

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$2.3 billion in 2006, an increase of \$493 million from \$1.8 billion in 2005. U.S. goods exports in 2006 were \$2.7 billion, up 25.2 percent from the previous year. Corresponding U.S. imports from Panama were \$378 million, up 15.7 percent. Panama is currently the 45th largest export market for U.S. goods.

The stock of U.S. foreign direct investment in Panama in 2005 was \$5.2 billion (latest data available), down from \$5.6 billion in 2004. U.S. FDI in Panama is concentrated largely in the non-bank holding companies, finance and wholesale trade sectors.

FREE TRADE NEGOTIATIONS

The United States and Panama completed trade promotion agreement (TPA) negotiations on December 19, 2006, with the understanding that discussions would continue on labor. The agreement is subject to approval by both the U.S. Congress and Panama's Legislative Assembly. A bilateral TPA with Panama would be a natural extension of an already largely open trade and investment relationship. Panama is unique in Latin America, but like the United States, in that it is predominantly a services-based economy. Services represent about 80 percent of Panama's gross domestic product. Along with implementation of the Dominican Republic – Central America – United States Free Trade Agreement (CAFTA-DR), implementation of a bilateral TPA with Panama could further boost momentum for lowering trade and investment barriers throughout the region. The agreement will provide new economic opportunities for U.S. exporters, including significant opportunities to participate in the \$5.25 billion expansion plan for the Panama Canal. The Panama Canal expansion is due to begin in 2008 and finish in 2014.

IMPORT POLICIES

Tariffs

Under the United States-Panama TPA, 88 percent of U.S. exports of consumer and industrial goods to Panama would become duty-free immediately, with remaining tariffs phased-out over ten years. The agreement would include "zero-for-zero" immediate duty-free access for key U.S. sectors and products including agricultural and construction equipment, information technology products, medical and scientific equipment, animal genetics, and oilseeds. Other key U.S. export sectors such as motor vehicles and parts, paper and wood products, and chemicals also would obtain significant access to Panama's market as duties are phased-out.

The TPA provides for immediate duty-free treatment for more than half of current U.S. agricultural exports to Panama, including high-quality beef, certain pork and poultry products, cotton, wheat, soybeans and soybean meal, most fresh fruits and tree nuts, distilled spirits and wine, and a wide assortment of processed products. The TPA also provides for expanded market access opportunities through tariff-rate quotas (TRQs) for agricultural products such as pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen French fries and tomato products. Tariffs on most remaining U.S. agricultural products would be phased out within 15 years.

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Apparel products made in Panama would be duty-free under the bilateral TPA if they use U.S. or Panamanian fabric and yarn, thereby supporting U.S. fabric and yarn exports and jobs. Strong customs cooperation commitments between the United States and Panama would allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Panama's tariffs on agricultural goods range from 10 percent to more than 250 percent. In addition, Panama charges a 10 percent tax on sparkling wine and a 15 percent tax on still wines. The maximum tariff on industrial imports is 15 percent. Under the bilateral TPA, more than half of U.S. agricultural exports would enter Panama duty-free immediately. Panama would eliminate its remaining tariffs on nearly all agricultural products within 15 years. For some of Panama's most sensitive products, TRQs would permit immediate duty-free access for specified quantities, that will grow during the tariff phase-out period, while the "over-quota" tariffs are phased out.

Non-Tariff Measures

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (or ITBM) tax levied on the cost, insurance, and freight value, and other handling charges. Pharmaceuticals, foods and school supplies are exempt from the transfer tax. Currently, importing entities are required to hold a commercial or industrial license to operate in Panama, which can be time-consuming and expensive, in order to import manufactured goods into the country without an additional import license.

STANDARDS, TESTING, LABELING AND CERTIFICATION

In the past, Panama has required that its health and agriculture officials certify individual U.S. plants and/or shipments as a precondition for the importation of beef, poultry, pork, dairy, and other agricultural products. In addition, Panama has restricted imports of U.S. meat and poultry and of other U.S. agricultural products through non-science-based sanitary and phytosanitary (SPS) requirements. Certain agricultural products (*e.g.*, processed food products) also faced lengthy and costly product registration requirements.

In December of 2006, the U.S. Government and the government of Panama signed a far-reaching bilateral agreement on SPS measures and technical standards. Panama has implemented this agreement through a series of resolutions and decrees. Under this agreement, Panama has recognized the equivalence of the U.S. meat and poultry inspection systems and of the U.S. regulatory system for processed food products, thereby eliminating plant-by-plant and shipment-by-shipment inspection requirements. In addition, Panama has provided access for all U.S. beef and beef products (including pet food), and all U.S. poultry and poultry products, consistent with international standards. Panama has lifted all import certification and licensing requirements, except those agreed with the United States (specifically, sanitary certificate requirements) and formalized its recognition of the U.S. beef grading system and cuts nomenclature. Finally, Panama has eliminated its time-consuming and costly product registration procedures, and agreed to an automatic, cost-free and quick registration process for the small group of agricultural products not exempted.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006 regulates government procurement and other related issues. The Law was intended to streamline and modernize Panama's contracting system. It establishes, among other things, an Internet-based procurement system (www.panamacompra.gob.pa) and requires publication of all proposed government purchases. The Law also created an administrative court to handle all public

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contracting disputes. The rulings of this administrative court are subject to review by the Panamanian Supreme Court. The Panamanian Executive Branch is developing the regulatory framework to implement Law 22. The Panamanian government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained that certain procedures have not been followed.

While Panama committed to become a party to the World Trade Organization (WTO) Government Procurement Agreement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled. Under the bilateral TPA, Panama would guarantee a fair and transparent process for procurement covered by the Agreement. Under the bilateral TPA, U.S. suppliers will be permitted to bid on procurement by a wide range of Panamanian government entities, including the Panama Canal Authority, on the same basis as Panamanian suppliers.

EXPORT SUBSIDIES

Panamanian law allows any company to import raw materials or semi-processed goods at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production), or duty-free for export production, except for sensitive agricultural products, such as rice, dairy, pork and tomato products. Companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2007.

In the context of its WTO accession, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), which was given to firms producing certain non-traditional exports, by the end of 2001. However, during the WTO Ministerial Conference in November 2001, the government of Panama asked for and received an extension for the use of CATs. The WTO extended this waiver until December 2006, allowing exporters to receive CATs equal to 15 percent of the export's national value added. Legislation enacted in 2004 aimed at eliminating the CAT and replacing it with another form of subsidy has been repealed. The CAT program has been extended until June 2007 allowing exporters to receive CATs equal to 10 percent of the export's value added. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that profit from these exemptions are not eligible to receive CATs for their exports.

Other Export-Related Items

The Tourism Law of 1994 (Law 8) allows a deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development. There is currently draft legislation aimed at eliminating this benefit, but it is uncertain whether such legislation will be enacted.

Law 25 of 1996 provides for the development of export processing zones (EPZs) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment, particularly in former U.S. military bases. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported.

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The government also provides other tax incentives to EPZ companies. There are thirteen EPZs in Panama, two of which are inactive. The Panamanian government is seeking to conform the regulations governing EPZs to those of the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Intellectual property policy and practice in Panama is the responsibility of an “Inter-institutional” Committee. This committee consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce and Industry. It coordinates enforcement actions and develops strategies to improve compliance with the law. The creation of a specialized prosecutor for intellectual property-related cases has strengthened the protection and enforcement of intellectual property rights (IPR) in Panama. However, given Panama’s role as a transshipment point, industry is concerned Panama will become susceptible to trading in pirated and counterfeit goods.

The bilateral TPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. standards of protection and enforcement and with emerging international standards. Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text and videos; stronger protection for U.S. patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks; and further deterrence of piracy and counterfeiting.

Copyrights

The government of Panama is a party to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, and is a member of the Berne Convention for the Protection of Literary and Artistic Works. The Copyright Office, however, has not yet promulgated the underlying regulations to the Treaties.

Though Panama’s 1994 copyright law modernized copyright protection and amendments to the law in 2004 provided for a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem. For example, although U.S. industry welcomes the effective police and legal action which have significantly reduced the rate of DVD piracy, Internet piracy is quickly emerging in Panama. Films in theatrical release are often downloaded to DVDs and videos, reproduced on optical discs, and then distributed by street vendors. Despite ongoing investigations to detect laboratory facilities, the legal framework guiding Internet use in the country remains incomplete.

Patents

Panama is a member of the Paris Convention for the Protection of Industrial Property. Panama’s 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. However, pharmaceutical patents are granted for only 15 years and can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

Trademarks

Law 35 provides trademark protection, simplifies the process of registering trademarks and allows for renewal of a trademark for ten-year periods. An important feature of the law is the granting of *ex-officio* authority to government agencies to conduct investigations and to seize materials suspected of being

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counterfeited. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by Customs and Colon Free Zone (CFZ) officials in conducting investigations and confiscating merchandise. In 1997, the Customs Directorate created a special office for IPR enforcement, followed by a similar office created by the CFZ in 1998. The Trademark Registration Office has undertaken significant modernization with a searchable computerized database of registered trademarks that is open to the public as well as online registration.

SERVICES BARRIERS

In general, Panama maintains an open regulatory environment for services. For some professions, such as insurance brokers, customs brokerage, freight forwarding, architects, engineers, medical doctors, lawyers and psychologists, Panama requires that individuals hold a Panamanian technical license.

Under the bilateral TPA, Panama would accord substantial market access across its entire services regime, including financial services. Panama agreed to eliminate measures that restrict investment in retail trade to Panamanian nationals, to provide improved access in sectors like express delivery, and to grant new access in certain professional services that previously had been reserved exclusively to Panamanian nationals. Panama also agreed that portfolio managers in the United States would be able to provide portfolio management services to both mutual funds and pension funds in Panama.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is receptive to foreign investment. Over the years the country has bolstered its reputation as an international trading, banking, maritime and services center.

The Panamanian government was, until recently, often unresponsive to concerns raised by U.S. investors. For example, in highly regulated sectors, or in sectors where the government grants a concession, companies have encountered a lack of cooperation from government officials and been subjected to changes to the terms of their concession contracts. One such example related to pricing changes and a cancellation of contracts without consideration for existing law.

The U.S.-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). With some exceptions, the BIT ensures that U.S. investors receive fair, equitable and non-discriminatory treatment and that both Parties abide by international law standards such as for expropriation and compensation and free transfers. Under the bilateral TPA, the BIT would be suspended after a period of 10 years. Investors will continue to have important investment rights and protections under the investment provisions of the bilateral TPA.

The bilateral TPA would establish a more secure and predictable legal framework for U.S. investors operating in Panama. Under the bilateral TPA, all forms of investment would be protected, including enterprises, debt, concessions, contract and intellectual property. U.S. investors would enjoy, in almost all circumstances, the right to establish, acquire and operate investments in Panama on an equal footing with local investors. Among the rights afforded to U.S. investors are due process protections and the right to receive a fair market value for property in the event of an expropriation. Investor rights would be protected under the bilateral TPA by an effective, impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute panels and, dispute panel hearings would be open to the public, and interested parties would have the opportunity to submit their views.

On July 12, 2006, Panama enacted Law 27 which allows the government of Panama to create enterprises to conduct oil and gas exploration, distribution, production, storing, industrialization, commercialization,

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importation, exportation and refining activities. Although the government has not yet created such an entity, U.S. companies have expressed concern that Law 27 is ambiguous and may result in greater government intervention and restrictions in the energy sector.

ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. The law was a collaborative effort between the public and private sectors, resulting from several months of detailed discussions and broad consultations. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it creates the National Directorate of Electronic Commerce to oversee the enforcement of the law; and it defines certification organizations and establishes a voluntary registration regime. In addition, in August 2004 partial regulations regarding the 2001 law were issued to facilitate the registration of certification organizations. The law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

Under the bilateral TPA, Panama would provide non-discriminatory treatment of digital products, would not impose customs duties on digital products transmitted electronically, and would cooperate in numerous policy areas related to electronic commerce. Additionally, the agreement would require procedures for resolving disputes about trademarks used in Internet domain names.

OTHER BARRIERS

Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. Amid persistent allegations of corruption in the government, particularly in the judiciary, the Torrijos administration campaigned in 2004 on a promise to "eradicate corruption." Although the government continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, it has been slow to deliver concrete results. The anti-corruption provisions in the bilateral TPA would require Panama to ensure that bribery in trade-related matters is treated as a criminal offense, or is subject to comparable penalties, under its law.