

United States – Panama Trade Promotion Agreement

Statement of Everett Eissenstat

Assistant United States Trade Representative for the Americas

Before the Committee on Finance

United States Senate

May 21, 2009

Chairman Baucus, Ranking Member Grassley, and Members of this distinguished committee, thank you for the opportunity today to discuss the economic and political benefits of our free trade agreement with Panama.

We appreciate the informed views and guidance we have received from members of this Committee on the United States – Panama Trade Promotion Agreement (“Agreement”) over the last five years. I look forward to working with you and your colleagues as we seek congressional approval of this important agreement.

The United States and Panama concluded negotiations on the Agreement in December 2006, and signed it on June 28, 2007. As I will describe, the Agreement makes progress in achieving the applicable purposes, policies, objectives, and priorities of the Bipartisan Trade Promotion Authority Act of 2002 (“TPA Act”) and fully reflects the Congressional-Executive Agreement of May 2007 on trade. As such, the Agreement will put into place a strong and up-to-date structure for the U.S.-Panama trade and investment relationship that will strengthen the rule of law and create new opportunities for American workers, farmers, ranchers and businesses.

The President believes that the United States needs a new framework for trade. He recognizes that trade is essential to America’s prosperity and has the potential to lift up workers in America and around the world. But for it to accomplish this, trade agreements need to include strong labor and environmental standards, we need to do a better job enforcing our trade agreements, and we need domestic policies to help Americans succeed in an increasingly dynamic economy. The President looks forward to outlining this framework in the near future.

This Administration is working with Panama to ensure that this Agreement and its implementation fully reflect the values of the President’s vision. At the same time, the

Administration wants to make sure that any new trade agreements that are advanced – including with Panama – be part of this broader framework.

We have been working with Panama to address labor law concerns and look forward to anticipated legislative and regulatory action by Panama that fully captures the intent and values of the Agreement’s labor provisions.

We also share concerns expressed about Panama’s tax policies and are working with Panama to address these issues. We believe that this Agreement, and the closer relationship it provides, will enable us to progress much more quickly in addressing these concerns than we could otherwise.

Successfully addressing these concerns will be an important step in determining when, in close consultations with Congress and as part of the President’s broader trade strategy, this Agreement should be considered by the House and Senate.

This Agreement has the potential to be a good deal for the United States. It represents an historic development in our longstanding and close relations with the Republic of Panama and accords with Congress’ goal, as expressed in the Caribbean Basin Trade Partnership Act, to conclude comprehensive, mutually advantageous free trade agreements with beneficiary countries of the Caribbean Basin Initiative (“CBI”) trade preference program. Since 1985, our trade relationship with Panama has been characterized by the unilateral trade preferences that the United States provides through the CBI program. While this program has contributed to economic development and helped to alleviate poverty in Panama, our common objective in concluding the Panama agreement was to build upon this success and move to a more fully reciprocal trade partnership.

Panama’s economy, albeit relatively small, is one of the fastest growing economies in Latin America. Panama’s GDP has grown over eight percent in each of the last three years. Panama is primarily a service economy, with nearly 80 percent of its GDP accounted for by services. The United States has one of the most advanced service sectors in the world, and thus is well poised to take advantage of the opportunities the Agreement will provide.

Panama’s per capita GDP ranks among the highest in Latin America. In recent years, unemployment levels in Panama have been reduced from double digits to 5.6 percent in 2008. Between 2001 and 2007, the poverty level in Panama declined from 37 percent to 29 percent, and extreme poverty declined from 19 percent to 12 percent. The Agreement will increase

opportunities for continued economic growth and will help Panama to further develop and modernize its economy. Once the Panamanian Government fully implements its labor reforms and effectively enforces them and the labor provisions of the Agreement, these changes could help broaden distribution of the gains from the Agreement.

The United States is Panama's largest trading partner. Total goods trade between the United States and Panama was \$5.3 billion in 2008. The United States had a goods trade surplus with Panama of \$4.5 billion in 2008. U.S. goods exports to Panama increased 31 percent from 2007 to 2008. The stock of U.S. foreign direct investment in Panama was \$6.2 billion in 2007 (latest data available), up from \$4.7 billion in 2006.

Panama's strategic location as a major shipping route and the massive project underway to expand the capacity of the Panama Canal enhance the importance of this Agreement. The Panama Canal remains a vital U.S. security and commercial interest. Approximately two-thirds of the Panama Canal's 14,000 annual transits are bound to or from U.S. ports and approximately ten percent of U.S. international trade passes through the Canal. The \$5.25 billion expansion project is one of the largest infrastructure projects in the Hemisphere. The project began in 2007 and is expected to be completed in 2014. The Agreement will ensure that U.S. firms have an opportunity to participate in the project on a competitive basis, which will create significant opportunities for U.S. businesses in goods and services, in particular construction services.

Panama is a strong U.S. ally and is a country heading in the right direction. Panama restored democracy in 1989 and has had a succession of peaceful and democratic elections since then, including most recently on May 3. The current Panamanian administration under President Martin Torrijos has been a strong ally of the United States and a cooperative partner in our efforts to combat drug trafficking and money laundering. Incoming President Ricardo Martinelli is eager to build on our already close bilateral relationship. The Agreement offers us an opportunity to strengthen the economic and political ties we already have with Panama, and to reinforce Panama's ongoing economic, political and social progress.

I would now like to discuss the key benefits of this Agreement for the United States in somewhat more detail.

Market Opening for U.S. Goods

The Agreement will level the playing field for U.S. exports to Panama. The United States market is already largely open to imports from Panama. In 2008, for example,

approximately 90 percent of U.S. imports from Panama entered the United States duty free under our most-favored nation/normal trade relations tariff rates, as well as under the CBI and the Generalized System of Preferences trade preference programs. The Agreement will give American workers, farmers, ranchers, and businesses the same access to Panama's growing market that Panama has to our market.

Panama's average applied tariff rate on consumer and industrial goods is 6.4 percent, and tariffs on some U.S. products are as high as 20 percent. These tariffs hinder our ability to create jobs at home when we need to do all we can to bring down barriers to job creation. Under the Agreement, Panama will provide duty free treatment on approximately 88 percent of U.S. exports of consumer and industrial goods as soon as the Agreement enters into force. Panama will eliminate its remaining tariffs on consumer and industrial goods within ten years. Trade in all textile and apparel goods meeting the Agreement's origin requirements will become duty free immediately, providing new opportunities for U.S. fiber, yarn, fabric and apparel exporters. Other key sectors that will benefit from duty elimination under the Agreement are information technology products, agricultural and construction equipment, infrastructure and machinery products, transportation equipment, autos and auto parts, chemicals (including pharmaceuticals, fertilizers, agro-chemicals, and plastics), environmental products, and medical and scientific equipment. Panama also agreed during our free trade agreement negotiations to join the WTO Information Technology Agreement ("ITA"). Panama has since joined the ITA and eliminated duties on a wide range of information technology products.

Panama's average applied tariff rate on agricultural products is 15 percent. However, many key U.S. agricultural exports face much higher tariffs. Panama's tariffs on meat can be as high as 70 percent, on grain as high as 90 percent, and on chicken as high as 260 percent. Under the Agreement, Panama will provide duty free treatment immediately on over 60 percent of U.S. agricultural exports. Key U.S. agricultural products that will benefit from immediate duty free treatment under the Agreement include high quality beef, certain pork and poultry products, cotton, wheat, soybeans, most fresh fruits and tree nuts, and a wide assortment of processed products, including soups and chocolate confectionary, distilled spirits, wine, and pet food. Duties on other agricultural goods will be phased out within five to 12 years and for the most sensitive products within 15 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. The Agreement addresses duty treatment for imports of sensitive products into the United States through transition periods and the use of TRQs.

The Agreement will provide benefits for U.S. producers and products that go beyond tariff reductions. For example, the Agreement also establishes state-of-the-art customs rules and procedures, which will increase transparency and expedite the movement of goods between our markets. This is especially important for U.S. small and medium-sized enterprises, which may not have the resources to navigate customs and cut through regulatory red tape. The Agreement also will establish mechanisms that will enhance bilateral cooperation on technical regulations, standards, and conformity assessment procedures, which will help to prevent unnecessary technical barriers to trade that hinder U.S. companies from taking advantage of the Panamanian market.

Similarly, our two governments will work together on sanitary and phytosanitary (“SPS”) matters, with a view to facilitating bilateral trade, while appropriately protecting human, animal, and plant life and health. In connection with the negotiation of the Trade Promotion Agreement, our two governments signed in 2006 and implemented in 2007 a far-reaching bilateral agreement on SPS measures and technical standards. Under that agreement, 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, and formalized its recognition of the U.S. beef grading system and cuts nomenclature. Finally, Panama now uses an automatic, free and quick registration process for the small group of agricultural products not exempted from this process. These significant regulatory changes will help our agricultural exporters to take better advantage of the tariff elimination commitments that Panama has made under the Trade Promotion Agreement.

The Agreement includes a safeguard procedure in the unlikely event an industry sustains or is threatened with serious injury due to increased imports resulting from the reduction or

elimination of U.S. import duties under the Agreement. The Agreement also includes special safeguard mechanisms for textile and apparel goods and certain agricultural products. The United States also retains its ability to take safeguard actions under section 201 of the Trade Act of 1974, and to impose antidumping or countervailing duties under the Tariff Act of 1930.

Government Procurement and the Expansion of the Panama Canal

The Agreement will open Panama's government procurement market to U.S. suppliers for the first time and does so on transparent and non-discriminatory terms. 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. Since Panama is not a signatory to the WTO Agreement on Government Procurement, this will constitute a major benefit of the Agreement. The Agreement includes strong disciplines on government procurement procedures, including requiring advance public notice of purchases and provision of information to all interested suppliers regarding covered procurement opportunities, as well as timely and effective domestic review procedures. Consistent with the Congressional-Executive Agreement of May 2007 on trade, the Agreement provides that government agencies may include provisions in their procurement to promote environmental protection and requirements that suppliers must comply with generally applicable laws concerning fundamental labor rights in the country where they make a product or perform a service.

Services

Services represent approximately 80 percent of Panama's gross domestic product. The Agreement will create new market opportunities in Panama for a range of key U.S. services suppliers and will lock in access in sectors where Panama's services markets are already open. All services sectors are subject to the Agreement's rules unless Panama negotiated a specific exemption in that sector. The Agreement will either open or lock in existing significant access to Panama's services markets in such priority U.S. services export sectors as financial services, telecommunications, express delivery services, computer and related services, distribution services, professional services, advertising, audiovisual services, education and training, tourism, construction and engineering, energy services, and environmental services. The Agreement's market-opening provisions are complemented by high-standard rules governing regulatory

transparency – rules that are especially important given the highly regulated nature of many services industries.

The Agreement includes provisions that provide significant flexibility to the United States to act in the event of a financial crisis, including by taking measures for “prudential reasons,” such as to protect depositors, or to ensure the integrity and stability of the financial system. The United States also retains its ability under the Agreement to restrict capital transfers related to illicit activities, such as money laundering and tax evasion.

Investment

Under the Agreement, U.S. investors operating in Panama will continue to have a secure and predictable legal framework. All forms of investment will be protected, and 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. Of particular importance, Panama agreed to eliminate certain measures that restrict investment in retail trade to Panamanian nationals, thereby allowing U.S. companies to engage in the retail sale of goods and services. 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 Agreement by an impartial procedure for dispute settlement that is fully transparent and open to the public. Under the Agreement, the United States will continue to provide Panamanian investors a high level of protection and due process, but, consistent with TPA Act objectives, will give Panamanian investors no greater substantive rights than U.S. investors already enjoy in the United States. Language in the Agreement states this explicitly.

Intellectual Property Rights

The Agreement 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, as well as with emerging international standards, of protection and enforcement of intellectual property rights. Such improvements include state-of-the-art protections for patents, trademarks, test data, and digital copyrighted products such as software, music, text, and videos; and includes measures to further deter piracy and counterfeiting. Consistent with the Congressional-Executive Agreement of May 2007 on trade, the Agreement does not prevent Panama from taking necessary measures to protect public health by promoting access to medicines for all, particularly in circumstances of extreme urgency or national emergency.

Labor

The Agreement incorporates the labor provisions of the Congressional-Executive Agreement of May 2007 on trade and is one of the first to include a commitment by each Party to implement in its law and practice the fundamental labor rights as stated in the 1998 ILO *Declaration on Fundamental Principles and Rights at Work* (“ILO Declaration”), reflecting a key element of the May 2007 agreement. Moreover, each country commits not to fail to effectively enforce its labor laws, through a sustained or recurring course of action or inaction in a manner affecting bilateral trade or investment. This commitment concerns each Party’s statutes and regulations that embody fundamental labor rights as stated in the ILO Declaration as well as those related to a prohibition on the worst forms of child labor, labor protections for minors, and acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health. The Agreement also will prohibit each Party from waiving or otherwise derogating from its domestic labor laws or regulations that implement fundamental labor rights in a manner affecting bilateral trade or investment, where the waiver or derogation would be inconsistent with a fundamental labor right. In addition, all of the Agreement’s labor obligations will be enforceable through the same dispute settlement procedures and remedies that apply to all other obligations. Through this Agreement, the United States and Panama create a labor cooperation and capacity building mechanism to advance cooperation on labor matters. In addition, the Agreement commits each Party to provide for the receipt and consideration of communications from persons of a Party on matters related to provisions of the labor chapter, including concerns about a Party’s enforcement of its labor laws. A Labor Affairs Council comprising senior government officials will oversee the implementation of and review progress under the labor chapter.

Environment

The Agreement also incorporates the environmental provisions of the Congressional-Executive Agreement of May 2007 on trade and is also one of the first U.S. free trade agreements to call for each Party to adopt, maintain, and implement laws, regulations, and all other measures to fulfill its obligations under specified multilateral environmental agreements (“MEAs”) to which both governments are parties. Each Party commits not to fail to effectively enforce its domestic environmental laws and its measures to fulfill its obligations under the specified MEAs through a sustained or recurring course of action or inaction in a manner

affecting bilateral trade or investment. The Agreement also will prohibit each Party from waiving or otherwise derogating from its domestic environmental laws in a manner affecting bilateral trade or investment other than pursuant to the waiver provisions of the Party's environmental laws. Each of the obligations set out in the Agreement's environment chapter will be enforceable through the same dispute settlement procedures and remedies as those available to enforce all other obligations.

In addition, the Agreement commits each Party to provide for the receipt and consideration of communications from the public on matters related to implementation of the environment chapter, including concerns about a Party's enforcement of its environmental laws. In a provision modeled on the mechanism in our free trade agreement with Central America and the Dominican Republic, the Agreement also calls on the Parties to establish an independent secretariat to review and consider public submissions on environmental enforcement matters in Panama. An Environmental Affairs Council comprising senior government officials will oversee the implementation of and review progress under the environment chapter and consider the status of the Parties' environmental cooperation activities. Finally, in parallel with the Agreement, the United States and Panama concluded an Environmental Cooperation Agreement that will promote joint cooperative efforts to protect the environment, including protection of endangered species and management of parks and other protected areas. These provisions will help make trade and environmental protection mutually supportive for the United States and Panama.

Transparency

The Agreement includes provisions that will ensure that Panama observes fundamental transparency principles. Those provisions are set out in a specific chapter of the Agreement dealing with regulatory transparency as well as in provisions of the Agreement addressing customs administration, technical barriers to trade, government procurement, investment, cross-border trade in services, financial services, telecommunications, and dispute settlement. The Agreement's principal transparency rules are based on U.S. practice under the Administrative Procedures Act. Additionally, the Agreement's dispute settlement procedures will set high standards of openness and transparency. The Agreement will require dispute settlement proceedings to be open to the public, the disputing Parties to release their legal briefs and other filings to the public (except for confidential information), and dispute settlement panels to have the authority to receive submissions from interested non-governmental groups.

Increased transparency is an effective tool in addressing government corruption in international trade. The Agreement contains innovative provisions on combating bribery and corruption. Under the Agreement, Panama must adopt or maintain prohibitions on bribery in matters affecting international trade or investment, including bribery of foreign officials, and establish criminal penalties for such offenses.

Exceptions

The Agreement fully takes into account critical U.S. domestic policy objectives, such as the need to maintain flexibility in addressing U.S. national security and public health, safety, and consumer interests. The Agreement includes a broad set of general policy exceptions for measures governing trade in both goods and services to ensure that the United States remains fully free to safeguard the national and public interest, including specific exceptions for national security, public health and morals, conservation, taxation, and the protection of confidential information. In particular, nothing in the Agreement limits the ability of the United States to protect our food supply; U.S. regulatory agencies will continue to be able to take all appropriate measures to protect our food supply and safeguard life and health, on the basis of science-based assessments of specific risks. The Agreement also avoids disturbing existing state and local governmental measures by including “grandfather” clauses that will exempt those measures from challenge under the Agreement.

Trade Capacity Building

The United States provided nearly \$6.5 million in trade capacity building assistance to Panama over the past five fiscal years. The Agreement builds on these efforts through the establishment of a Committee on Trade Capacity Building, which will assist Panama to coordinate its capacity building needs with U.S. Government agencies, multilateral institutions, such as the Inter-American Development Bank and the World Bank, non-governmental organizations, and the private sector, which, in turn, will help Panama to implement the Agreement and benefit from the opportunities the Agreement creates.

* * *

Mr. Chairman and Members of the Committee, the United States – Panama Trade Promotion Agreement enables us to turn our unilateral trade preference program into a trade partnership thereby leveling the playing field for U.S. exporters. With respect to our international competitors in Panama’s market, the agreement provides significant market access

advantages to U.S. exporters, especially small businesses, that they do not enjoy today. The Agreement provides for enhanced protection for workers and the environment, will encourage domestic political and economic reforms in Panama, and strengthen our partnership with an important regional ally. In particular, the labor provisions of the Agreement, along with our renewed focus and commitment to trade enforcement, reforms to Trade Adjustment Assistance, and the Administration's investment in domestic infrastructure and competitiveness, demonstrate how trade and economic policy can combine job creation and concern for working families at its core. It is a strong agreement that fits with the President's goals to build trading relationships that are fair, equitable and benefit the citizens of both countries. It has the potential, as part of the broader strategy the President will outline, to move America's trade policy forward.

The Agreement provides an excellent opportunity to raise working standards and enhance environmental protections in Panama, gain fair access for U.S. workers, farmers, ranchers, and businesses to one of the fastest growing markets in the Western Hemisphere, and enhance our bilateral relationship with one of our strongest allies in the region. This could affect progress in a broad number of areas, including regional security as well as efforts to combat drug trafficking and money laundering.

I hope that after carefully examining the Agreement, the Members of this Committee and the U.S. Congress will agree that this is a solid agreement that is strongly in our national interest. I look forward to working with you Mr. Chairman, Ranking Member Grassley, and the other Members of this Committee to achieve strong bipartisan support for this Agreement.

Again, thank you for the opportunity to testify today.