

PANAMA

TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$7.9 billion in 2011, an increase of \$2.2 billion 2010. U.S. goods exports in 2011 were \$8.3 billion, up 36.1 percent from the previous year. Corresponding U.S. imports from Panama were \$389 million, up 2.2 percent. Panama is currently the 32nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama was \$6.0 billion in 2010 (latest data available), down from \$6.9 billion in 2009. 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 U.S. Congress enacted legislation approving the agreement on October 12, 2011, and President Obama signed the legislation on October 21, 2011. Presidents Obama and Martinelli have agreed to implement the TPA as quickly as possible.

The TPA is a comprehensive free trade agreement. Under the TPA, there will be 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 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).

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 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.

Over 87 percent of U.S. exports of consumer and industrial products to Panama will be duty free immediately upon entry into force of the Agreement, with remaining tariffs on these products phased out over 10 years. Within each of the following key industrial sectors, almost all products will gain 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. This year Panama notified its Information Technology Agreement tariff schedule to the WTO and thus achieved

membership in the ITA. As such, Panama has committed to provide most favored nation duty-free treatment on imports of products covered by the ITA.

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. 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 goods sold in Panama, except for foods and feeds, are subject to a seven 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 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. 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 among others, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established PanamaCompra, an Internet-based procurement system (<http://www.panamacompra.gob.pa>). 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.

Many observers believe political interests are influencing 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.

From January to September 2011, 65,000 contracts, valued at over \$1.7 billion, were awarded by the government of Panama; sole source tendering accounted for \$208 million of these contracts. During the period January 1, 2011 to April 15, 2011, the government of Panama procured approximately \$32 million in goods and services through approximately 360 sole-source contracts, the majority of which the government justified on grounds of "urgency," unique service or provider, or to benefit local interests.

There have been numerous news articles about alleged corruption involving an Italian company and the donation of six patrol boats to Panama, and the sole source purchase of radar equipment and helicopters for reportedly inflated prices.

Under the TPA, Panama's procuring entities will be required 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 by most Panamanian government entities, including key ministries and state-owned enterprises, on the same basis as Panamanian suppliers.

The TPA would also help to 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 non-criminal penalties where criminal responsibility is not applicable. 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

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 three 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.

In December 2009, Panama's National Assembly passed Law 82 of 2009, which creates a 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. From January 2, 2011 to December 1, 2011, the government of Panama issued 1,024 certificates valued at \$9.7 million.

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 95 companies operating in Panama's 14 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 government of Panama is making efforts to strengthen the enforcement of intellectual property rights (IPR) in Panama. Since 1997, two district courts and one superior tribunal have been exclusively adjudicating antitrust, patent, trademark, and copyright cases. Since January 2003, a specific prosecutor with national authority over IPR cases has consolidated and simplified the prosecution of those cases. Law 1 of 2004 added crimes against intellectual property as a predicate offense for money laundering, and Law 14 establishes a 5 year to 12 year prison term, plus possible fines. Law 10 of 2011 moved the Copyright Office from the Ministry of Education to the Ministry of Commerce and Industry. A

Committee for Intellectual Property (CIPD), comprising representatives from five government agencies (Colon 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 269 patents were registered in 2011, down from 491 in 2010. Also, 9,266 trademarks were registered, up from 8,225 in 2010. The Panamanian government also reports that it investigated 901 intellectual property violations in 2011 (up from 765 cases in 2010), of which 409 were crimes against copyrights and related issues, 438 for crimes against industrial property, 33 for crimes against information system security, and 21 for reinstatement. As a result, there were 339 convictions and 26 acquittals for IPR-related violations (up from 260 and 29 respectively in 2010). The Colon Free Zone created a special office for IPR enforcement in 1998; in 2011, this office performed only 24 inspections (up from two in 2010). However, 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. Panama's Attorney General, the U.S. Department of Justice, and the U.S. Embassy sponsored a workshop in August 2011 for Panamanian prosecutors, judges, and investigators to combat the illicit sale, importation, and manufacturing of counterfeit pharmaceuticals.

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; and further deterrence of piracy and counterfeiting. Once these improved standards are in place, the importance of enforcement will be all the more essential.

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

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 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. Decisions taken by the National Land Authority established by this law, however, have reinforced investors concerns regarding government administration, corruption, and the ability of the judicial system to resolve these issues.

There is a low level of confidence in the competency and independence of the judicial system. Additionally, there are public complaints that Panama is not observing public-private agreements from 2003 and 2005 and promises to follow certain procedures for new judicial appointments. The United States continues to stress the need to increase transparency and accountability in land titling, and 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

FOREIGN TRADE BARRIERS

that, subject to some exceptions, investors of both Parties receive fair, equitable, and nondiscriminatory treatment and have the right to make free transfers, and that both Parties abide by international law standards relating to expropriation. Once in force, the investor protection provisions in the TPA will supplant those in the BIT. For 10 years, investors may invoke dispute settlement under the BIT with respect to investments covered by the Treaty as of the date of entry into force of the TPA.

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, under the TPA, Panama will have in place 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, 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 (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. 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 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. The TPA also will promote transparency and encourage whistleblower protection.