

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$9.4 billion in 2012, an increase of \$1.5 billion 2011. U.S. goods exports in 2012 were \$9.9 billion, up 20.3 percent from the previous year. Corresponding U.S. imports from Panama were \$542 million, up 39.2 percent. Panama is currently the 30th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$5.7 billion in 2011 (latest data available), up from \$5.6 billion in 2010. Reported U.S. FDI in Panama is led by the finance/insurance, mining, and wholesale trade sectors.

The United States-Panama Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) was signed on June 28, 2007. The U.S. Congress enacted legislation approving and implementing the TPA on October 12, 2011, and President Obama signed the implementing legislation October 21, 2011. Panama completed its domestic procedures in October 2012 and the TPA entered into force on October 31, 2012.

The TPA is a comprehensive free trade agreement and 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, in addition to significant liberalization of trade in goods and services, including financial services. Under the TPA, U.S. firms will have 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 are covered under the TPA, except where Panama has made specific exceptions. Moreover, Panama agreed to become a full participant in the WTO Information Technology Agreement (ITA).

Before the U.S. Congress approved the implementing legislation, the Obama Administration worked with the government of Panama to address concerns regarding Panama's labor regime and its tax transparency rules. As a result, Panama implemented several labor and tax transparency reforms in 2010 and 2011. The United States-Panama Tax Information Exchange Agreement was signed on November 30, 2010, and entered into force on April 18, 2011.

IMPORT POLICIES

Tariffs

Panama's average tariff (non-preferential or MFN) on consumer and industrial goods is 7 percent, although tariffs on some products are as high as 81 percent. Panama's average tariff (non-preferential or MFN) on agricultural goods is 15 percent, but some agricultural imports face tariffs as high as 260 percent.

Over 86 percent of U.S. exports of consumer and industrial products to Panama became duty free on October 31, 2012, when the TPA entered into force. Tariffs on the remaining consumer and industrial products will be phased out over the course of 10 years. Almost all U.S. 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. Apparel products made in Panama will be duty free under the TPA if they use U.S. or Panamanian fabric and yarn. In 2012, Panama notified the WTO of its ITA tariff schedule and thereby achieved membership in the ITA. As an ITA participant, Panama has committed to provide duty-free treatment on imports of products covered by the ITA to all WTO Members.

The TPA provides 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. Under the terms of the TPA, duties on most other agricultural goods will be phased out within 5 years to 12 years depending on the product. Sensitive products will see tariffs phased out within 15 years to 20 years. In some cases, the current applied MFN tariff for agricultural goods is lower than tariff commitment under the TPA and will continue to apply to U.S. products.

The TPA also provides for some immediate improved market access opportunities through tariff-rate quotas (TRQs) for certain U.S. agricultural products. The TRQs permit immediate duty-free access for specified quantities of certain agricultural products during the tariff phase-out period, with the duty-free amount expanding during that period. The TRQs are administered using four different mechanisms depending on the product: auctions; first-come, first-served; licensing; and an export trading company. The government of Panama issued the Implementing Regulations for TRQ administration systems 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 administration system.

Strong customs cooperation commitments between the United States and Panama under the TPA will allow for verification of claims of origin or preferential treatment, and denial of preferential treatment or entry if claims cannot be verified.

Nontariff Measures

In addition to tariffs, all goods, except for foods and feeds, and most services sold in Panama, are subject to a 7 percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied on the cost, insurance, and freight value, as well as on import duties and other handling charges. The 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 are exempt from the tax under most circumstances. 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 and other characteristics of the vehicle, for example, if the vehicle is a hybrid.

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](#). 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.

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 *Panama Compra*, an Internet-based procurement system. 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, many observers believe that 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 introduced new disciplines on certain government procurements. The goal of the disciplines is to ensure competitive, transparent, and predictable procurement practices. The TPA applies to procurements by entities covered by the TPA above certain dollar thresholds. The thresholds vary, but for covered central government entities, the threshold for procurements of goods and services is at least \$193,000, while the threshold for construction procurements is \$7.407 million. Higher thresholds apply to other government agencies or enterprises.

To enhance the competitive bidding process, the TPA requires that all covered procurements allow at least 40 days for the presentation of bids, although in cases of emergencies the minimum is 10 days. The TPA requires that all information relevant to a bid be published as part of the bidding process. In addition, technical specifications must not be written in a way that favors a particular supplier. The TPA also requires that Panama ensure under its domestic law that bribery in matters affecting trade and investment, including government procurement, is treated as a criminal offense or is subject to non-criminal penalties where criminal responsibility is not applicable. There have been numerous news articles about alleged corruption involving an Italian company and the donation of six patrol boats to Panama, and a sole-source purchase of radar equipment and helicopters for reportedly inflated prices.

When Panama became a WTO Member, it committed to accede to the WTO Agreement on Government Procurement (GPA). While Panama is an observer to the WTO Committee on Government Procurement, it has not proceeded with accession to the GPA.

EXPORT SUBSIDIES

In December 2009, Panama's National Assembly passed Law 82 of 2009, which created an agricultural export promotion program, known as the Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA gives incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products.

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 CEFA program 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

Law 61 of October 5, 2012, amending Panama's industrial property law, and Law 64 of October 10, 2012, amending Panama's copyright law, introduced important updates to Panama's legislative framework in order to, among other things, implement certain intellectual property rights (IPR) obligations of the TPA. The TPA provides for improved standards for the protection and enforcement of a broad range of IPR, including protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, and digital copyrighted products such as software, music, text, and videos. The TPA also provides for improved IPR enforcement, including further deterrence of piracy and counterfeiting. These recent changes to these laws build on Panama's efforts over the last decade to improve IPR enforcement.

The Panamanian government also reports that it investigated 934 intellectual property violations (July 2011 to June 2012), of which 437 were crimes against copyrights and related issues, 456 for crimes against industrial property, 41 for crimes against information system security, and 54 for reinstatement. As a result, there were 239 convictions and 11 acquittals for IPR-related violations (down from 339 and 26 respectively in 2011).

The Colon Free Zone created a special office for IPR enforcement in 1998. As of October 2012, the office had performed 22 inspections, compared to 24 inspections in 2011. Given Panama's importance as a hub for regional and global trade, enforcement against trans-shipment of pirated and counterfeit goods is and will continue to be crucial.

SERVICES BARRIERS

Under the TPA, U.S. service suppliers are granted better access to Panama's services sector than other WTO Members under the General Agreement on Trade in Services. All services sectors are covered under the TPA, except where Panama has scheduled specific exceptions. Panama agreed to provide improved access in sectors such as 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 will be permitted to operate as a branch or a subsidiary.

Telecommunications

On October 5, 2012, Panama amended its telecommunications law to eliminate the universal service program contribution amount charged on inbound international traffic to Panama that was significantly higher than the amount collected from carriers engaged in domestic telecommunications. Under the revised law, which took effect January 1, 2013, all carriers engaged in telecommunications in Panama will contribute up to 1 percent of their taxable income to Panama's universal service program. This change eliminates the competitive imbalance Panama's former law had imposed on foreign competitors.

INVESTMENT BARRIERS

While Panama maintains an open investment regime and is generally receptive to foreign investment, the U.S. Government has received numerous property dispute complaints from U.S. investors and individual property holders. Many of the complaints seem to arise from a general lack of titled land in Panama and an inadequate government system for the administration of property. Panama enacted a law in 2009 (Law 80) that attempts to address the lack of titled land in certain parts of the country. Decisions taken by the National Land Authority established by this law, however, have reinforced investors' concerns regarding inadequate government administration, perceived corruption, and the inability of the judicial system to resolve these issues.

There is a low level of confidence in the competency and independence of the judicial system. The United States continues to stress the need to increase transparency and accountability in land titling and to reinforce the rule of law in Panama.

The United States-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 with additional amendments in 2001. Among other protections, the BIT and the investment chapter of the TPA ensure that, subject to some exceptions, investors of both Parties receive fair, equitable, and nondiscriminatory treatment and have the right to make free transfers. The BIT also ensures that both Parties abide by international law standards relating to expropriation. The investor protection provisions in the TPA supplant those in the BIT. However, until October 31, 2022 (10 years after the TPA entered into force), investors may invoke dispute settlement under the BIT with respect to investments covered by the BIT.

ELECTRONIC COMMERCE

Under the TPA, Panama must provide nondiscriminatory treatment of digital products transmitted electronically and not impose customs duties, fees, or other charges on digital products transmitted electronically. Additionally, under the TPA, Panama must have in place procedures for resolving disputes about trademarks used in Internet domain names.

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. The Martinelli administration campaigned in 2009 on a promise to "eradicate corruption" and continues to assert its commitment to combating corruption as part of its overall agenda of institutional reform, but it has not yet delivered concrete results. Domestic anticorruption mechanisms exist, such as asset forfeiture, protection for witnesses and whistleblowers, and conflict-of-interest rules. In addition, Panama ratified the Organization of American States Inter-American Convention Against Corruption in 1998 and the United Nations Convention Against Corruption in 2005. However, the general perception is that anticorruption laws are not applied rigorously, and that government enforcement bodies and the courts 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 anticorruption provisions in the TPA require Panama to ensure that bribery in matters affecting trade or investment is treated as a criminal offense or is subject to comparable penalties under its law.