PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was $3.4 billion in 2007, an increase of $1.1 billion from $2.3 billion in 2006. U.S. goods exports in 2007 were $3.7 billion, up 38.5 percent from the previous year. U.S. imports from Panama were $366 million, down 3.4 percent over the corresponding period. Panama is currently the 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was $5.7 billion in 2006 (latest data available), down from $5.8 billion in 2005. U.S. FDI in Panama is concentrated largely in the nonbank holding companies and finance sectors.

TRADE PROMOTION AGREEMENT

On June 28, 2007, the United States and Panama signed a trade promotion agreement (TPA). Panama approved the TPA on July 11, 2007. The U.S. Congress has not yet enacted legislation approving the TPA.

The TPA is a comprehensive free trade agreement. When implemented, the TPA 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, Panama will be obligated to liberalize the services sector beyond its commitments under the WTO General Agreement on Trade in Services by adopting a negative list approach where all sectors are covered except where it has made specific exceptions. Moreover, in connection with the TPA, Panama agreed to become a full participant in the WTO Information Technology Agreement, and entered into an agreement with the United States that resolved a number of regulatory barriers to trade in agricultural goods ranging from meat and poultry to processed products, including dairy and rice.

IMPORT POLICIES

Tariffs

Panama’s maximum tariff on industrial goods is 20 percent. Panama’s tariffs on agricultural goods range from 10 percent to more than 250 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 significant access to Panama’s market as duties are phased out.

The TPA provides for immediate duty free treatment for more than half 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 for 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, thereby supporting U.S. fabric and yarn exports and jobs. 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 are subject to a 5 percent transfer (ITBM) 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. Currently, 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.

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 other U.S. agricultural products through nonscience based sanitary and phytosanitary (SPS) requirements. Certain agricultural products (*e.g.*, processed food products) also faced lengthy and costly product registration requirements.

Under a far reaching bilateral agreement on SPS measures and technical standards signed with the United States in December 2006, Panama recognized the equivalence of the U.S. meat and poultry inspection systems and the U.S. regulatory system for processed food products, thereby eliminating plant-by-plant and shipment-by-shipment inspection requirements. In addition, Panama 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 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. Additionally, Panamanian authorities have committed to notifying U.S. authorities within 24 hours of any detention of a U.S. shipment due to suspected SPS concerns. Finally, Panama eliminated its time consuming and costly product registration procedures, and established an automatic, cost free and quick registration process for the small group of agricultural products not exempted from this process.

Labeling and testing requirements are primarily limited to food products. Products that comply with U.S. labeling and marketing requirements are generally accepted for sale in Panama.

GOVERNMENT PROCUREMENT

Panamanian Law 22 of 2006 regulates government procurement and other related issues. Law 22 streamlined and modernized Panama's contracting system. It established, among other things, an Internet-based procurement system (http://www.panamacompra.gob.pa) and requires publication of all proposed government purchases on the Internet, the evaluation of proposals and monitoring of the procurement process, and advance public notice of intended procurement, including technical specifications and tender documents. Law 22 also created an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by the Panamanian Supreme Court. 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.

When it enters into force, the TPA 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 state-owned 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, including for the $5.25 billion Panama Canal expansion project. The anti-corruption provisions in the TPA require 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.

While Panama committed to become a party to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) at the time of its WTO accession, its efforts to accede to the GPA have stalled.

EXPORT SUBSIDIES

Panamanian Law 3 of 1986 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, corn, and tomato products. Companies are allowed a tax deduction of up to 100 percent of their profits from export operations through 2010.

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 Certificates (CAT) program, which provides tax credits to firms producing certain nontraditional 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 of the waiver permitting the use of CATs. The WTO subsequently extended this waiver through September 30, 2009. Under the program, exporters receive CATs equal to 10 percent of the goods' national value added for exports made in 2008 and 5 percent of the good's national value added for exports made through September 30, 2009. 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 benefit from these exemptions are not eligible to receive CATs for their exports.

Other Export-Related Items

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. There are 15 EPZs in Panama, 2 of which are inactive. Companies operating in these zones 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 exportation of a given level or percentage of goods or the use of domestic content in the production of goods). Panama is permitted to 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

An interagency committee that consists of representatives from six government agencies and operates under the leadership of the Ministry of Commerce and Industry is responsible for Panama's intellectual property law and policy. The committee 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 IPR in Panama. However, given Panama's role as a transshipment point, U.S. industry remains concerned that Panama will become susceptible to trading in pirated and counterfeit goods.

The TPA provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with U.S. and international standards of protection and enforcement as well as with emerging international standards. Such improvements include 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.

Panama has ratified or acceded to the Berne Convention for the Protection of Literary and Artistic Works, the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, the Convention Establishing the World Intellectual Property Organization (WIPO), the Convention for the Protection of Producers of Phonograms against Unauthorized Duplication of their Phonograms, the International Convention for the Protection of New Varieties of Plants, the Paris Convention for the Protection of Industrial Property, the WIPO Copyright Treaty, and the WIPO Performances and Phonograms Treaty. Under the TPA, Panama will be obligated also to ratify or accede to the Patent Cooperation Treaty and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure by the date the TPA enters into force and the Trademark Law Treaty by January 1, 2011.

Copyrights

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. Panama has taken police and legal actions that have significantly reduced the rate of DVD piracy. Internet piracy, however, 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.

Implementation of the TPA will require Panama: (i) to provide copyright protection for the life of the author plus 70 years (where the term of protection is measured by a person's life) or 70 years (where the term of protection is not measured by a person's life, *i.e.*, for corporate works); (ii) to require government agencies to use only legitimate computer software; and (iii) to protect encrypted program-carrying satellite signals.

Patents

Panama is a Party to 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. The Industrial Property Law provides specific protection for trade secrets.

Under the TPA, Panama will be required to adjust the patent term for products (other than pharmaceutical products) to compensate for unreasonable delays that occur while granting a patent. For pharmaceutical products, Panama may, but is not required to, adjust the patent term if there is an unreasonable delay in granting a patent or providing marketing approval for a product. The TPA will also require Panama to protect test data submitted to regulators for the purpose of seeking marketing approval for a product.

Trademarks

Law 35 of 1996 provides trademark protection, simplifies the process of trademark registration, and allows for renewal of a trademark for 10 year periods. It appears that this law provides *ex-officio* authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. The Trademark Registration Office has undertaken significant modernization; including creating a searchable computerized database of registered trademarks that is open to the public, and providing for online registration.

Under the TPA, Panama will be required to protect trademarks and geographical indications, including by refusing protection or recognition of a geographical indication that is likely to be confusingly similar to a preexisting trademark. Panama will also be required to have a system of registration that provides efficient and transparent procedures governing applications to protect trademarks and geographical indications.

SERVICES BARRIERS

Services represent approximately 80 percent of Panama's gross domestic product. In general, Panama maintains an open regulatory environment for services.

Under the TPA, Panama will accord substantial market access across its entire services regime, 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 provide certain types of insurance services in Panama and to open branches or subsidiaries in Panama.

With respect to telecommunications, investments have been hampered by the reluctance of Cable & Wireless Panama (one of the two cellular telecommunications companies operating in Panama and the principal wire-line carrier) to negotiate and/or implement interconnection agreements with new entrants. Under the TPA, Panama will be required to ensure that its major telecommunications suppliers provide interconnection to U.S. suppliers on nondiscriminatory terms and conditions.

INVESTMENT BARRIERS

Panama maintains an open investment regime and is generally receptive to foreign investment. There are no measures in place that prohibit the acquisition of Panamanian companies by foreign nationals.

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 Panamanian 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 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 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 TPA.

The TPA will establish a more secure and predictable legal framework for U.S. investors operating in Panama. 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 an impartial procedure for dispute settlement that is fully transparent and open to the public. Submissions to dispute settlement panels and hearings before such panels will be open to the public and interested parties will have the opportunity to submit their views. In particular, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals (specifically allowing U.S. companies to engage in the retail sale of goods and services; full access to investments in the retail sector will be permitted after 2010 if the investment is at least $3 million).

ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. Panama’s electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it created the National

Directorate of Electronic Commerce to oversee the enforcement of the law; it defines certification organizations; and it establishes a voluntary registration regime. In 2004, Panama issued regulations to facilitate the registration of certification organizations, particularly in the maritime sector.

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 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 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.