

PANAMA

TRADE SUMMARY

U.S. goods exports in 2013 were \$10.8 billion, up 9.6 percent from the previous year. Corresponding U.S. imports from Panama were \$449 million, down 16.9 percent. The U.S. goods trade surplus with Panama was \$10.3 billion in 2013, an increase of \$1.0 billion 2012. Panama is currently the 29th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$5.1 billion in 2012 (latest data available), down from \$5.4 billion in 2011. Reported U.S. FDI in Panama is led by the nonbank holding and manufacturing sectors.

TRADE PROMOTION AGREEMENT

The U.S. Congress enacted legislation approving and implementing the United States-Panama Trade Promotion Agreement (TPA) on October 12, 2011, and President Obama signed that legislation on October 21, 2011. After Panama completed its necessary actions, the TPA entered into force on October 31, 2012. The TPA includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

IMPORT POLICIES

Tariffs

Panama's average applied tariff on non-U.S. industrial and consumer goods is approximately 6.1 percent, although tariffs on some products are as high as 81 percent. Panama's average applied tariff on non-U.S. agricultural goods is 12.4 percent, but some agricultural imports face tariffs as high as 260 percent.

Over 87 percent of U.S. exports of consumer and industrial products to Panama became duty free immediately upon entry into force of the TPA. For those products for which tariffs will be phased out over time, the first round of tariff reductions took place upon entry into force of the TPA on October 31, 2012, the second round of tariff reductions took effect on January 1, 2013, and a third round of tariff reductions took effect on January 1, 2014. Most remaining tariffs on consumer and industrial products will be phased out over the course of 10 years. Almost all products within each of the following key industrial sectors gained immediate duty-free access to the Panamanian market: information communications and telecommunications equipment; agricultural and construction equipment; aircraft and parts; medical and scientific equipment; environmental products; pharmaceuticals; fertilizers; and agro-chemicals. In 2012, Panama notified its Information Technology Agreement (ITA) tariff schedule to the WTO and thus achieved membership in the ITA. As such, Panama has committed to provide duty-free treatment on an MFN basis to imports of products covered by the ITA.

The TPA provided for immediate duty-free treatment for over half of U.S. agricultural exports to Panama (by value), 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. Duties on most other agricultural goods will be phased out over a period of 5 years to 12 years, depending on the product. Tariffs on the most sensitive products for Panama, such as pork and pork products, chicken leg quarters, dairy products, corn, and rice, will be phased out over 15 years to 20

years. In some cases, Panama's current applied tariff for agricultural goods is lower than the bound tariff required under the TPA.

The TPA also provided for immediate expanded market access opportunities through tariff-rate quotas (TRQs) for some sensitive agricultural products. These TRQs permitted immediate duty-free access for specific quantities of certain agricultural products. This access will increase as quotas are increased and over-quota duties are phased out over the course of the implementation period.

The TRQs are administered using four different mechanisms, which vary by product:

- an auction system for nonfat dry milk, whole milk powder, corn, rough rice and milled rice;
- a first-come, first-served system for pork meat, certain processed pork products, pig fat, fluid milk, yogurt, butter, ice cream, other dairy products, fresh or chilled potatoes, fresh or chilled onions, dried kidney beans, refined corn oil, and processed tomatoes;
- a licensing system for historical importers or new importers for cheddar cheese, other cheeses and frozen French fries; and
- an Export Trade Certificate of Review, issued through the Board of the Panama Poultry Export Quota, Inc., after an open auction for chicken leg quarters.

The government of Panama issued the implementing regulations for TRQ administration under the TPA in Executive Decree No. 154 of October 10, 2012. Customs Resolution No. 246 of October 22, 2012, governs the implementation of the first-come, first-served TRQ.

Nontariff Measures

In addition to tariffs, all goods and most services sold in Panama, except for foods and feeds, are subject to a 7 percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges. The value-added tax is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using endorsable documents are exempt from the VAT. In 2012, the government introduced an excise tax on vehicle sales, which varies from 5 to 25 percent, based on the value of the vehicle.

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, Panama Emprende (<https://www.panamaemprende.gob.pa/>). Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

Law 42 of April 2011, which entered into force in 2013, promotes the production and use of domestically-produced biofuels through the provision of various incentives. For example, Law 42 imposes a tax on the use of anhydrous bioethanol and biodiesel blended with gasoline and diesel, respectively, while at the same time establishing an offsetting tax credit that can be earned through the purchase of bioethanol and biodiesel produced from domestic sources. The United States has expressed concerns with Law 42 in light of Panama's WTO commitments. Panama has thus far been nonresponsive to U.S. concerns, and the United States will continue to engage Panama to address this issue in 2014.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006, as amended by Law 48 of 2011 and Law 62 of 2012, among others, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established an Internet-based procurement system called Panama Compra, (<http://www.panamacompra.gob.pa/portal/PortalPanama.aspx>). Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

Despite the oversight of the administrative court, political interests often appear to influence procurement decisions. Panamanian business leaders have requested that sole-source contracting be used only on an exceptional basis, and U.S. firms have expressed concern about how the government of Panama establishes and evaluates the criteria used to select a procurement winner.

The TPA requires procuring entities to use fair and transparent procurement procedures, including advance notice of purchases and timely and effective bid review procedures for procurement covered by the Agreement. The TPA contains nondiscrimination provisions that require Panamanian entities covered by the Agreement to allow U.S. suppliers to participate in their procurement on the same basis as Panamanian suppliers in procurements covered by the TPA.

Concerns have been expressed that some tenders have been offered in a manner that limits competition and companies' ability to submit bids. For example, in April 2013, an extremely complex tender for a 550 MW Liquid Natural Gas terminal was open for a period of only 45 days, only five days more than the minimum required by the TPA, despite the requirement in the TPA that the procuring entity take into account the nature and complexity of the procurement and provide suppliers sufficient time to prepare and submit responsive tenders. Though over 20 companies initially expressed interest in the contract, only one firm actually bid, and that company was awarded the contract.

EXPORT SUBSIDIES

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are also 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 benefit from these exemptions are not eligible to benefit from the Program to Promote the Competitiveness of Agricultural Exports ("CEFA" in Spanish) for their exports. The 99 companies operating in Panama's 15 free zones may import inputs duty free if products assembled in the zones are to be exported.

Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods).

INTELLECTUAL PROPERTY RIGHTS PROTECTION

The TPA requires Parties to provide enhanced protection and enforcement of a broad range of intellectual property, including patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and penalties that strengthen deterrence of piracy and counterfeiting. Panama executed a number of improvements to its IPR regime as a result of its TPA implementation, including substantial overhauls of its copyright (Law 64 of October 4, 2012) and industrial property (Law 62 of October 5, 2012) laws. A Committee for Intellectual Property (CIPI), comprising representatives from five government agencies (Colón Free Zone, Offices of Intellectual

Property Registry and Copyright under the Ministry of Commerce and Industry, Customs, and the Attorney General), under the leadership of the Ministry of Commerce and Industry, is responsible for development of intellectual property policy in Panama.

The Panamanian government reports that it investigated 715 intellectual property violations during calendar year 2013, of which 292 were crimes against copyrights and related rights, and 340 were crimes against industrial property. There were 184 convictions and 11 acquittals for IPR-related violations in 2013. These numbers are down from 239 convictions and 11 acquittals in 2012, and a significant drop from the 339 convictions in 2011. According to the Panamanian government, conviction numbers are down because many cases are settled before the conviction phase, and because a significant number of cases are in the appeals process.

In 2013, Panama began implementing a system identifying geographical indications (GIs) in response to European Union (EU) applications to register a range of GIs in Panama. The United States engaged extensively with Panama stressing the need for transparency and clarity with regard to the determinations, particularly with regard to the scope of coverage of protection. Affected industries report that the lack of clarity in the GI determinations issued to date has created concerns about whether the market will still be open to certain dairy products.

The Colón Free Zone (CFZ) has had a special office for IPR enforcement since 1998; this office performed 24 inspections in 2011 and had performed 22 inspections as of October 2012. In May 2013, however, the CFZ Administration terminated all the employees in the Office of Money Laundering Prevention and Intellectual Property Rights claiming inappropriate behavior by the employees. The office has not yet returned to normal operations. Given Panama's importance as a hub for regional and global trade, industry believes enforcement against trans-shipment of pirated and counterfeit goods is and will continue to be crucial, so effective enforcement of IPR in Panama is critically important. The U.S. Government plans to sponsor training for Panamanian IPR judges in 2014.

SERVICES BARRIERS

Under the TPA, U.S. firms are granted better access to Panama's services sector than Panama provides to other WTO Members under the General Agreement on Trade in Services. All services sectors, including financial services, are covered under the TPA, except where Panama has made specific exceptions. Panama agreed 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. Under the TPA, U.S. insurance suppliers are permitted to operate as a branch or a subsidiary.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, the U.S. Government continues to receive complaints from U.S. investors related to property disputes. Many of these complaints appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Panama enacted a law in 2009 (Law 80) that attempts to address the lack of titled land in certain parts of the country, but decisions taken by the National Land Authority established by the law, have reinforced investors' concerns regarding government administration generally, corruption, and the ability of the judicial system to resolve property-related issues.

In June 2013, Panama enacted Law 41, which stipulates that Panamanian nationals must own at least 75 percent of companies or vessels engaged in auxiliary maritime services, effectively capping foreign investment in any such company at 25 percent. This law is of significant concern, given Panama's commitment to provide national treatment to foreign investors and their investments in the investment chapter of the TPA. The United States has raised serious concerns about this law with the government of Panama, particularly in the context of Panama's commitments under the TPA. Other trading partners have also raised similar concerns about Law 41, for example, the European Union, under the auspices of the EU-Central America Association Agreement. Despite these engagements Panama has thus far declined to change the law. The United States continues to press Panama on the issue.

OTHER BARRIERS

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, case backlogs, and a perceived lack of independence from political influence. In 2009, the Martinelli administration campaigned on a promise to "eradicate corruption," and it continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform. However, as the administration nears the end of its term, these efforts have not yet yielded concrete results, and there continues to be reports of corruption and favoritism.

Domestic anticorruption mechanisms exist, such as asset forfeiture, protection for witnesses and whistleblowers (that is, people who report corruption), and conflict of interest rules. In addition, Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention Against Corruption in 1998. The anticorruption provisions in the TPA require Panama to ensure that under its domestic law that bribery in matters affecting trade, investment, including government procurement is treated as a criminal offense or is subject to comparable penalties under its law. However, the general perception is that anticorruption laws are not rigorously applied, and that courts and government enforcement bodies have lacked effectiveness in pursuing and prosecuting those accused of corruption, particularly in high profile cases. There is also a perception that Panama could do more to implement the conventions and respond to official recommendations. The United States continues to stress the need to increase transparency and accountability, particularly in government procurement, as noted above, and the judicial processes.