that enter or leave the country or are in transit; and,
- b. They do not keep up to date the electronic and physical inventories of the merchandise stored.

4. Express mail services or couriers, when:

- a. Have made 3 infractions.
- b. Have been sanctioned with more than 10% of the quantity of declarations presented in the same month, for non-compliance or non-observance of any regulation, procedures' manual, work instructions, or customs administrative dispositions, of general duty, not classified as crimes, or violations.
- c. Do not keep for the period foreseen in the regulations of this Code, the registers and documents that serve as a base for the elaboration of the customs declaration presented before the National Customs Service of Ecuador;
- d. Do not answer before the owners of merchandise that has been lost or damaged while under the responsibility of the authorized firm; and,
- e. Do not maintain up to date an electronic and physical inventory of the merchandise.

As a consequence of the suspension, the authorized firm may not import or export merchandise via this regime. Merchandise already embarked with a destination to Ecuador and prior to notification of the suspension, may be nationalized.

Merchandise already embarked with a destination abroad and prior to notification of the suspension, may be regularized.

In all cases, once the sanction has been complied with, the operator may resume foreign commerce operations without delay.

Art. 199.- Cancellation Sanctions.- Temporary customs warehouses, customs warehouses, installations authorized to operate habitually under a regime of temporary import for final manufacturing, express mail service, couriers, and free warehouses shall be sanctioned with cancellation of their concession, authorization, or permission when:

- a. They do not maintain or comply with the requirements or conditions to operate;
- b. They use the authorized areas for activities different from those authorized
- c. The temporary deposit has been used by those responsible for it, to commit a customs crime, money laundering, or drug trafficking as declared and sentenced by a competent legal authority,
- d. Do not perform authorized activities for a period of 6 months
- e. Incur in causes for suspension on more than 2 occasions within the same fiscal period; and,
- f. Do not comply with the sanction of suspension imposed by National Customs Service of Ecuador.

Chapter VI

Statute of Limitations

Art. 200.- Expiration of Penal Action.- Penal actions for customs crimes expire after a period of five (5) years from the date the infraction was perpetrated or the last criminal act was performed.

In case a penal process has been initiated prior to the completion of the 5-year period, the action will expire in the same period counting from the initial notification of the charges.

The power to impose sanctions for regulatory violations and failures expires in 5 years, counted from the date of the infraction or from performance of the last act.

Art. 201.- Expiration of Sanctions.-The penal sentences expire in double the amount of time of statute of limitations, counted from the date of the sentence if the individual has not been deprived of their liberty.

Chapter VII

Public Auction, Free Adjudication, and Destruction

Art. 202.- Public Auction.- Public auction will be subject to the norms established for its effect, both in the regulations of this Code and the dispositions dictated by the customs administration. For said ends, a third party may be contracted.

Art. 203.- Free Adjudication.- Appropriate free assignment will proceed for merchandise found expressly and definitively abandoned, those declared in judicial administrative decommission, and those already in the process of public auction, within the terms and dispositions contained in the present Code, its regulations and other norms of the National Customs Service of Ecuador, in benefit of entities and companies of the public sector, including customs administration, when so required. Merchandise prohibited to import may only be donated to the public sector, when it can serve for a specific institutional activity, or it shall be destroyed. Additionally, free adjudication will proceed in benefit of institutions of social assistance, charity, education, or non-profit research, as required for the compliance of social objectives, in the cases and conditions provided for in the Regulations of this Code.

Art. 204.- Destruction of Merchandise.- The public servant in charge at district level or his delegate will destroy merchandise as established in the Regulations of this Code.

Without prejudice to that aforementioned, weapons, accessories, munitions, and related items abandoned or decommissioned, will be placed at the disposal of the armed forces for their control. Medicines in abandon or decommission will be placed at the disposition of the Ministry of Public Health.

TITLE IV

Customs Administration

Chapter I

Legal Nature and Powers

Art. 205.- Legal Nature.- Customs service is a public power exercised by the State, through the National Customs Service of Ecuador, without prejudice to the exercise of power by duly authorized delegates and with the coordination and cooperation of other entities, subject to the present legal body, its regulations, procedures and operations manuals, and other applicable norms.

The objectives of Customs are: to facilitate foreign commerce and exercise control over the entry and exit of merchandise, cargo units and transport through the borders and customs zones of the Republic, as well as over persons directly or indirectly involved in the international movement of merchandise; to determine and collect customs taxes caused by the import and export of merchandise; to resolve claims, complaints, petitions, and consults of interested parties; to prevent, pursue, and sanction customs infractions, and, in general, the powers inherent to the Customs Administration in the norms adopted by Ecuador in international agreements.

Art. 206.- Customs Policy.- It corresponds to the National Customs Service of Ecuador to execute customs policy and issue norms for their application through the General Director.

Art. 207.- Customs Powers.- Customs powers are a combination of rights and attributions of supranational norms, the law, and the regulations, given exclusively to the National Customs Service of Ecuador for the compliance of its purpose.

Art. 208.- Subjects of Customs Power.- The merchandise, transport that cross through the borders, and persons directly or indirectly involved in the international movement of merchandise, are subject to customs powers.

Art. 209.- Scope of Customs Power.- Obedience to customs' power implies the compliance of all formalities and requirements that regulate the entry and exit of persons, merchandise, and means of

transport; the payment of taxes and fees, even if they correspond to different entities of the Central Administration of different tax administrations, that, by legal mandate or regulation, the National Customs Service of Ecuador should control or collect.

Art. 210.- Customs Services.- For the exercise of customs power, the National Customs Service of Ecuador will have under its control the services of storage, inspection, control, and vigilance of merchandise that has entered, and as determined by the Director; for said effects, the National Customs Service of Ecuador may draw up contracts with public or private institutions to perform said services.

These contracts will contain clauses and sanctions for the cases of non-compliance of contractual obligations, without prejudice to other penal and civil responsibilities that cannot be limited by the contract.

Art. 211.- Attributions of Customs.- The following are the attributions of Customs, exercised in the form and circumstance determined by the Regulations:

- a. Exercise vigilance over the persons, merchandise, and means of transport in the primary and secondary zones;
- b. Inspect and apprehend merchandise, goods, and means of transport, for effects of control and when it is presumed the commission of an infraction of the law in relation to the entry and exit of merchandise in customs territory, and solicit the prosecutor's office for search warrants;
- c. Inspect and apprehend persons and put them at the disposal of the competent legal authority in case of flagrant crimes;
- d. Realize investigations, in coordination with the Attorney General's Office, when there is presumption of commission of a customs crime, for which it may perform all acts that determine the Regulations;
- e. Exercise coercive credit action in benefit of the National Customs Service of Ecuador directly or by delegation;

- f. Coordinate activities with other entities of the State or abroad, request information from them and analyze it in relation to the entry and exit of merchandise, means of transport, and persons in Ecuadorian territory, as well as the economic activity of persons in Ecuador. With respect to the information sent or received by the National Customs Service of Ecuador, the end user will guard and keep as confidential said information;
- g. Require from the National Police, in the form and frequency established by the National Customs Service of Ecuador, the list of persons who enter and exit the country. The National Police are obligated to supply the information;
- h. Be part of the penal processes that investigate the facts behind the perpetration of customs crimes;
- i. Regulate customs operations derived from the development of international commerce and customs regimes even when they are not expressly determined in this Code or its regulations. Collaborate in the control of non-authorized exit of works considered artistic, cultural, or archaeological Heritage, and, of species of wild flora and fauna in the primary and secondary zones;
- k. Collaborate in the control of the illicit traffic of illegal drugs, the chemicals used in their manufacture, weapons, munitions, and explosives in the primary and secondary zones;
- l. The rest provide for in this Law.

Chapter II

The National Customs Service of Ecuador

Art. 212.- The National Customs Service of Ecuador.- The National Customs Service of Ecuador is a legal public entity, of indefinite duration, with technical, administrative, financial, and budget autonomy, domiciled in the City of Guayaquil with legal authority throughout the national territory.

It is an entity to which the attributions are given in virtue of this Code, the technical-administrative powers necessary to carry forward the planning and execution of the country's customs policy, and, in a regulated manner, the powers of tax

determination, resolution, sanction, and regulation in customs matters, in accordance with this Code and its regulations.

Art. 213.- Administration of the National Customs Service of Ecuador.- The management of the National Customs Service of Ecuador is the responsibility of the General Director who is the maximum authority and legal representative, on account of which it will exercise administrative, operating, and vigilance controls outlined in this Code through the authorities referred to in the previous article.

Art. 214.- Policy Council.- The General Director shall be part of the Policy Councils convened by the President in the related field.

Art. 215.- General Director.- The General Director will be a functionary of free appointment and removal, designated directly by the President of the Republic, and should fulfill the following prerequisites:

- Be of Ecuadorian nationality and enjoy all accompanying rights;
- Hold a Bachelors Degree from a national or foreign university.
- Possess ample professional experience in foreign commerce, administration, or related areas.

Art. 216.- Competencies.- The General Director will hold the following attributions and competencies:

- Legally represent the National Customs Service of Ecuador;
- Administrate the goods, material and human resources, funds of the National Customs Service of Ecuador, acts of investment and supervision, and those others required for the compliance of the purpose of the institution;
- Know and resolve complaints presented by customs users against customs personnel, as well as being aware of the recourses of revision of resolutions dictated against said employees.
- Know and resolve administrative complaints placed against the institutions' own actions.

- Set out the boundaries of the area for the application of border traffic, in accordance with international agreements, this Code, and its regulations.
- Establish in secondary zones, and border perimeters, special control points subject to international agreements, this Code, and its regulations.
- Grant, suspend, cancel, or declare terminated the licenses for customs agents, without delegating anyone.
- Resolve the consultations about the import duty with respect to merchandise classification, as well as over application of this Code and its Regulations, with submission to the dispositions of the Tax Code, resolution that will have binding effect for whom ever presented the consultation.
- Review with the law their own acts in terms established by this Code and the Tax Code, and revoke them when said revocation is not contrary to law and does not generate damage to the contributor;
- Authorize the functioning of industrial installations under the regime of temporary import and finished manufacturing, express mail and courier, customs warehouses, duty free stores, and the regime of international fairs.
- Exercise the functions of nominating authority of National Customs Service of Ecuador.
- Issue, through resolution, the regulations, manuals, and instructions necessary for the operational, administrative, and procedural aspects of customs valuation, and for the creation, suppression, and regulation of customs service fees, as well as the regulations necessary for the efficient functioning of the customs administration and those operating aspects not contemplated in this Code and its regulations; and,
- Authorize the customs regimes contemplated in this Code and regulations that Supranational Organizations in customs matters decrees;
- Authorize changes of regimes in accordance with this Code and its regulations;

- Control imported merchandise that is under special customs regimes;
- Perform the public auction of abandoned merchandise;
- Authorize the direct nationalization of merchandise;
- The rest established by the law, as well as those delegated by the General Director, via resolution.

Art. 219.- Notifications.- Notifications effected by the National Customs Service of Ecuador through its information system, carry complete judicial force.

Art. 220.- Customs Public Servants.- The Organic Law of Public Servants will govern public servants of the National Customs Service of Ecuador. When institutional needs require so, public servants that fulfill required administrative operations in one area, may fulfill other required operations without it being considered a change or administrative transfer. They will be available for required work outside of their normal work hours and will be compensated in accordance with the law that regulates public servants and the regulations established in the present Code.

Art. 221.- Responsibilities.- The National Customs Service of Ecuador is responsible for the efficient and agile dispatch of merchandise, completing its responsibility in cases where these shall be put under judicial authority. In case of unjustified delays in the dispatch of merchandise imputable to the National Customs Service of Ecuador, the institution will reimburse the costs of storage and late fees to the affected party. Said values will be discounted, up to a maximum amount of one month's unified salary, from the responsible public servant whose negligence caused the problem, without prejudice to other administrative sanctions. The restitution will be in accordance with the procedures determined in the regulations.

Customs procedures shall be carried out with due diligence and care on the part of the public servants of the National Customs Service of Ecuador, striving always to prevent the deterioration of merchandise subject to inspection.

The General Director and other functionaries of the National Customs Service of Ecuador, in the

exercise of any of the faculties of tax administration provisioned for in the law, will act with the responsibilities established in the Tax Code.

For the establishment of responsibilities in the exercise of their duties, the General Director or his substitute will be under the penal jurisdiction of the National Court. To the same end, the public servants of high rank will be under the jurisdiction of the Provincial Court.

Art. 222.- Customs Vigilance Unit. - The Customs Vigilance Unit is an administrative Unit of the National Customs Service of Ecuador, empowered to execute operations related with the prevention of customs crimes and investigations in national territory, as support to the Attorney General's Office, according to the Law that Regulates Public Service and the regulations decreed by the General Director, in coordination with the Minister of Labour Relations, in order to obtain permission from the competent authority to possess and carry weapons.

The Director General of the National Customs Service of Ecuador is the maximum authority of the Customs Vigilance Unit and has the power to issue the regulations necessary to function.

Art. 223.- Organic and Administrative Structure. - The Director General shall determine the organic and administrative structures and the attributions of the district units of the National Customs Service of Ecuador.

Chapter III

Information

Art. 224.- Information Related to Foreign Commerce. - The foreign commerce statistical information processed by the National Customs Service of Ecuador shall be published free of charge, without other restrictions contemplated in the Intellectual Property Law, on the web site of the National Customs Service of Ecuador and may be consulted without prohibition, according to the Organic Law of Transparency and Access to Public Information.

The information that shall be generated by the National Customs Service of Ecuador in different

formats as those published on the website of the entity, at third party request, will carry a fee in accordance with the dispositions dictated by the General Director. The National Customs Service of Ecuador may require, at any moment, of importers, exporters, transporters, public or private entities or persons, the transfer of information in relation to import and export activity, to facilitate the effective control of compliance with tax obligations derived from the same, granting a maximum of 15 days to comply with the request.

Art. 225.- Data Bases. - The National Customs Service of Ecuador and the Internal Revenue Service, when they require, shall have free and unrestricted access, permanently and continually, via information or physical presence, to all information concerning foreign commerce that are in the archives and data bases of the Central Bank of Ecuador, Immigration Police, Civil Registry, Social Security Administration, Superintendents, Agency for Agro Quality, INEN, Mercantile Register, Financial Intelligence Unit of the National Police, and other Ecuadorian entities that participate directly or indirectly in foreign commerce. Public servants who do not send information or put obstacles to, or interfere to obtain said information, will be sanctioned with dismissal from their job.

The content of the database of the National Customs Service of Ecuador is protected information, and its unauthorized access and/or use shall be sanctioned according to the Penal Code.

Chapter IV

Financing of the Customs Service

Art. 226.- Financing of the National Customs Service of Ecuador. - It is the patrimony of the National Customs Service of Ecuador, the buildings and furniture that it has acquired or may acquire under any method.

The National Customs Service of Ecuador will be financed by:

- a. Assignments from the General State Budget;
- b. Revenue collected from fees for customs services, which shall be transferred to the

Unified Treasury Account, and later distributed according to the General State Budget;

- c. Revenues collected for contracts, licenses, and royalties;
- d. Non-reimbursable funds from international organizations; and,
- e. Other revenues legitimately collected, not provisioned for in this Code.

TITLE V

Auxiliaries of the Administration of Customs

Chapter I

Custom Agents

Art. 227.- Custom Agents. - An individual or legal entity whose license, given by the General Director of the National Customs Service of Ecuador, grants the right to manage, at their own cost, the routine dispatch of merchandise, sign customs declarations and clients invoices, when allowed by regulation and in accordance with minimum fee schedule, authorized and fixed by the General Director of the National Customs Service of Ecuador. The license shall be valid for 5 years and may be renewed for the same period of time.

Custom Agents may contract with other operators of foreign commerce and are obligated to respond before the National Customs Service of Ecuador for information contained in their declarations.

Custom Agents will have characteristics of both notary and auxiliary of the public sector, so that customs will assume the information presented, faithfully conforms to all legal requirements, and serves as a legal base for the customs declaration, without prejudice to any verification that the National Customs Service of Ecuador may perform.

Customs Agents, whom in the performance of their duties, had participated as authors or conspirators in a cover-up, shall carry penal responsibility for acts against public faith in what pertains to falsification of documents, in which case, a civil judicial ruling is not required prior to penal action provisioned for in Art. 180 of the Code of Civil Procedure. In

all cases, custom agents will bear the same the responsibilities of a notary public.

In the dispatch of merchandise involving a customs agent, they shall have co-responsibility for the related tax obligations, without prejudice to their administrative or penal responsibilities that legally correspond. Independent of the before mentioned, custom agents will not be responsible for the valuation of merchandise.

Art. 228.- Rights and Duties of the Customs Agent. - The rights of the customs agent are recognized throughout the country. The main duty of the customs agent is to comply with this Code, its regulations, the dispositions of the National Customs Service of Ecuador, and advise their clients to do the same.

The granting of a license to a customs agent, his rights, obligations, and the regulation of his activity, will be determined in the Regulations of this Code and the dispositions of the National Customs Service of Ecuador.

Art. 229.- Sanctions. - While an act does make a crime, customs agents will be subject to the following sanctions:

1. Suspension of the license. - Customs Agents will be sanctioned with the suspension of their license for up to 60 calendar days when they incur in the following:

- a. being sanctioned 3 times within 12 months, for failure to comply with the Regulations of this Title or the Rules dictated by the Director of the National Customs Service of Ecuador.
- b. Being sanctioned 3 times within 12 months for any of the following: 1) Obstructing or hindering the control function of customs, either for actions to hinder the activity of the National Customs Service of Ecuador, or for obstructing the activities of the National Customs Service of Ecuador, as well as for not collaborating with the investigations it may realize.

2. Non-presentation of documents that accompany a customs declaration, when it corresponds to do so, for the assigned dispatch by the owner or consignee, or

- c. Non-compliance of the obligations provided for in the Rules for Customs Agents in this Code and in the rules that regulate the activity of customs agents dictated by the Director General.

2. Cancellation of License. - Customs Agents shall be sanctioned with the cancellation of their license when any one the following occur:

- a. Repeated suspension of their license within a period of 12 months;
- b. having been sentenced for a customs crime;
- c. not preserving the files of the dispatches for the period established by this Code; or,
- d. Death of the license holder or dissolution of the company.

Art. 230.- Auxiliaries of Customs Agents.-

Customs Agents may have auxiliaries for their business. They must be certified by the National Customs Service of Ecuador in accordance with the dispositions of the General Director. The credentials of the auxiliary will be valid as long as the customs agent maintains valid his respective credential. The auxiliaries of the customs agents may act in representation of Customs Agents, before the customs administration, in all matters except the signing of customs declarations.

The main duty of the auxiliary customs agents is to comply with this Code, its regulations, and the dispositions of the National Customs Service of Ecuador.

The credentials of the auxiliary customs agent shall be cancelled in any of the following cases:

- a) Being sentenced for a customs crime;
- b) Death of the agent; and,

All other provisions established in this Code.

Chapter II

Authorized Economic Operators

Art. 231.- Authorized Economic Operators.- A person or legal entity involved in the international movement of goods and merchandise, irrespective of any function they have assumed, who comply with norms of logistical security established by the National Customs Service of Ecuador, in order to have access and perform customs paperwork. The Authorized Economic Operators include, amongst others, producers, importers, exporters, transporters, consolidators, de-consolidators, international cargo agents, ports, airports, bonded warehouses, couriers, terminal operators. They shall be regulated according to the dispositions dictated by the Director General.

To be qualified as Authorized Economic Operator (OEA), they must comply with the requirements of the regulations of this Code.

Persons or entities will not be considered Authorized Economic Operators if they or their representatives, partners, or shareholders, have been sanctioned for a customs crime. Whomever uses any form of simulation to appear as an OEA is incurring in prohibited activity of this Code and will lose their status as OEA's, including those persons or entities that have aided to obtain this status, and they will be unable to obtain authorization in the future.

In case of non-compliance with customs norms and without prejudice to the corresponding sanctions, the Director General may suspend or revoke the authorization of an OEA, in accordance with the provisions and regulations of this Code and the regulations dictated by the National Customs Service of Ecuador, which regulates the activity of the OEA's.



BOOK VI

SUSTAINABILITY OF PRODUCTION AND ITS RELATIONSHIP WITH THE ECOSYSTEM.

BOOK VI**SUSTAINIBILITY OF PRODUCTION AND ITS RELATIONSHIP WITH THE ECOSYSTEM****TITLE I****Of Eco-Efficiency and Sustainable Production**

Art. 232.- Definition.- For the purposes of this Code, efficient productive processes are those that use clean environmental technology and low-impact, non-contaminating alternative energy, adapted to reduce the negative effects on human beings and the environment. These measures are understood as those whose design and implementation improve production, considering the product life cycle and the sustainable use of natural resources. As well, productive processes are those that implement modern technology, allow for the administration and rational utilization of resources, and prevent and control environmental contamination from productive processes, services, and final use of products.

Art. 233.- Sustainable Development.- Persons and legal entities and other associations considered by this Code should develop their productive processes in a sustainable manner and in accordance with the precepts of the Constitution and international agreements that Ecuador adheres to.

Art. 234.- Clean Technology.- Companies, in the course of technology substitution, shall adopt measures to attain cleaner production, for example:

- a. Using non-toxic and environmentally low-impact raw material.
- b. Adapting sustainable processes and using efficient equipment that contributes to the prevention of contamination.
- c. Applying in an effective, responsible, and timely manner, the principles of universally accepted environmental management, codified in international agreements and domestic legislation; in particular:

- 1) Reducing, reusing, recycling.
- 2) Adopting the best technology available.
- 3) Using responsibly determined products, especially chemicals.
- 4) Preventing and controlling environmental contamination.
- 5) Paying for contamination.
- 6) Using gradually alternative energy.
- 7) Managing responsibly and placing value to natural resources.
- 8) Being Intra and Intergenerational responsible.

Art. 235.- Incentives for Cleaner Production.- To promote clean production and energy efficiency, the State shall establish the following incentives:

- a. Tax benefits created in this Code.
- b. Benefits of an economic nature, obtained through the transfer of "Negotiable Discharge Permits". The regulations of this Code shall fix the parameters by which the firms that ask for these benefits shall comply, and the way in which the market for discharge permits or contamination rights will be regulated, according to the national norms and of the Autonomous Decentralized Governments, with their respective valid time periods, the transfer mechanisms of these rights, and the desired objectives of environmental quality.

Art. 236.- Adaptation to Climate Change.- With the purpose of adapting Ecuador to the effects of climate change and minimize them, private citizens, legal entities, and associations under this Code, shall acquire and adopt adequate environmental technologies to insure prevention and control of contamination, clean production, and the use of alternative energy.

GENERAL DISPOSITIONS

FIRST. - To regulate the different material that in an integral manner makes up this Code, the specific regulations shall be emitted within 90 days and be in accord with the Constitution of the Republic.

SECOND. - The rights, obligations, and responsibilities acquired by private citizens and legal entities, in accord with the laws, regulations, concessions, ministerial authorizations, or contracts legally celebrated before this Code entered into law, shall remain valid for the period of time that they were issued.

THIRD. - All legal dispositions and regulations where it says "Customs Corporation of Ecuador", "CAE", or "Customs Corporation of Ecuador, CAE", shall say "National Customs Service of Ecuador". All legal dispositions and regulations where it says: "customs military police" or "customs vigilance service" shall say "Customs Vigilance Unit", except in the special law that reincorporates personnel of the ex-military customs police to the customs vigilance service. In equal manner, all judicial dispositions, of equal or inferior hierarchy, that confer authority and power to the Customs Military Police or Customs Vigilance Service, shall be understood to be the same as that exercised by the National Customs Service of Ecuador.

FOURTH. - All administrative regulations that say "Board of the Customs Corporation of Ecuador" or "Board of the CAE" or simply "Board", referring to said collegial body, shall read "Director General of the National Customs Service of Ecuador" or "Director General". As well, where it is said "General Manager" or "General Management", shall say "Director General".

FIFTH. - The National Customs Service of Ecuador assumes all the rights and obligations of the Customs Corporation of Ecuador. Because of this disposition, all the assets of the Customs Corporation of Ecuador will pass to the National Customs Service of Ecuador, and in case they are subject to registration, the corresponding inscription will be made by law, without cost, by those in charge of said registries.

SIXTH. - The concessionaries of temporary storage service, port and airport operators, shall, in a period of 90 days, present the norms for control

of entry to a primary zone, for their approval by the General Director.

SEVENTH. - From the publication of this Code, the Ministry of Agriculture will register banana, plantain plantations in the country.

REFORM DISPOSITIONS

FIRST.- At the end of Art. 72 of the General Law for Institutions of the Financial System add an insert with the following text:

" The Superintendent of Banks shall regulate a special guarantee regime for Micro, Small, and Medium size companies that allows the setting up of adequate levels, in accord with the economic capability of this type of businesses, as well as, at the time of their conceptualization, the incorporating and use of modern financial instruments, such as invoices and patents, amongst others, to be included in the regulations of this law.

SECOND.- Reforms to the Organic Law of the Internal Tax Regime

2.1.- Reform article 9 in the following manner:**1. Substitute numeral 15 for the following:**

15.- The revenues obtained by mercantile trusts, as long as they do not develop business activities or operate ongoing concerns, according to the definition given by Art. 42.1 of this law. Also exempt shall be the revenue obtained by investment and complementary funds.

The same way, those revenues obtained from investment funds and complimentary funds may be exempt.

In order for the above mentioned societies, so they may benefit from such exemptions, it is an indispensable requisite that at the moment of distributing benefits, yields, returns from investments, profits to the beneficiary, part or participant of each financial trust, the fiduciary or funds administrator entities have done the corresponding tax retentions in the same percentages established for the cases of dividends and profits distribution, and abiding by the dispositions of the Regulations for the application of this law, and have also presented to the SRI,

in magnetic medium, an informative declaration for each mercantile trusts, investment funds, complimentary funds that it manages, which also shall be presented to the General Director of IRS, by a resolution of general nature, in the periodicity the Director decrees.

If the above mentioned mercantile trusts, investment or complimentary funds do not comply with the above-mentioned requisites, they shall be taxed without any exemptions.

2. Substitution of paragraph following numeral 15 to the following:

“15.1. - Benefits or profits obtained by private citizens or companies for fixed time deposits, paid by national or international financial institutions to private individuals or companies, except to financial system institutions, as well as yields obtained because of investment in fixed negotiable securities negotiated through the stock markets of the country, and for investment in market, investment and complementary trusts, as long as they are fixed time investments or fixed-yield securities, negotiated in the stock market. In all of the above-mentioned cases, investments or deposits shall be originally made for one year or more. These exemptions shall not apply in those cases where the beneficiary is directly or indirectly a debtor of the financial institution in which he has his deposits or investments, or of any of its linked institutions; and”

3. After numeral 16), addition of following numerals:

“17. Interests paid by workers because of loans given by the entity for which they work, so that said workers acquires shares or participations in same entity, as long as the worker keeps proprietorship of said shares or participations.”

“18. The economic compensation for the Honourable Salary.”

2.2.- After Art.9, addition of following article:

Art. 236.- Income Tax exemption for the development of new and productive investments. - The companies that may be set up after the inception of the Code of Production, as well as those new companies that may be set up by already

existing companies, with the purpose of making new and productive investments, may benefit from Income Tax exemption, for five years counted from the date when new income is generated and is only and directly attributable to the new investment.

To the effect that what is said in this article applies, new and productive investments shall be made outside the urban jurisdiction of the Canton of Quito or the Canton of Guayaquil, and within the following economic sectors, considered priority by the State:

- a. Production of fresh, frozen or industrialised foodstuff;
- b. Forestry and agro forestry chain, and its manufactured products;
- c. Metal mechanical;
- d. Petrochemical;
- e. Pharmaceutical;
- f. Tourism;
- g. Renewable energy, including bio energy or energy by biomass;
- h. Logistics services for foreign trade;
- i. Biotechnology and applied software;
- j. Sectors for strategic substitution of imports and for fostering export, as determined by the President of the Republic.

The mere change of proprietorship of productive assets that are already working and operating, does not imply new investment, according to what has been aforementioned in this article.

In case that non-compliance of the necessary conditions for the application of this article has been verified, the Tax Administration, exercising its legally established powers, shall determine and collect the corresponding Income tax, with no prejudice to the sanctions that might take place.

To enjoy the benefits stated in this article, no registrations, authorisations, or of any other nature, asides from the ones in this article, may be required.”

2.3.- Reformation of article 10 in the following form:

1. Add the following numeral:

“17) For calculating income tax, mid-size businesses may have the right of an additional one hundred per cent of the costs incurred in the following items:

1. Technical training directed to investigation, growth and technological innovation that technology, destined has to improve production and which benefit shall not go over one per cent of the amount of expenses for salaries and wages of that year in which the benefit may apply;
2. Expenses for productive improvement through the following activities: technical assistance, through market and competitiveness analyses and studies, for the product development; technological assistance for development of processes, products; adaptation and implementation of designs of processes, packaging, specialized software and other services for companies' growth, that shall be specified in the regulations of this law, and which profits do not exceed one per cent of sales; and
3. Expenses of travel, lodging and commercial promotion with the objective of accessing international markets, like business rounds, international fairs, amongst other costs and expenses of similar nature and which shall not exceed fifty per cent of the total cost and expenses destined tor promotion and publicity.

The regulation of this law shall determine the technical and formal parameters, that the contributors shall fulfil so they may profit from this benefit.”

2. in number 7), add a subsection with the following text:

Depreciation and amortization that correspond to acquisition of machinery, equipment and technology destined to implementing cleaner production mechanisms, renewable energy sources (solar, Aeolic or similar), or to the reduction of environmental impact of the productive activity,

and the emission of greenhouse-effect gases, will be reduced an additional one hundred per cent, as long as such acquisitions are not necessary for the compliance of dispositions of the pertinent environmental authority, to reduce the impact of work or as a requisite or condition for the issuance of environmental license, card or corresponding permit. In any case, there shall be an authorisation of the pertinent authority.

This additional expense shall not go over an amount equivalent to five per cent of total income. Expenses made to obtain the expected results in this article, may enjoy the same incentive. The regulations of this law, shall establish the technical and formal parameters that have to be complied with to have access to this additional deduction.

This incentive does not constitute accelerated depreciation.”

3. In the second subsection of number 9, after the phrase “ obligatory social security”, add the phrase “whenever applicable”.

4. In the fourth subsection of number 9, after the phrase “ of the respective exercise”, add the following text:

“When the investment is new in ZEDE and border zones, and workers inhabiting said zones are contracted, the deduction may be the same and for a five-year period of time. In this last case, the specific aspects for its application shall be in the regulation of this law.”

5. At the end of numeral 9, add a subsection that says the following:

“Economic compensation paid to workers to reach the Honourable Salary, may be subject for deduction.”

2.4.- Reform article 13 in the following way:

1. Eliminate number 2.

2. Substitute number 3 with the following:

3.- Payments on interests of external credits and credit lines opened by foreign financial institutions,

legally established as such, as well as the interests on foreign credits conferred government-to-government, or multilateral organizations. In these cases, interests shall not exceed the maximum referential interest rates fixed by the Board of the Central Bank, on the date of the registration of the credit or its renovation, and if in fact they exceed, the corresponding retention over excess interest rate, shall be made. Lack of registration, according to the dispositions given by the Board of the Central Bank, shall determine that the financial costs of the credit shall not be subject for deductions. Credits from financial institutions domiciled in tax havens or in jurisdictions with lesser tax rates.”

2.5.- Incorporate the following norms to article 36:

1. In literal “b” after the sentence “shall satisfy the single tariff”, eliminate the phrase “of twenty five per cent (25%)”, and add “provided for companies”.
2. In literal “c” after the sentence “... shall pay the single tariff”, eliminate “of twenty five per cent (25%)” and add, “provided for companies”.
3. In literal “e” after the sentence which in no case shall be greater”, eliminate “of twenty five per cent (25%)”, and add “provided for companies”.

2.6.- For the reduction of Income Tax rates for companies, substitute article 37 for the following:

“Art37. - Income Tax rates for companies. - Companies set up in Ecuador, as well as those branches of foreign companies domiciled in the country, and those permanent entities of foreign ones not domiciled, that have taxable income, shall be subjected to the tax rate of twenty two per cent (22%) over its taxable base.

Companies that re invest their profits in the country, may get a reduction of ten percentage points of the income tax rate, of the amount reinvested in productive assets, as long as they are destined to purchasing of new machinery or equipment, assets for watering, vegetal material, plantlets and any other vegetable provisions for agricultural, forestry, livestock and floricultural used in their production, as well the purchase of goods related to research

and technology, that shall improve productivity, generate employment and productive diversity, for which end they shall make the corresponding capital increase and comply with the requisites established in the regulations of this law. In the case of private financial institutions, savings and credit cooperatives and similar ones, they may get the tax cut, as long as the credits they issue are for the productive sector, including small and mid-size producers, as established by the regulations and are made with the corresponding capital increase.

This increase in capital shall be improved with its inscription in the Mercantile Registry until the thirty first of December of the financial year following that in which profits, subject of this reinvestment were generated, and in the case of savings and credits cooperatives and its similar, it may be improved according to the pertinent norms.

In exceptional cases, and duly justified through the technical report from the Productive Sector and Economic Policy Council, the President of the Republic of Ecuador, through Executive Decree, may establish other productive assists over which to reinvest profits, and therefore get the ten percentage points discount. The definition of productive assets shall be in the Regulations of this law. Companies that explore and extract hydrocarbons shall be subjected to the minimum tax over their base established for companies in the terms of sub index one of this article.

When a company gives money loans to its partners, shareholders, participants, and beneficiaries, those shall be considered as the company's anticipated dividends or benefits; therefore it shall make the corresponding retention over the base rate provided for companies. Said retention shall be declared and paid the month after it was done, and within the same frame provided in the regulations, and shall be a tax credit for the company at the moment of income tax declaration.

When referring to income tax rates for companies, it should be understood as a twenty two per cent rate, for all effects provided in the Tax regime and provided for in sub index one of this article.

**2.7.- Following article 37, add the following not-numbered article.-
The entities that are Managers and Operators of a Special Economic**

Development Zones (ZEDE) from the inception of the Code of Production, may have an additional five percentage points on Income Tax rates.

2.8.- In article 39, incorporate the following reforms:

1. In sub index one after the sentence “shall pay the Only Tariff, eliminate the phrase “twenty five per cent (25%)” and add, “provisioned for companies”;
2. In sub index two, after the sentence “shall pay the unified tariff”, eliminate “of twenty five per cent (25%)” and add “provisioned for companies”;

2.9.- Following article 39, add the following not-numbered article:

Art. 39.1. - The company which transfers by sale no less than five per cent of its shares, to at least twenty per cent of its workers, may defer income tax payment and its advance payment, for up to five fiscal years, with the corresponding payment of interests, calculated over the active corporate rate, in the terms established in the Regulations of this law. This benefit shall be applicable only as long as the shares are the property of the workers.

In case abovementioned workers transfer their shares to third parties, or to other shareholders, in such way that not even the minimal limits provided in this norm are met, the deferment shall immediately end and the company shall pay the remaining income tax the month following verifying any non-compliance. The benefit mentioned here might be effective during the established time as long as the company's social capital is proportionally kept or increased in favour of the workers, as prescribed in this article.

The regulations of the law, shall establish the parameters and requisites that have to be met, so as to recognise said benefits.

The present disposition shall not apply with respect to those workers for whose advantage the opening of capital is made if, outside of the labour relationship, they have any other type of link, spousal, family relatives up to level four of consanguinity, or second of kinship, or as a party with links to the owners or the representatives of the company, in the terms provided by tax legislature.

2.10.- Reform article 41 this way:

1. Replace the last insert of letter b) of Art. 41 for: “Companies recently formed, new investments recognised by the Code of Production, private citizens required to keep accounting records and the undivided succession required to keep accounting records, which might start activities, shall be subject to anticipated income tax payment after five years of effective operation, understanding the latter as the start of its productive and commercial process. In case the productive process so requires, this period of time may be extended, prior authorisation of the of the Productive Sector Council's Technical Secretary Office and the IRS.”

2. In number 2 of art. 41, add after literal i) literals j), k), l) and m) with the following text:

“j) For private citizens and legal entities that commercialise and distributors of fuel to the automotive sector, the coefficient corresponding to the total of taxable income, because for income tax purposes, may be replaced by the zero point four per cent (0.4%) of the corresponding total spread.”

“k) Tax payers whose exclusive economic activity is related with productive agro forestry and forestry for its species, with a growth time period of over a year, may be exonerated of the income tax advance payment during fiscal years in which they receive non taxed income, product of a main harvest.”

“l) Tax payers whose exclusive economic activity is related to software or technology projects, with a growth time period of over a year, may be exonerated of the income tax advance payment during fiscal years in which they receive non taxed income.”

m) To the effect of advance income tax calculations, amounts that belong to incremental spending for generating new employment or improvement of salaries, as well as for purchase of new actives, destined to the improvement of productivity and technology, and in general those investments and expenses effectively made, and relating to tax benefits for income tax payment, which is recognised by the Code of Production for new investments in the Regulations' established terms, may be excluded.

2.11.- After Art. 42, add the following Article:

“Art. 42.1. - Payment of Income tax from Mercantile/commercial/business/trade/ trusts and investment funds. -

As established in this law, the mercantile trusts that do entrepreneurial activities or that manage operating businesses, shall declare and pay the corresponding income tax over profits, the same way other companies do.

The mercantile trusts that do not do entrepreneurial activities or that do not manage operating businesses, investment, and complementary funds, as long as they obey numeral 15 of article 9 of this law, may be exempt from income tax. Without prejudice to it, they may only present an informative declaration of income tax, in which the status of the trust or mercantile is stated.

For taxes purposes, it shall be understood that a mercantile trust is one that does entrepreneurial activities or that manages operating businesses, when the object and/or activities it does are of industrial, commercial, agricultural, services, as well as any other operation for profit making, and that are commonly done by other types of companies.

The same way, for applying the anticipated income tax, in the case of mercantile real estate trusts, and for the purpose of determining the start of effective operations, the real estate business project, or any of its phases, should comply with the break-even point.”

2.12.- Reform Article 55 thus:

After literal d) of numeral 9), add literal e) with the following text:

“e) The Managers and Operators of Special Economic Development Zones (ZEDE), where the imported goods are destined exclusively to the authorized zone or incorporated in a one of the production transformation processes developed there.”

2.13.- In article 57, incorporate 2 inserts with the following text:

“As well, the taxpayers that have as their business the transport of cargo abroad and have paid IVA in the acquisition of jet fuel, have the right for a tax

credit exclusively for said payment. Once transport service has been provided, the contributor will request from the Internal Revenue Service the refund in the form and conditions provided for in the corresponding resolution.

The operators and administrators of the ZEDE's have the right to a tax credit for VAT paid in the acquisition of raw material, inputs, and services from national territory that are incorporated in the productive process in the ZEDE's. The taxpayer will request from the Internal Revenue Service, the refund in the ways and conditions provided for in the corresponding resolution, once the responsible operative technical unit of supervision and control of the ZEDE certifies, under its responsibility that said goods are part of the productive process of the acquiring company.

2.14.- In every disposition of the Law of the Internal Tax Regime where it is said: “FOB value” and “CIF value”, substitute said words for the phrase “value in customs”.**2.15.- In the second to last subsection of the numbered article after article 4, delete the phrase “ for which purpose they may base it on the information of the OCDE and the International Financial Action Group – GAFI.”**

THIRD. - Reforms to the Tax Equality Reform Law of Ecuador

3.1.- In article 159, incorporate the following inserts:

“Payments abroad for the amortization of capital and interest for credits of greater than a one-year term granted by international financial institutions, destined to finance investment allowed in the Code Of Production, are also exempt. In these cases, the interest rate of said operations shall be less than the active referential interest rate at the date the credit is registered. This exemption will not apply to credits received from related parties or financial institutions constituted or domiciled in fiscal paradises or jurisdictions considered tax havens. Payments abroad by the administrators of the ZEDE's, both for the import of goods and services related to their authorized activity, and for the amortization of capital and interest for

credits of greater than a one-year term, granted by international financial institutions, destined to finance their development in Ecuador, as well are exempt. The interest rate of said operations shall be less than the active referential interest rate at the date the credit is registered. This exemption will not apply to credits received from related parties or financial institutions constituted or domiciled in fiscal paradises or jurisdictions considered tax havens.”

3.2.- Substitute article 177 for the following:

“Art.177. - Taxable Base. - For calculation of taxable base, this shall be considered as the total area, at national level, of rural real estate, determined by the land registry that shall be made together by the municipalities and the Minister of Agriculture or their equivalent. This information shall be sent and updated annually to the Internal Revenue Service in accordance with the regulations for the application of the Rural Land Tax.”

3.3.- In article 180, make the following changes:

- a. Substitute the text of literal a), for the following text: “a) real estate located in the moors ecosystems, duly defined by the Ministry of the Environment.”
- b. In literal g) at the continuation of the phrase “priority ecosystems”, substitute the period “.” For a comma “,” ; and include the phrase “duly qualified by the Ministry of the Environment”.
- c. At the end of article 180 add the following literal:

- i) Rural property over which force majeure or fortuitous cases have occurred, duly justified and certified by the Minister of Agriculture, which gravely affect the performance and productivity of same.

3.4.- Substitute article 181 for the following:

“Art. 181. - Liquidation and Payment. - The Internal Revenue Service will determine the tax, based on the land registry elaborated together with the municipalities and the Minister of Agriculture or their equivalent. The private citizen or legal entity shall pay in the form and dates determined in the regulations for the application of this tax.”

FOURTH.- Add an additional paragraph to article 2 of the Law of the Electric Sector Regime to say:

“The State may delegate the provisioning of electrical energy services in its phases of generation, transmission, distribution, and commercialization to public/private firms where the State holds a majority participation. In exceptional circumstances, it may grant to the private and popular, supportive and community economy sectors, the provisioning of electric energy services in any of the following cases:

1. **When necessary to satisfy public, collective, and general interest;** or,
2. **When the demand for service cannot be satisfied by the public companies.”**

FIFTH.- Reform the Labour Code with the following dispositions:

1. In article 81, add the following inserts:

“The Basic Salary is the minimum economic remuneration that a person must receive for his work from his employer and which makes up part of his total compensation, but does not include the income in the form of money, kind, or services, that is derived from supplementary work, commissions, profit participation, reserve funds, benefits, per diem, occasional subsidies, additional pay, nor any other conventional remuneration or those determined by Law.

The amount of the Basic Salary shall be determined by the National Salary Council (CONADES), or by the Ministry of Labour Relations in case an agreement cannot be reached in CONADES.

The annual salary revision of the Basic Salary will be carried out in a progressive way, until it reaches the Honourable Salary, in accordance with the Constitution of the Republic and the present Code.”

2. At the continuation of Art. 105, incorporate the following numbered article:

“Art. 105.1. – By prior agreement of the employee and the employer, all or part of the profits that correspond to the employee may be paid with shares of the company where the employee

works, as long as the firm is registered in the Stock Market and complies with the ethical protocol for companies as defined by the State and the requirements in the Regulation of the Code of Production, Commerce, and Investment.”

3. In the second insert of Art.17 of the Labour Code, after the word “continuous”, add the phrase “or discontinuous”, and at the end of the same insert add the following:

“The salary or wages paid for temporary contracts, shall be increased 35% over the per-hour value of the basic salary of the sector to which the employee belongs.”. At the end of the third insert add the following: “The salary or wages paid for temporary contracts, shall be increased 35% over the per-hour value of the basic salary of the sector to which the employee belongs.”

4. Following Article 23, add the following article:

“Art.23.1. - The Ministry of the area may regulate those special work relationships that are not regulated by this Code, according to the Constitution of the Republic.”

5. In the second subsection of Art.95 of the Labour Code, after the phrase “the thirteenth and fourteenth remunerations.”, add the following text: “the economic compensation for the Honourable Salary.”

SIXTH.- Reforms to the Social Security Law:

1. Add a numeral to Art.14 of the Social Security Law to say: “The economic compensation for the Honourable Salary.”
2. At the end of the second insert of Art.11 of the Social Security Law, add the following phrase: The economic compensation to achieve the Honourable Salary shall not be taxed.”

SEVENTH.- Reform article 165 of the Law for Investment Promotion and Citizen Participation, published in the Supplement to Official Registry No. 144 of 18 August 2000, in the following manner: where it says “National Training Council and Professional Formation”, it will say “The Governing Body for Training and Professional Education”.

EIGHTH.- Substitute article 2 of the Law for the Development of the Port of Manta, for the following:

“Art.2. - The Special Inter-institutional Commission for the Port of Manta, as a legal entity, shall have the nature of an advisory organization to the Board of the Manta Port Authority, with the objective of becoming responsible for the promotion of the International Cargo Transfer Port project in the port of Manta. To comply with these ends, the Commission will enjoy administrative, economic, and technical autonomy. The commission shall contain the following members:

- a) The Mayor of Manta, as presiding officer;
- b) A representative of the Chamber of Production of Manta, legally constituted; and,
- c) The President of the Board of the Manta Port Authority

The Municipality of Manta will provide the administrative facilities for the functioning of the Commission. Additionally, the Commission will be financed with resources from national and international organizations that serve to accomplish its purpose.

The Board of the Manta Port Authority shall consult the Commission when it must make decisions related to the development of the International Cargo Transfer Port project of Ecuador in the Port of Manta. The pronouncements of the Commission will be of non-binding technical advice nature.”

NINTH.- In the Ecuadorean Quality System Law, make the following modifications:

1. In the first subsection of article 7, eliminate the phrase “and private”.
2. Substitute literal a) of article 8 and add literal e) as:

“a) Inter-Ministry Quality Committee”

“e) Ministry of Industry and Productivity (MIPRO)”

3. Add the following subsection after article 8: “The Ministry of Industry and Productivity (MIPRO) will be the governing institution of the Ecuadorian Quality System.”

4. Substitute Article 9 for the following:

“Art. 9.- Create the Inter-Ministry Committee for Quality as the authority for coordinating and formulating the policy for sector quality, and shall be made up from the following public entities:

1. Coordinating Minister of Production, Employment, and Competitiveness.
2. Minister of Industry and Productivity, who will preside over the committee or name a delegate.
3. Minister of the Environment or a named permanent delegate.
4. Minister of Tourism or a named permanent delegate.
5. Minister of Agriculture.
6. Minister of Public Health or a named permanent delegate.
7. Minister of Transport and Public Works or a named permanent delegate.
8. Minister of Electricity and Renewable Energy or a named permanent delegate.

The Sub Secretary of Quality from the Ministry of Industry and Competitiveness shall act as Secretary of the committee.

5. After article 9 add the following numbered article:

The Inter-Ministry Committee shall have the following authority:

1. Approving the National Quality Plan.
2. Formulation of policies for the implementation and compliance of the present law.
3. Formulation of policies that shall be the base for defining those goods and products that must comply with technical regulations and procedures to evaluate compliance; coordinating the activities of the entities that makes up the Ecuadorian Quality System.

4. Knowing the results of the Ecuadorian Institute for Norms-INEN, as well as of the Ecuadorian Accreditation Organization-OAE, and share the recommendations with the organizations that make up the Ecuadorian Quality System.

5. Resolve, as last resort, conflicts that arise from this law as a result of actions or omissions by entities that make up the Ecuadorian Quality System.

6. Issue the guidelines for the evaluation procedures for compliance and related to the obligatory certification of products, systems, and private citizens that perform specialized labour.

7. Coordinate and facilitate the execution, in an integrated manner, the national policies pertinent to quality.

8. Promote and request the preparation of investigation, technical and legal studies for the development and adjustment of the quality policy.

9. Request the preparation and validation of parameters to promote awareness of a culture of quality in goods and services.

10. Request the participation and advice of work groups with institutions and organizations that require compliance of their duties.

11. Promote the activities of training, technical assistance, specialization, and widespread diffusion of quality themes in goods and services.

12. Promote the securing of additional resources and the complementary inter-Ministry assistance and cooperation for the issues of climate change, through the institution established for said effect; and.

13. Issue the necessary norms for its functioning and regulate the exercise of its authority. All matters lacking norms for its functioning, shall be governed by the Judicial and Administrative Regime of the Executive Branch.

An Inter-Ministerial Consultant Committee will be convened and made up of representatives from the productive, academic, and consumer sectors.

The INEN and OAE will have their respective technical advisory committees that will include the participation of the productive sector, universities, and experts in the field of these entities.

It shall be compulsory to consult these advisory committees, and their pronouncements will be non-binding.

iamientos tendrán carácter referencial no vinculante.

6. Eliminate articles 10 and 11

7. Substitute article 12 for the following:

“Art. 12- For the execution of policies dictated by the Inter-Ministerial Quality Committee, the Ministry of Industry and Productivity will have the following powers:s:

- a. To advise the Inter-Ministerial Quality Committee in the study, design, and feasibility of the programs and projects, in order to comply with the objectives of this law;
- b. To Comply and enforce the dispositions of the Inter-Ministerial Quality Committee.
- c. Sign all classes of contracts, agreements of mutual recognition with international institutions, and agreements for technical and financial cooperation with the approval of the Inter-Ministerial Consultant Committee.
- d. Impose the corresponding sanctions for violations of the dispositions of the present law, based on reports presented by the INEN or the OAE.
- e. Temporarily designate laboratories, compliance evaluation organizations, and other entities necessary for specific issues, if they do not exist in the country. The designated organizations cannot give accreditation services in areas outside the scope of their designation.
- f. All others, for compliance of the policies dictated by the Committee, shall not provide services in their condition as accredited agents, other than those within their fields.

8. After Article 12, add the following numbered article:

“The National Quality Plan will be valid for one year from the approval in the month of January by the Inter-Ministerial Quality Committee and must be evaluated two times during this period.

The contents of the National Quality Plan will be focused on the following aspects:

- a. Promotion of quality.
- b. Preparation and review of the list of products subject to quality control.
- c. Guidelines for the elaboration of technical regulations.
- d. Guidelines to promote and develop the designation and accreditation of organizations of evaluation, which include: local and foreign laboratories, organizations of certification and inspection of products and services established in literal a) of this article.
- e. The Procedures for Evaluation and Compliance.”

9. Eliminate Art. 13.

10. In article 14, after the phrase “Public Right”, add “assign the Minister of Industry and Productivity,”

11. Eliminate Article 16.

12. In article 17, incorporate the following reforms

- Substitute the first subsection with the following: “Art 17. – In relation to INEN, the Ministry of Industry and Productivity shall have the following duties and powers.”
- Replace literal f) with the following: “approve the proposals of norms and technical regulations and procedures for compliance evaluation in the field of competition. The technical norms voluntarily emitted by the INEN (Norms NTE INEN), will be of official nature and shall comply with the Code of Good Conduct for the

elaboration, adoption, and application of the OTC norms of the World Trade Organization.

- Substitute in literal g) the phrase “propose to CONCAL”, with “propose to the Inter-Ministerial Quality Committee”.
- In literal j), replace the word “CONCAL” with the “Minister of Industry and Productivity”.

13.- Substitute Article 18 for the following:

Art. 18- The General Director of the INEN shall be of free appointment and removal by the Minister of Industry and Productivity; shall be a professional with a university Bachelors degree in Science and a Master Degree in a relevant field; with ample technical and professional experience in the areas related to this law.

The Director will be the legal representative of the INEN. He or she will be responsible for the performance of the entity, in compliance with all laws and regulations. He or she will convene, in coordination with the involved sectors, technical committees to prepare norms and regulations.

The Director General, at the request of the Minister of Industry and Productivity, should present, for approval, the projects of technical norms and regulations, as well as studies and other documents considered appropriate, in relation to the approved plans and programs.

The Director General will be responsible to carry out investigations concerning presumed infractions of this law and make the respective report to be presented to the Minister of Industry and Productivity for his knowledge and signing.

It corresponds to the Director of INEN to contract and dismiss the employees of the institution. He may sign all manner of acts and contracts that are necessary for the development and compliance with the institution’s activities, and, may make the annual budget of the entity.

14. In the first subsection of Article 20, after the phrase “Public Right”, add, “attached to the Ministry of Industry and Productivity,” and eliminate subsections 2,3,4,5, and 6.

“Art. 22.- In relation to the OAE, 4. Substitute the first insert of article 22 with the following:”

“Art. 22- In relation to the OAE, the Ministry of Industry and Productivity shall have the following powers:”

16. In literal a) of Art. 22, replace the word “CONCAL” with “Inter-Ministry Quality Committee”, and in literal i) replace the word “CONCAL” with “Ministry of Industry and Productivity”.

17. In article 23, substitute the phrase “may remain four years in the exercise of his duties and may be re-elected.” For “will be of free appointment and removal by the Minister of Industry and Productivity.”; in letters f), g), h), substitute the phrase “Director of the OAE” for “Minister of Industry and Productivity”; in letter k) eliminate the phrase “at the request of the Board” and “will be known and signed by the Board”, and replace “National Quality Council” with “Ministry of Industry and Productivity”.

18 In article 26, replace the word “CONCAL” with “Ministry of Industry and Productivity”.

19. In the second insert of Art. 28, replace the word “CONCAL” with “Inter Ministerial Quality Committee” and “Director of the OAE” for “Ministry of Industry and Productivity”.

20. In article 29, second paragraph, replace the phrase “National Quality Council” with “Ministry of Industry and Productivity” and eliminate the word “policies”.

21 In Art. 34, replace the word “CONCAL” with “Ministry of Industry and Productivity”.

22. In Art. 40, second insert, replace the words “of the board” with “of the Ministry of Industry and Productivity”.

23. In article 46, literal c), replace the word “CONCAL” with “Ministry of Industry and Productivity”; in letter k) and l) replace the phrase “INEN Board” with “Ministry of Industry and Productivity”.

24. In article 47, final subsection, replace the phrase “INEN Board” with “Ministry of Industry and Productivity.”

25. In article 48, replace the phrase "INEN Board" with "Ministry of Industry and Productivity",
26. In article 50, replace the word "CONCAL" with "Ministry of Industry and Productivity"
27. In article 52, first and second insert, replace the word "CONCAL" with "Ministry of Industry and Productivity."
28. In Art. 53, literal b), replace the phrase "National Quality Council" with "Ministry of Industry and Productivity".
29. In Art. 57, replace the word "CONCAL" with "Ministry of Industry and Productivity."
30. In the first subsection of Art. 58, replace the word "CONCAL" with "Ministry of Industry and Productivity": in the second subsection, replace the phrase "National Quality Council so that its President" with "Ministry of Industry and Productivity, who"; in the sixth subsection, replace the word "CONCAL" with "Ministry of Industry and Productivity", and in the seventh subsection, replace the phrase "National Quality Council" with "Ministry of Industry and Productivity" and replace the word "CONCAL" with "Ministry of Industry and Productivity".
31. Eliminate the first and second general dispositions.

TENTH.- Reforms to the Law to Stimulate and Control the Production and Sale of Banana and Plantain, destined for export, codified in RO-S315 of 16 April 2004.

10.1 Replace the first and second subsections of article 1 with the following text:

"Art. 1- Minimum Price Support. - The Executive Branch, through an agreement with the Ministry of Agriculture, will fix in U.S. Dollars, the minimum support price that a banana producer must compulsorily receive at the pier, for each of the distinct classes of packaging and specification for bananas and plantains for export, and for any agreement or commercial contract allowed under present law. For this reason the Ministry of

Agriculture will organize negotiation meetings. In case the parties cannot come to an agreement, the Ministry of Agriculture will fix the price by ministerial agreement. It will also fix the minimum reference price (FOB) to be declared by the exporter, in accordance with the different packaging and specifications. The mechanism for fixing the price will be determined by regulation."

10.2 In the fifth insert of article 1, substitute the words "intermediary" for "commercial agent, these being the business chambers of banana and plantain producers"; and in addition, substitute in the same subsection, the words "thirty days" for "one year".

10.3 Add after the fifth subsection of article 1 the following text:

"Except the guarantee of the agents that buy fruit from the producers. The Ministry of Agriculture, after a technical analysis, will determine who are the exporters that are exempt from presenting guarantees."

10.4 In the sixth subsection of article 1, substitute the words "in favour of the producer" with "in favour of the Ministry of Agriculture".

10.5 Add after the sixth subsection of article 1, the following text:

"All producers, agents, and exporters are obligated to sign buy-sell contracts for the fruit and will respect the clauses that are freely and voluntarily agreed upon between the parties, under the condition that they are not against the present law and regulation. The exporter that does not sign contracts with the producers and/or agents will not be allowed to export.

10.6 Replace the first subsection of article 4 with the following text:

"Art.4- Sanctions for Non-Compliance and Repeated Offenses- The Ministry of Agriculture, through its corresponding administrative authority, by law, or through written complaint, will verify that exporters and/or agents pay the producers for their bananas, plantains, the established minimum support price.

If found to be in non-compliance, the administrative authority in charge of the process, and after a hearing from the interested parties and having received a technical report, will apply a fine of twenty five and fifty times the value of the evasion of non-compliance, will return to the producers the value of the evasion and/or non-payment, and will order the suspension of export permission for fifteen days, without prejudice to any civil or penal actions that may follow.

In case of repeated offenses, the suspension of export permission will be thirty days. After three offenses, the sanction will be sixty days, and, after four offenses, the suspension will be permanent and definitive.

Repeated offenses are considered as non-compliance within a period twelve months.

10.7 After the third subsection of article 4, add the following text:

"The exporter is obliged to pay for the purchase of the bananas, plantains in their different types, in a period of eight calendar days, counting from the bill of lading, through the transfer of funds using the Interbank Payment System (SPI) of the Central Bank of Ecuador, from the checking and/or savings account of the exporter, to the respective account of the producer and/or agent. The non-use of the Interbank Payment System will carry with it an administrative fine equivalent to the amount evaded or not paid through the (SPI)".

10.8 Eliminate the fourth subsection of article 4

10.9 In the first subsection of article 8, after the words "present Law," add the following:

"that has not been previously authorized by the Ministry of Agriculture".

TRANSITORY DISPOSITIONS:

FIRST.- The reduction in Corporate Income Tax (CIT) considered in Art. 37 of the law of the Internal Tax Regime will apply in a progressive form in the following terms:

During fiscal year 2011, the CIT will be 24%.
During fiscal year 2012, the CIT will be 23%
During fiscal year 2013, the CIT will be 22%
From fiscal year 2013 and on, the CIT will be 22%

SECOND.- For effects of fulfilling the idea of greater citizen participation, diversify the ownership and open the capital structure of firms with State ownership, in a period of one-hundred and eighty days from the inception of this Code, the State shall define the conditions and mechanisms for the process of divestiture of said companies, as long as they are not part of the strategic sectors of the economy, established by the Constitution. This way, in the given period, the Production Sector Council, in the field of its competency, will design the mechanisms for the financing and sales process for the respective shares or companies, in benefit of the Ecuadorian people or investors in general, giving preference to the workers of said companies.

THIRD.- Duty-Free Zones, whose concessions have been granted under the Law of Duty-Free Zones, will continue operating under the conditions at the time of authorization for the remainder of the concession. However, the administrators and users of the present duty-free zones are subject to the administrative and operational dispositions of this Code.

FOURTH.- At the time of the enactment of this Code, and for the effects of their qualification, companies that desire to register themselves as new users of the duty-free zones that are functioning, shall comply with the norm required from the operators of Special Economic Development Zones (ZEDE); and they may be approved when they are in accordance with a qualified investment plan presented to the Duty-Free Zone.

FIFTH.- The firms that administer the duty-free zones that desire to convert to a ZEDE, will be able to do it provided that their request is presented to the pertinent authority up to six months prior to the end of their concession. In cases where possible,

the Production Sector Council will give priority to migration of existing Duty-Free Zones to the new mode provided for in this code.

SIXTH.- As of the publication of this Code in the Official Registry, it is decreed that planning and final execution of export promotion and non-financial investment, both in and out of the country, that have been in charge of the CORPEI under that established in Title IV, Chapter I, of Law No. 12: Law of Foreign Commerce and Investment LEXI, published in the Official Registry 9 June 1997, will be assumed by the Ministry of Foreign Relations, Commerce, and Integration, in coordination with the other entities and institutions of the state in this field, until the President of the Republic, in exercise of his powers provided for in numeral 5 of Article 147 of the Constitution of the Republic, structures and regulates the functioning of the Institute for Export Promotion and Foreign Investment.

In accord of that is established in Title XXX of the Civil Code, the CORPEI will remain a non-profit legal entity, contributing to the country's development, through private promotion of exports and investment in the country and abroad.

In this context, because of that established in the present disposition, the CORPEI, in a maximum of ninety days from the publication of this law in the Official Registry, will reform the Statutes, in reference to its functions, activities, members, administrative entities, board, resources, and equity; it will eliminate competencies, functions, and assignments, that for these dispositions shall be assigned to a specialized public entity for promotion of exports and foreign investment. The Ministry of Foreign Relations shall carry out the reform of the statutes of the CORPEI, within thirty days after having presented the corresponding project to be known and resolved.

Being a policy and strategic objective of the Ecuadorian State, provided for in the Constitution, the state shall keep its representation in the CORPEI as a member of the assembly general and as a board member, for the purpose of coordinating policies in the field of foreign commerce and optimizing human and economic resources. Therefore, the Ministry of Foreign Relations will establish cooperation agreements with the CORPEI for the purpose of taking advantage of its experience and technical capacity in trade promotion and investment.

SEVENTH. - With respect to the redeemable quotas collected y CORPEI, the following is issued:

Without prejudice to that stipulated in the preceding Transitory Disposition, the redeemable quotas created by Law 24, published in Official Registry 165 of 2 October 1997, will continue being collected until 31 December 2010 for the CORPEI, at that moment that the obligation ceases to contribute said redeemable quota.

2o For the effects to refund the redeemable quota, certificates, and coupons of the contributors, in the corresponding periods, the CORPEI will constitute in a pertinent period of 90 days the trusts considered necessary and sufficient for the refund of the contributors funds. Said trusts will be constituted in a Public Sector financial institution with the resources that conserve the statutory and technical corresponding restitution. The general characteristics of the trust, as well as whatever other aspect that relates to the net equity of CORPEI generated before 31 December 2010, will be incorporated in the reforms of the statutes considered in Transitory Disposition N.6.

3o So as to insure that the contributors that have completed US \$500.00 in coupons go to exchange for certificates of contribution of the CORPEI for their respective restitution, the CORPEI will convene by notice through a major newspaper of widespread circulation, once every three months, from the publication of this Code in the Official Registry. The contributors will have two years to exchange their coupons for CORPEI certificates of contribution. At the same time, the period for the payment of the certificates will be 10 years from the emission of the last coupon paid by the CORPEI.

4o In equal form the contributors that have not completed US\$500.00 in coupons will be convened by notice through a major newspaper of widespread circulation, so that in a period of two years they convert the CORPEI certificates of contribution. The payment of the certificated will be within a period of 5 years from the date of the emission of the last coupon paid by the CORPEI.

5o The unclaimed money of the contributors held by the trust in the form of coupons and certificates will be used to finance projects for promotion and investment between the Ministry of Foreign Relations, Commerce and Integration, and the CORPEI, conforming to the particular characteristics of the trusts.

EIGHTH.- The actual board of the Customs Corporation will continue its functions for a period of 90 days from the promulgation of this Code, with the objective to conclude the matters that remain pending to resolve. After this period, the continuation and resolution of unfinished processes will pass to the authority of the General Director.

NINTH.- The Public Servants that have positions within the Customs Corporation will be moved to positions in the National Customs Service of Ecuador.

The public servants that are part of Customs Vigilance Service at moment that the Code becomes law, will be moved to positions in the National Customs Service of Ecuador, through a process of reclassification, be it in the Customs Vigilance Unit or other operating units in the entity, respecting at every moment their pay and labour stability in accordance with the law of Public Service.

TENTH.- Until the new General Director takes charge, whomever is in the post of General Manager of the Customs Corporation, will assume the functions of the General Director of the National Customs Service of Ecuador.

ELEVENTH.- The good and merchandise that are stored, under custody of the Customs Corporation or en warehouses rented by said institution, for whatever reason, will be submitted to a process of valuation and inventory by the institution, except that which has already been valued by an expert within a judicial process, in which case this shall be the value of the good.

After the valuation of the goods, three publications will be executed every eight days in two newspapers of widespread national publication, giving a period of 20 days from the date of the last publication for those persons who believe they have rights with respect to the goods to certify their claims in due legal form.

If within the designated period it is determined that the goods are submitted to a judicial process, they will be publically auctioned, with the disposition that proceeds from the auctions are deposited with the National Customs Service of Ecuador according to that established in the regulations, until the end of the corresponding judicial process, in which case if the order of a

judge or tribunal is to return the merchandise, the administration will return the proceeds of the public auction and, if the merchandise is decommissioned, the proceeds will be deposited in the Unified Treasury Account.

The same procedures will be followed with respect to goods that are not under judicial order and are under the custody of the National Customs Service of Ecuador. In this case, if no person demonstrates a legitimate claim over said merchandise, the proceeds from the public auction will be deposited in the Unified Treasury Account; on the contrary, if a person demonstrates a legitimate claim over said merchandise, a process over the corresponding claim will be transmitted in accordance with the dispositions of the applicable legislation.

If it is determined there are goods without commercial value, and within the time period stipulated in the present disposition no person makes a legitimate claim, the destruction of the goods will proceed without delay. If the merchandise in this case is clothing whose import is prohibited, it will be transferred to the Ministry in charge of social policy for its respective donation. For the realization of the process detailed in this disposition the authority may contract with the private sector.

TWELFTH.- The administrative and judicial processes that have been filed against the customs authority or that the authority has filed against customs users, including until year 2000, and whose quantities do not exceed US \$1000, will be dismissed by the judicial or administrative authority and eliminated from fiscal accounts, whether it concerns reclaimed values by the customs user or to be recovered in favour of the treasury.

THIRTEENTH.- Until it is promulgated the reforms anticipated in the regulations of the Organic Law of Customs and/or promulgated the respective administrative dispositions for the case of consumable goods, live animals, perishable or easily decomposable goods, article 157 of the General Regulations of the Organic Customs law, published in the Official Registry N. 158 of 7 September 200 will apply, as well as the internal manuals that regulate it. In other cases, until the regulations of this Code are promulgated,

the Director of the Customs Corporation, while it exists, and after, the General Director of the National Customs Service of Ecuador, may dictate technical norms for their application.

FOURTEENTH.- Upon entering into law the present Code, the General Director of the National Customs Service of Ecuador, subject to the law and institutional necessity, may stipulate the administrative transfer of public servants of the institution, including those that members of the Customs Vigilance Service.

FIFTEENTH.- Within a period of 90 days from the entry in force of this Code, the respective modifying contracts with the concessionary companies for customs services will be signed in accordance with the new norms.

SIXTEENTH.- Within a period of 90 days from the entry in force of this Code, the Director of the National Customs Service of Ecuador will decree the regulations that regulate the Customs Vigilance Unit, within which will be established the attributions, responsibilities, and organic structure.

SEVENTEENTH.- The competent institution that will exercise administrative control over the Special Economic Development Zones (ZEDES) will be established with corresponding public servants, financial and administrative resources, and the infrastructure of the National Duty-Free Zone Council.

EIGHTEENTH.- In a period of 60 days from the publication of this Code, the President of the Republic, through Executive Order, will designate the structure and make-up of the "Training and Professional Formation Entity". Until said entity is designated, the National Training and Professional Formation Council will continue as the governing entity.

To comply with the rules of the Code concerning professional and technical training, the Training and Professional Formation Entity, within a period of 18 months from the norms of the Code entering in force, will consolidate a professional training system based on labour competencies, with the corresponding structural and administrative changes, in such form that the methods of financing lead to the establishment of

curriculum based on the professional profiles for developmental training and personal formation, and in addition, the recognition of labour competencies through labour evaluation and certification.

For this effect, the Training and Professional Formation Entity may finance all activities and direct and indirect costs that make possible a system based on labour competencies, to include studies, identification of professional profiles, designing of norms and standards, design of curriculum, training programs, and evaluation and certification, amongst others.

NINETEENTH.- The resources that have been generated for the application of article 1 of the Reformatory law of the Law of the Port of Manta Development published in Official Registry numbers 323 of 22 May 1998, until the entry in force of this Code, will be distributed in the following form:

10% of said resources will be sent to the Special Interinstitutional Commission for the Port of Manta, to be invested in studies and promotional projects for the development of the port and airport of Manta, oriented towards the formation of a logistical service centre, without detriment that the funds can be used as well for complying with contractual obligations contracted before the entry in force of this Code.

The other 90% of the resources will be sent Manta Port Authority, and will serve to finance the public works of the port, as well as for the execution of projects for the International Cargo Transfer Port of Ecuador in the Port of Manta. The promotion of said project will be executed in coordination with the Special Interinstitutional Commission for the Port of Manta. At a later date, the resources generated as a consequence of the legal dispositions of this article will be assigned to the Manta Port Authority for the execution of projects for the International Cargo Transfer Port of Ecuador.

TWENTIETH.- The payment of economic compensation to arrive at the Honourable Salary will be realized over the base stated in article 8 of this Code when the sum of the Basic Unified Salary plus the components contemplated in article are less than the Honourable Salary or until the Basic Unified Salary is equal to it. Under no circumstances will this temporary compensation

become a permanent acquired right of the workers.

TWENTY FIRST.- For fiscal year 2010, the period for the declaration and payment of the Rural Land Tax will be until 31 December of said fiscal year.

TWENTY SECOND.- In the case of property located in the Amazon region, for the time period covering fiscal years 2010 through 2015, the process that generates the tax will be produced with property or land area that exceeds 70 hectares, under the terms of Article 174 of the Tax Equality Reform Law of Ecuador. However, those that have cancelled the tax corresponding to 2010, and do not possess properties greater than 70 hectares, will have the right to a tax refund for unjustified excess tax paid under the Tax Code.

In case the liable person is in possession of or at the same time owns land in the Amazon Region and in other regions of the country, the calculation of this tax will be based on the maximum sum of all the land owned less the land in the Amazon Region for the fiscal period. The resulting positive number will be the base of the tax. However, if the number of hectares possessed in the Amazon Region is less than 25, the tax liability will be based on those hectares that exceed 25 hectares of the sum total of rural land owned at the national level.

Beginning in 2016, for the calculation of rural lands located in the Amazon Region, the following table will apply:

FISCAL YEAR	LÍMITE (HECTÁREAS)
2016	61
2017	52
2018	43
2019	34
2020... and beyond	25

In any case, for the payment of the Rural Land Tax, as long as it is not taken into account with a actualized national land registry and this is not sent to the Internal Revenue Service in conformity with the present law and its regulations, the liable persons will declare and pay this tax in the authorized financial institutions according to the format of the Internal Revenue Service. For proven cases of Force Majeure of the tax authority, up to

five years may be granted under the tax code for facilitation of payments.

TWENTY THIRD.- within a period of 60 days from the entry in force of this Code, the administrative resources and personnel of the Council of Foreign Trade (COMEXI) and Investment will be transferred to the ministry designated by the Technical Secretary of the governing body for commercial policy. Equally, all resolutions adopted by the COMEXI will maintain their validity and provide for their respective legal effects until they are expressly revoked.

TWENTY FOURTH.- Within a period of 60 days from the entry in force of this Code, the administrative resources and personnel of the National Council for Quality, the Bureau Statistics, and the OAE Directorate will be transferred to the Ministry of Industry and Productivity. Equally, all resolutions that these entities have adopted will maintain their validity and provide for their respective legal effects until they are expressly revoked by the Interministerial Quality Committee of by the Ministry of Industry and Productivity, whomever corresponds.

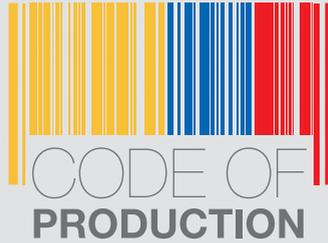
TWENTY FIFTH.- All fines for regulatory infractions registered in the Interactive System of Foreign Commerce (SICE) of the Ecuadorian Customs Authority under the Organic Customs Law up until 30 October 2010, except those registered for late presentation of customs declaration, or for non-collaboration with customs control, or for cases of non-payment over which the Customs Authority has not initiated legal procedures for payment, will be eliminated from the customs administrative information system by the Director of the National Customs Service of Ecuador.

REPEAL OF DISPOSITIONS

Apart from the established Transitory Dispositions, from the date of the validity of this Code, all norms that are contrary to the dispositions of this Code stand repealed. In addition, the following norms are expressly repealed:

- Code N. 2006-004 of the Law of Industrial Promotion, published in Official Registry N. 269 of 12 May 2006;
- The law of Small Industry Promotion, contained in Supreme Decree N. 921, published in the Official Registry N. 372 of 20 August 1973;

- c. The Law of Tax and Credit Promotion in favour of the industries established in the Province of Esmeraldas, published in Official Registry N. 130 of 14 August 1997;
 - d. Law N. 35 of Agro Industrial y Tourism Development in the Province of Manabí, published in the Supplement of Official Registry N. 194 of 14 November 1997;
 - e. Law N. 45 of Industrial Promotion for the Province of Bolívar, published in Official Registry N. 218 of 18 December 1997;
 - f. Law N. 48 of Industrial and Agro Industrial Promotion for the Province of Imbabura, published in Official Registry N. 223 of 26 December 1997;
 - g. Law N. 51 for the Promotion of Production of Goods and Development of Fisheries Industry in the Province of Chimborazo, published in the Supplement to Official Registry N. 227 of 2 January 1998;
 - h. Law N. 65 for the Promotion of Industrial, Artisan, and Tourism Development of the Province of Cañar, published in Official Registry N. 269 of 5 March 1998;
 - i. Law N. 65 for the Promotion of Production and Avoidance of Population Migration of the Province of Loja, published in the Official Registry N. 1 of 12 August 1996;
 - j. Law N. 46 for Promotion and Guarantee of Investment, published in Official Registry N. 219 of 19 December 1997;
 - k. The Law of Foreign Commerce and Investment, published in the Supplement of Official Registry N. 82 of 9 June 1997.
 - l. Article 7 of the Law for Fisheries Promotion and Development, published in Official Registry N. 792 of 15 March 1979.
 - m. Article 15 of the Law of Agrarian Development, published as Codification N. 2004-02, published in the Supplement of Official Registry N. 315 of 16 April 2004.
 - n. The Law of Duty Free Zones, published as Codification N. 4, published in Official Registry N. 562 of 11 April 2005.
 - o. Chapter Two of Law N. 90 of the Assembly and Part-Time Labour Contracting Regime, published in the Supplement of Official Registry N. 493 of 3 August 1990. In what is pertinent, the norm for what this disposition repeals may be incorporated in customs rules for the regulation of temporary entry and finished manufacture considering the particular systems of assembly the are valid in the before mentioned laws.
 - p. Stands repealed articles 3 and 5 of the Law of the Development of the Port of Manta, as well as the article and numeral following article 3, introduced by Law N. 28, published in Official Registry 231 of 1 December 2003. Stands Repealed as well the second insert of article 1 of Interpretive Law N. 2006-51, published in Official Registry N. 344 of 29 August 2006.
 - q. The Organic Law of Customs.
 - r. The Law of Industrial Parks, published in Official Registry 137 of 1 November 2005 and its reforms.
- The dispositions of this Code and its revocations enter into force from the date of promulgation in the Official Registry.
- Given and Signed in the seat of the National Assembly, located in Metropolitan District of Quito, Province of Pichincha, this sixteenth day of December of 2010.
- f.) Fernando Cordero Cueva, President.
 - f.) Dr. Francisco Vergara O., General Secretary.



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