PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $4.1 billion in 2009, a decrease of $454 million from 2008. U.S. goods exports in 2009 were $4.4 billion, down 10.8 percent from the previous year. Corresponding U.S. imports from Panama were $304 million, down 19.7 percent. Panama is currently the 40th largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was $7.2 billion in 2008 (latest data available), up from $6.5 billion in 2007. Reported U.S. FDI in Panama is led by the finance/insurance and wholesale trade sectors.

TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed the United States – Panama Trade Promotion Agreement (TPA). Panama approved the TPA on July 11, 2007. The United States has not yet approved the TPA.

The TPA is a comprehensive free trade agreement. When the TPA enters into force, it will result in significant liberalization of trade in goods and services, including financial services. The TPA also 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. Under the TPA, U.S. firms will have better access to Panama's services sector than it 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.

IMPORT POLICIES

Tariffs

Panama's average tariff on U.S. industrial and consumer goods is 7 percent, but tariffs on some of these products are as high as 81 percent. Panama's average tariff on U.S. agricultural goods is 15 percent, but some U.S. agricultural exports face tariffs as high as 260 percent.

When the TPA enters into force, 88 percent of U.S. exports of consumer and industrial goods will enter Panama duty-free, with remaining tariffs phased out over 5 years or 10 years. The TPA includes "zero-for-zero" immediate duty-free access for key U.S. sectors and products, including agricultural and construction equipment, information technology products, and medical and scientific equipment. Other key U.S. export sectors, such as motor vehicles and parts, paper and wood products, and chemicals also will obtain significantly improved access to Panama's market as duties are phased out.

The TPA provides for immediate duty-free treatment for over 60 percent by value of 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. Duties on other agricultural goods will be phased out within 5 years to

12 years and on the most sensitive products within 15 years to 20 years. 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. These TRQs will permit immediate duty-free access for specified quantities that will increase as over-quota duties are phased out over the course of the implementation period.

Apparel products made in Panama will be duty-free under the TPA if they use U.S. or Panamanian fabric and yarn. 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 imports into Panama, except for foods and feeds, are subject to a 5 percent transfer tax levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges. 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 transfer tax. Importing entities are required to hold a commercial or industrial license to operate in Panama in order to import manufactured goods into the country without an import license. The commercial or industrial license may be obtained through Panama's online business registration service (http://www.panamaemprende.gob.pa). Importing entities holding a license are not required to have a separate import license, with the exception of imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006 regulates government procurement and other related issues. Law 22 was intended to streamline and modernize Panama's contracting system. It requires publication of all proposed government purchases. Law 22 also established PanamaCompra, an Internet-based procurement system (http://www.panamacompra.gob.pa) through which the government of Panama evaluates proposals and monitors the procurement process and holds consultations for public bids, including technical specifications and tender documents. PanamaCompra has been the forum for almost 275,000 contracts valued at over $3 billion during the three years it has been open. While Panama committed to become a party to the WTO Government Procurement Agreement at the time it joined the WTO, it remains an observer and, to date, it has not followed through on this commitment.

The Panamanian government has generally handled procurement in a transparent manner, although occasionally U.S. companies have complained that certain required procedures have not been followed. The government of Panama announced approximately $100 million in procurement through the use of sole-source contracts between July 1 and September 25, 2009, which the government justified on grounds of "urgency." However, the appropriateness of this justification is questionable since the procurements included expansion of the coastal highway ($55 million) and purchase of a Presidential airplane ($22 million). 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.

When the TPA enters into force, it will require Panama's 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 TPA. U.S. suppliers will be permitted to bid on procurement above certain thresholds of most Panamanian government entities, including key ministries and stateowned enterprises, on the same basis as Panamanian suppliers. In particular, U.S. suppliers will be permitted to bid on procurement by the Panama Canal Authority. Disputes relating to Panama Canal Authority procurement will continue to be addressed through the authority's existing procedures. The TPA would also help to the strengthen rule of law and fight corruption by requiring Panama to ensure under its domestic law that bribery in matters affecting trade and investment, including in government procurement, is treated as a criminal offense or is subject to comparable penalties.

EXPORT SUBSIDIES

Any company may import raw materials or semi-processed goods into Panama duty-free for export production, except for sensitive agricultural products, such as rice, dairy, pork, poultry, corn, and tomato products, or at a duty of 3 percent for domestic consumption or processing (pending certification that there is no national production). Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2015, as provided in Law 11 of 2008.

Under Panama's Tax Credit Certificates (CAT) program, which provides tax credits to firms producing certain nontraditional agricultural exports, exporters received CATs equal to 5 percent of the good's national value added for exports made in 2009. The certificates were transferable and could be used to pay tax obligations to the government, or they could be sold in secondary markets at a discount.

In late December 2009, Panama's National Assembly passed Law 82 of 2009, which creates a Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA program will give incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products. The CEFA replaces the CAT program, and is expected to provide similar benefits. The government of Panama is still developing implementing procedures for the CEFA program.

A number of export industries, such as tourism, and special economic areas, such as free trade zones, 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 benefit from these exemptions are not eligible to benefit from the CEFA program for their exports.

Companies operating in any of Panama's 15 export processing zones (EPZs) may import inputs duty-free, if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. 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). The TPA provides that Panama may maintain existing measures that are inconsistent with this obligation through 2009, provided that it maintains the measures in accordance with its obligations under the WTO Agreement on Subsidies and Countervailing Measures.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

The government of Panama is making efforts to strengthen the enforcement of IPR in Panama. Since 1997, two district courts and one superior tribunal have been exclusively adjudicating anti-trust, patent, trademark, and copyright cases. The Panamanian government reports that, in 2009, there were 185 convictions for IPR-related violations, and it seized over $17 million of illicit goods. However, given Panama's role as a transshipment point, U.S. industry remains concerned that Panama may become an important hub in the regional and global trade in pirated and counterfeit goods. Piracy is a significant problem in Panama, and the incidence of Internet piracy has quickly emerged. For example, the unauthorized downloading from the Internet is often the source of pirated optical discs of films distributed by street vendors.

The TPA would provide 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; and further deterrence of piracy and counterfeiting.

SERVICES BARRIERS

Under the TPA, Panama will accord U.S. services suppliers substantial access to its services market, including financial services. 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 will be permitted to operate as a branch or a subsidiary.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is generally receptive to foreign investment. However, recent actions taken by government of Panama to modify the terms of public concessions have contributed to an impression that the protection of an investment is less than in past years.

The U.S. Government has received numerous property dispute complaints from U.S. investors. Many of these complaints appear to stem from the general lack of titled land in Panama, along with inadequate government administration of the property system and a weak judiciary. Panama enacted Law 80 of 2009, which attempts to address the lack of titled land in certain parts of the country; however, it does not cure deficiencies in government administration or the judicial system.

The United States – Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). The BIT ensures that, with some exceptions, U.S. investors receive fair, equitable, and nondiscriminatory treatment, and that both Parties abide by international law standards, such as for expropriation and compensation and free transfers. Under the TPA, the dispute settlement mechanisms of the BIT would be suspended in most respects. Investors will continue to have important investment rights and protections under the investment provisions of the TPA.

Under the TPA, U.S. investors operating in Panama will continue to have a secure and predictable legal framework. Under the TPA, all forms of investment will be protected, including enterprises, debt, concessions, contracts, and intellectual property. U.S. investors will 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 that will be afforded to U.S. investors are due process protections and the right to receive fair market value for property in the event of an expropriation. Investor rights will be protected under the TPA by a procedure for dispute settlement that is impartial and transparent. In particular, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals.

ELECTRONIC COMMERCE

Law 43 of 2001 gives electronic signatures the legal equivalence of handwritten signatures. Panama issued Executive Decree 40 of 2009, which defines and regulates electronic documents, electronic signatures, technological documents, and storage services while adopting other measures that will allow the development of electronic commerce. These measures should improve the efficiency of the public sector by eliminating the use of paper documents, stamps, and handwritten signatures.

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

OTHER BARRIERS

Corruption

The Panamanian judicial system continues to pose a problem for investors due to poorly trained personnel, huge case backlogs, and a lack of independence from political influence. The Martinelli administration campaigned in 2009 on a promise to "eradicate corruption." Although the Panamanian government asserts its commitment to combating corruption as part of its overall agenda of institutional reform, it has not yet delivered concrete results. 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. The anticorruption provisions in the TPA will 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.