
IV. TRADE POLICY BY SECTOR

(1) OVERVIEW

1. The sectoral structure of Panama's economy shows marked duality: whereas productivity in the services sector is relatively high, in the agricultural and manufacturing sectors it is low. As a result, international services (the Canal, the Colon Free Zone, international banks, maritime transport and tourism) are competitive at the global level and constitute the main foundation of Panama's economy. Producing goods, on the other hand, has required the implementation of protection measures and assistance which, in most instances, have become a burden on taxpayers and consumers.

2. The agricultural and fisheries sectors' share of GDP is relatively modest (6.8 per cent), but they are a major source of jobs (19.6 per cent) and export of goods (43 per cent). Average tariff protection (10.8 per cent) in the agricultural sector (ISIC classification) is above the overall mean; tariffs on some dairy products, products of animal origin and sugar cane range from 144 to 260 per cent. Panama administered tariff quotas for all the products in its schedule of market access commitments and in most cases around 100 per cent of the quotas were utilized. Panama notified the WTO that it granted both domestic support and subsidies for investment and the export of agricultural products.

3. The manufacturing sector is relatively small and focuses on a few activities, mainly related to the processing of agricultural products. The sector was the beneficiary of the only special trade measure adopted by Panama, in the form of a safeguard (see chapter III(2)(vii)). Moreover, the sector has been given certain fiscal incentives, some of which have been notified to the WTO as subsidies (see chapter III(3)(iv)). Panama liberalized and partly privatized the electricity sector in 1998-1999, but the State still kept its monopoly of energy transmission as well as a large holding in the major generating and distribution companies.

4. As already mentioned, the services sector is of the utmost importance to Panama's economy and in 2006 it accounted for around 81 per cent of the GDP. Panama adopted substantial specific commitments on market access and national treatment in 11 of the 12 specific sectors in the GATS, with the exception of the "other services" sector. During services negotiations under the Doha Round, Panama submitted an initial offer in April 2003, but by May 2007 had not yet submitted a revised offer.

5. In 1997, the telecommunications sector was privatized and in 2003 it was opened up to competition. Since then, rates have fallen and the quality of services has improved. There are no restrictions on private foreign investment, which receives national treatment. The traditional operator is still a dominant presence in local fixed telephony and there is a duopoly in mobile telephony services, even though a large number of licences have been granted in all branches of telecommunications. In its specific commitments within the WTO, Panama only undertook to liberalize the value-added services segment. It has not accepted the Reference Paper on Telecommunications.

6. There are no restrictions on foreign entities becoming established in the banking sector and they receive national treatment. Banks may be established in the form of subsidiaries or branches given licences to operate in Panama, licences solely for transactions abroad or agency licences. International banks are highly active and in 2006 37 banks were operating. Panama was one of the 35 jurisdictions identified in June 2000 by the OECD as meeting the technical criteria for constituting a tax haven. Panama did not, however, appear on the list of non-cooperative countries as it undertook to amend its regulatory and taxation regime and enhance transparency by the end of 2005.

7. Insurance to cover risks in Panama can only be taken out through companies established in Panama. Foreign insurance companies may only provide services in the areas in which they are engaged in their countries of origin. Special legislation applies to captive insurance companies, which are offices set up in Panama to insure or reinsure foreign risks.

8. In the air transport sector, cabotage traffic is in principle restricted to companies in which a minimum of 60 per cent of the shares are owned by Panamanian nationals. There are no restrictions on foreign capital holdings in companies engaged in international traffic. By law, Panama's public airports, including the country's largest international airport, must be State-owned and managed, even though the private sector may be given concessions for auxiliary services.

9. Panama's ship register is the largest in the world. Registration gives tax benefits such as exemption from profits tax. There are no nationality restrictions for registration, including registration for the purpose of providing cabotage services. By law, the ports must be owned by the State but private companies may be given concessions for their management. In practice, the major ports are privately operated.

10. The Canal is the cornerstone of Panama's economy because of its unique role as the nerve centre for global transport. The Canal was handed back to Panama in 1999. It is managed by the *Autoridad del Canal de Panamá* – ACP (Panama Canal Authority), an autonomous legal person under public law. In 2006, a public referendum approved the enlargement of the Canal by building a third set of locks at an estimated cost of US\$5,250 million; the new locks are expected to start operating in 2015.

11. Panama does not have any legislation containing general regulations on the supply of professional services. The various professions are governed by specific laws and the principal ones are organized in their respective professional associations. Access to Panama's market by foreign professionals is restricted: it is necessary to be a Panamanian national in order to engage in the majority of professions, including those of lawyer and certified public accountant. Panama's two leading State universities have agreements on mutual recognition of university degrees with universities in ten other countries. Panama made limited commitments on professional services under the GATS.

(2) AGRICULTURE AND FISHING

(i) Features

12. The agricultural and fishing sectors (excluding food processing) account for a fairly modest share of Panama's GDP, but their contribution to employment and, above all, to exports is substantial. In 2006, the GDP shares of agriculture (including livestock and forestry) and fishing were 4.4 per cent and 2.4 per cent, respectively.¹ According to data from the August 2006 household survey, the agricultural sector employed 17.2 per cent of the labour force (of which one third were under-employed) and the fishing sector 1.1 per cent. In 2006, the leading agricultural products according to production value were the following: bovine animals and goats (16.5 per cent); poultry (16.2 per cent); various types of fruit (14.2 per cent); bananas (11.7 per cent); swine (5.7 per cent) and sugar cane (5.6 per cent).²

¹ According to the ISIC classification (chapters 01 and 02 for agriculture and chapter 05 for fishing).

² Statistics and Census Department (National Accounts and Household Survey). Consulted at <http://www.contraloria.gob.pa/dec/>.

13. The agricultural sector grew slowly from 2001 to 2006, at an annual average rate of 1.7 per cent. From 2002 to 2006, however, the production of various types of fruit and poultry was extremely dynamic, growing at annual average rates of 34.0 and 6.2 per cent, respectively. The fishing sector also expanded considerably at an annual average rate of 10.6 per cent during the period 2001-2006.³

14. During the period 2000-2005, the value of agricultural exports was on average 26.0 per cent of Panama's total exports (see Table AIV.1). Over the same period, in terms of value, exports of melons, watermelons and fresh papayas replaced bananas as Panama's major export products. According to data provided by the authorities, in 2005, the major agricultural exports were: melons, watermelons and fresh papayas (41.0 per cent of agricultural exports); bananas (33.6 per cent); and bovine cattle (7.4 per cent). During the period 2000-2005, agricultural imports accounted on average for 3.2 per cent of Panama's total imports. In 2005, the largest agricultural imports were maize (33.3 per cent), wheat (19.9 per cent) and rice (12.1 per cent).

15. In 2005, close to 90 per cent of fisheries production was exported. During the period 2000-2005, the value of fisheries exports was on average 9.7 per cent of Panama's total exports (see Table AVI.1).

(ii) Agriculture

(a) Policy objectives

16. The Ministry of Agricultural Development (MIDA) is responsible for formulating and implementing agricultural policy, as well as for coordinating some of the procedures relating to sanitary and phytosanitary measures (see chapter III(2)(ix)). The main bodies belonging to or cooperating with the MIDA and assisting it to implement the policy are the *Banco de Desarrollo Agropecuario* – BDA (Agricultural Development Bank), the *Instituto de Seguro Agropecuario* – ISA (Agricultural Insurance Institute), the *Instituto de Investigación Agropecuario* – IDIAP (Agricultural Research Institute) and the *Instituto de Mercadeo Agropecuario* – IMA (Agricultural Marketing Institute).

17. According to the authorities, during the period 1994-1999, the Framework Guidance for Sectoral Policy was used as a reference to move ahead with the negotiations on accession to the WTO, mainly for the selection of sensitive products. Already during the period 2000-2004, the Rural Panama Plan proposed, *inter alia*, to speed up the process of agricultural technological development, to expand agricultural trade and to develop new markets. In 2004, the Government defined new strategic guidelines for agricultural development. The new strategy's objectives include increasing production and enhancing competitiveness, promoting demand-focused and export-oriented agricultural conversion, improving plant protection and animal health, and raising the living standards of the rural population.⁴

(b) Policy instruments

Border measures

18. In 2007, the agricultural sector (according to the ISIC classification) benefited from average tariff protection of 10.6 per cent (see Table AIV.1). The groups of agricultural products (according to

³ Statistics and Census Department. Consulted at <http://www.contraloria.gob.pa/dec/>.

⁴ 2004-2009 Strategic Plan for Agriculture. Information on line. Consulted at: <http://www/mida.gob.pa/>.

the WTO classification) given high average tariff protection include dairy products (41.8 per cent), animals and products of animal origin (24.3 per cent) and cereals (23.7 per cent).

19. For sanitary and phytosanitary reasons, prior authorization is required before importing agricultural products (see chapter III(2)(ix)).

20. Agricultural products are not subject to the sales tax (the ITBMS) (see chapter III(2)(v)). Imports of capital goods and inputs to be used exclusively in the agricultural sector are exempt from import tariffs.⁵

21. Panama has notified the WTO that, during the period 1997-2004, it did not make use of the special safeguard provisions reserved in its schedule, which include six tariff lines in the milk and cream chapter (HS 0402).⁶

22. Mexico requested consultations with the Government of Panama following the publication of Cabinet Decree No. 20 of 17 July 2002 under which Panama abolished the tariff item for modified milk (at a bound tariff of 5 per cent) and subsequently replaced it by two new tariff items (at tariffs of 0 and 65 per cent, respectively).⁷ The Parties reached a mutually agreed solution with the reduction of the 65 per cent tariff to 5 per cent following publication of Cabinet Decree No. 18 of 3 August 2005.⁸

23. Panama undertook to administer tariff quotas for a list of products in the context of the commitment on market access opportunities contained in the WTO Agreement on Agriculture.⁹ Panama has submitted five notifications to the WTO on the administration of tariff quotas for the period 1997-2004.¹⁰

24. During the period 2004-2006, Panama administered tariff quotas for all the products on its schedule of market access commitments (Table IV.1), covering a total of 60 tariff lines. For all these products, the in-quota bound tariff rate is 15 per cent while the out-of-quota rate ranges from 30 to 260 per cent. For some products, the in-quota tariff applied can be one of two figures (3 or 15 per cent), whereas for the others it is only one figure (15 per cent). The authorities have indicated that in those cases where the in-quota tariff applied is 3 or 15 per cent, approximately 95 per cent of the volume of the announced quota is intended for buyers holding an industrial licence (granted by the MICI); this is done through an auction called a "raw material" auction at a tariff of 3 per cent. The remaining 5 per cent of the quota goes to any registered buyer through an auction called a "finished product" auction at a tariff of 15 per cent. In the case of the other products, for which the tariff applied only has one rate (15 per cent), the quota goes to any registered buyer through a regular auction.

25. Close to 100 per cent of quotas are used in most cases, with the exception of dairy products and poultry meat (Table IV.1). In the latter case, Panama has been self-sufficient and has not imported either in-quota or out-of-quota. According to the authorities, a quota for poultry meat has been opened but no offers have been received.

⁵ Pursuant to Law No. 28 of 20 June 1995.

⁶ WTO document G/AG/NG/S/9/Rev.1 of 19 February 2002.

⁷ WTO document G/AG/GEN/69 of 21 March 2005.

⁸ WTO document G/AG/GEN/69/Add.1 of 6 October 2005.

⁹ Section I-B of Schedule CXLI of Panama's Protocol of Accession to the WTO. Available in WTO document WT/ACC/PAN/19/Add.1 of 20 September 1996.

¹⁰ WTO documents G/AG/N/PAN/2 and 3 of 19 October 1998; G/AG/N/PAN/6 of 12 June 2002; G/AG/N/PAN/8 of 12 March 2004; and G/AG/N/PAN/10 of 18 July 2005.

Table IV.1
Agricultural products subject to tariff quotas, 2004-2006

| Product group | Number of tariff lines | Average quotas announced (metric tonnes) | Average fill rate (%) | Tariff applied | |
|---------------------------------|------------------------|--|-----------------------|---------------------|-----------------------|
| | | | | In-quota | Out-of-quota |
| Pig meat | 20 | 840.0 | 89.3 | 3 - 15 | 60 - 70 ^a |
| Poultry meat | 2 | 708.0 | 0 | 15 | 260 |
| Dairy products | 25 | 11,918.5 | 60.8 | 3 - 15 | 30 - 155 ^a |
| Potatoes | 1 | 590.4 | 89.2 | 15 | 81 |
| Tomato concentrate ^b | 3 | 1,709.4 ^b | 84.7 | 3 - 15 | 81 |
| Beans | 1 | 608.3 | 100 | 15 | 15 |
| Maize | 3 | 321,988.2 ^b | 96.5 | 3 - 15 ^a | 40 |
| Rice ^b | 4 | 60,595.5 ^b | 100 | 3 - 15 | 90 |
| Onions ^c | 1 | 907.0 ^c | 100 | 15 | 72 |

a The tariff applied varies within this range depending on the specific tariff line.

b For these products, quotas additional to those agreed at the WTO were approved because of lack of supply.

c Onions do not appear in Panama's schedule of market access commitments, but in 2006 a quota was approved because of lack of supply.

Source: WTO Secretariat, based on information provided by the MIDA.

26. Resolution No. 5-98 of 18 November 1998 contained the implementing regulations for Law No. 23 of 15 July 1997 as far as the award of tariff quotas is concerned. Under this Resolution, the *Comisión de Licencias de Contingentes Arancelarios* (Tariff Quota Licensing Commission) is responsible for preparing the invitation to tender for the quota and for sending it to the *Bolsa Nacional de Productos S.A. – BAISA* (National Products Exchange). In early 2007, the BAISA was the only private exchange for products and was licensed by the *Comisión Nacional de Bolsas de Productos* (National Product Exchange Commission) to negotiate agricultural quotas in Panama. The Licensing Commission must publish the opening of quotas widely at least 21 calendar days prior to making them available to the public.

27. In order to allow both importers (buyers) and foreign exporters (sellers) to participate in the negotiating round, a registration form must be submitted and a broker's office duly accredited to the BAISA must be appointed.¹¹ Once the period for receiving the forms has expired, the volumes requested individually by each importer are allocated, free-of-charge, provided that their total does not exceed the total amount of the quota. If the total volume does exceed the quota, the Technical Secretariat of the Licensing Commission and the MICI's Directorate General of Industry determine the percentage and amount of each applicant's share based on their previous import record.¹² The importers must then negotiate sales contracts for the goods with foreign exporters by means of an auction mechanism within the BAISA. Immediately after the auction has been held, the BAISA issues a provisional import certificate, which must be replaced by the definitive import licence granted by the Licensing Commission within one or two days.¹³

28. The allocation of quotas to supplier countries is on a global scale, with the exception of the quota for pig meat for which a special quota of 130 tonnes for Costa Rica (approximately 17 per cent of the total quota) was negotiated when Panama acceded to the WTO.

¹¹ Pursuant to Law No.23 of 15 July 1997, brokers' offices are legal persons given a concession by the BAISA in order to conduct market trading activities.

¹² Resolution No.5-98 of 18 November 1998.

¹³ Information provided by the authorities.

29. Non-automatic import licences issued following the auction of quotas are not transferable. Imports under the licences must also comply with the sanitary measures, technical regulations and other requirements in effect in Panama.

30. The Licensing Commission decides on the number of lots and the intervals at which tariff quotas are made available to the public, depending on each product's specifications. There is no pre-established maximum period within which the products must actually be imported and the Licensing Commission determines the maximum period on a case-by-case basis.¹⁴

31. Panama applies autonomous tariff quotas for the supply of products declared by the Cabinet Council of the President's Office to be sensitive items. In early 2007, onions, coffee, sugar cane, and all the products on the market access commitment schedule, were deemed to be sensitive.¹⁵ During the period 2004-2006, autonomous quotas applied to the import of onions and the existing quotas for tomato concentrate, maize and rice were increased. The procedures for allocating these quotas are virtually the same as those applicable to ordinary quotas.¹⁶

32. Panama applies additional quotas under trade agreements with other Central American countries.¹⁷ The products covered and the volume of the quotas depends on the agreement with the country concerned.

Internal measures

33. Panama does not apply any form of price control to agricultural or food products. The Government does, however, monitor prices, which are made public through the IMA and the *Autoridad de Protección al Consumidor y Defensa de la Competencia* (Consumer Protection and Competition Authority) (see chapter III(4(ii))).

34. Panama notified to the WTO domestic support granted for information and training services, pest and disease control, extension and advisory services, marketing and promotion services, natural disaster relief and the programme in support of agricultural conversion, which are considered to be "green box" measures. These measures amounted to around US\$347 million during the period 1997-2002. Panama has not made any notifications on domestic support for the years after 2002.

35. The programme in support of agricultural conversion is intended to facilitate the transition to different crops and new technologies. Panama also notified subsidies for investment in agriculture (loans to small producers), for an annual average amount of US\$21.5 million during the period 1997-2002. It likewise notified the WTO of direct payments for the production of maize and swine made solely during the period 1999-2002. This programme ended in 2002, but some payments to producers were pending and were disbursed in 2003 and 2004. The calculation of the aggregate measurement of support for these special products was lower than the *de minimis* level throughout the years during which it applied.¹⁸

36. Panama notified subsidies for the export of non-traditional agricultural products under the *Certificados de Abono Tributario* – CAT (Tax Credit Certificates) general programme, whose term

¹⁴ Resolution No. 5-98 of 18 November 1998.

¹⁵ Section I-B of Schedule CXLI of Panama's Protocol of Accession to the WTO. (WTO document WT/ACC/PAN/19/Add.1 of 20 September 1996).

¹⁶ Resolution No. 02-05 of 10 July 2005 and Law No. 26 of 4 June 2001.

¹⁷ El Salvador, Costa Rica, Guatemala, Honduras and Nicaragua.

¹⁸ WTO document G/AG/N/PAN/11 of 19 July 2005.

was extended until June 2007 (see chapter III(3)(iv)).¹⁹ Different products were classified as non-traditional each year and received the benefit of the programme.

37. The Government has agricultural loan programmes through special credit lines from the BDA. The latter grants loans both for traditional items such as rice, maize, beans, livestock, and for non-traditional crops and agro-industry. The credit terms are favourable as regards interest rates, security and duration. In general, in 2006, the interest rates offered was 6 per cent on loans of up to B 25,000 and 7.5 per cent on other loans, which is below the market interest rates for commercial and industrial loans (8.1 and 8.3 per cent, respectively).²⁰ The BDA requires security for its loans, which may be in the form of mortgages, liens, bonds, future crops or a combination thereof. The terms and amortization schedule are drawn up taking into account various aspects of the project to be financed, for example, the investment plan and the marketing calendar.²¹

38. During the first eight months of 2006, the BDA granted 592 new loans for a total of B 17.9 million, giving a cumulative total of outstanding loans of B 93.8 million.²² The authorities have indicated that, between 2001 and 2005, the BDA utilized 86 per cent of the B 172 million available to it to finance agricultural and agro-industry projects.

39. Law No. 2 of 20 March 1986 on Agricultural Exports, amended by Law No. 28 of 1995, provides measures and incentives to encourage agricultural production and exports in order to promote agro-industrial development. These include the following: (a) a preferential rate for the installation and consumption of electricity used for agricultural activities, up to 30 per cent less than the regular rate; (b) tax exemption of up to 30 per cent for the sums invested in agricultural, livestock, fisheries, aquaculture and agro-industrial activities, although the amount may not exceed 40 per cent of income tax. This exemption entails the obligation to maintain the investment in the production of goods or the introduction of technology for over three years. According to the authorities, there are no special official programmes for agricultural export credits.

(iii) Fishing

40. Most fishing takes place on the Pacific coast. It is divided into two major sectors: industrial fishing using vessels of over ten gross registered tonnes (mainly for anchovies, herring and tuna); and small-scale fishing (for various species). Fish farming is another important component, mainly producing shrimps.²³

41. The *Autoridad de Recursos Acuáticos de Panamá* – ARAP (Panamanian Aquatic Resources Authority) is responsible for managing, conserving and exploiting marine and coastal resources. Pursuant to Decree No. 10 of 1985 and Executive Decree No. 41 of 7 October 1977, industrial fishing requires authorization from the ARAP, as well as an industrial licence granted by the MICI. These licences are given to Panamanian nationals and foreigners without restriction. Commercial shrimp fishing is restricted to vessels built in Panama. Foreigners are not allowed to engage in small-scale fishing.²⁴ A series of other legal instruments lays down requirements applicable without distinction to Panamanian nationals and foreigners in order to limit the exploitation of fisheries resources, for example, requirements relating to mesh size and restrictions on the power of vessels' engines.

¹⁹ WTO documents G/AG/N/PAN/9 of 19 April 2005 and G/SCM/100 of 18 December 2002.

²⁰ Data from the Banking Supervisory Authority provided by the Ministry of the Economy and Finance.

²¹ Consulted at: http://www.bda.gob.pa/principal_bda.html.

²² Consulted at: <http://www.bda.gob.pa/estadisticas.html>.

²³ Panamanian Maritime Authority (2005).

²⁴ Executive Decree No. 124 of 8 November 1990.

(3) MANUFACTURING

42. The manufacturing sector (including preparation of foodstuffs) is relatively small and focuses on just a few activities, mainly those related to the processing of agricultural products. The sector has seen its share of GDP fall slightly, from 8.9 per cent in 2001 to 7.0 per cent in 2006.²⁵ Nevertheless, between 2002 and 2004, the branches manufacturing beverages and metal products for use in building grew at annual average rates of 18.9 per cent and 14.6 per cent, respectively. According to data in the August 2006 household survey, the manufacturing sector employed 8.9 per cent of the labour force. The major manufactures, according to their production value in 2004, were the following: preparation and conservation of meat, fish, fruit and other items (17.6 per cent); preparation of beverages (13.8 per cent); preparation of other foodstuffs (9.4 per cent); publishing and reproduction of recordings (7.7 per cent); and manufacture of metal products for use in building (7.5 per cent).²⁶

43. During the period 2000-2005, the value of exports of manufactures represented on average 64 per cent of Panama's total exports (see Table AIV.1). In 2005, the leading exports of manufactures were: other semi-manufactures (4.0 per cent of total exports); chemicals (2.6 per cent); and clothing and accessories (1.1 per cent). The major manufactures imported by Panama in 2005 were: chemicals (12.8 per cent of total imports); automobile industry products (10.1 per cent); and office and telecommunications equipment (8.9 per cent).

44. In 2007, the average MFN tariff applied by Panama to manufactures (non-agricultural products according to the WTO classification) was 7.3 per cent (see Table III.2); there are virtually no significant tariff peaks for manufactures.

45. As far as contingency measures are concerned, the only measure adopted by Panama was the initiation of a safeguards investigation in 2006 into a manufactured product (printed film in rolls for the manufacture of flexible packaging) (see chapter III(2)(vii)).

46. Manufactures in general are given various incentives under several programmes implemented by Panama (see chapter III(4)(iv)).

(4) ELECTRICITY

(a) Features of the sector

47. In 2006, Panama's electricity generating capacity was divided between hydroelectric power stations, accounting for 55.3 per cent of installed capacity, with other power stations (which mainly use Bunker C fuel) accounting for the remaining 44.7 per cent. Total installed capacity for generating electricity was 1,541 MW in 2006, including self-powered plants connected to the *Sistema Interconectado Nacional* – SIN (National Interconnected Grid) (11.7 per cent) and independent systems (0.8 per cent). Total net generation of electricity in Panama was 5,817 GWh in 2006 while total sales amounted to 4,935 GWh.

48. Between 1998 and 2002 during partial privatization of the electricity sector, substantial investments were made in Panama's generating capacity, mostly in thermal power stations. This allowed the growth in total capacity to remain above the increase in maximum demand on the SIN,

²⁵ According to the ISIC classification (chapters 15-36).

²⁶ Statistics and Census Department (National Accounts and Household Survey). Consulted at <http://www.contraloria.gob.pa/dec/>.

with aggregate rates of growth of 42.9 and 18.1 per cent, respectively, between 1998 and 2002.²⁷ The rise in oil prices from 2001 onwards, however, discouraged investment in thermal power stations and between 2003 and 2006 the SIN's margin of reserve fell from 79 to 59 per cent.²⁸ The authorities have pointed out that this level of reserve margin nonetheless suffices to ensure that the SIN remains reliable.

49. During the period 1998-1999, the State electricity company (IRHE) was partly privatized and its generating, transmission and distribution subsidiaries were separated into different companies. The Government sold 49 and 51 per cent of the shares of the hydroelectric and thermoelectric generating companies, respectively, to private investors. The State also owns the company EGESA, recently set up for the purpose of investing in thermoelectricity generation. Following the privatization and the new concessions granted by the State, Panama's electricity generating market now has five large generating companies (including the self-powered Panama Canal Authority) and some small generating companies. The State owns all the shares in ETESA, which has a de facto monopoly of electricity transmission; ETESA's concession contract gives it exclusive rights in the areas covered by the concession. The Government sold 51 per cent of the shares in the three companies which share Panama's distribution market on a geographical basis. There is foreign investment in generation and distribution.²⁹

50. Panama is interconnected with the Central American electricity schemes through Costa Rica. Following the sector's privatization, Panama went from being a net importer of electricity to a net exporter. In July 2006, the *Sistema de Interconexión Eléctrica Centroamericano* – SIEPAC (Central America Electrical Interconnection System) started to be expanded in order to create a wholesale electricity market to bring down the cost of energy and enhance the reliability of the Central American electricity grid.³⁰ In early 2007, a project for electricity interconnection between Colombia and Panama was under consideration.

51. Electricity rates depend on the level of consumption and the voltage. High voltage consumers (voltage exceeding 115 kV) with monthly consumption exceeding 15 kW, supplied by a distributor, pay a rate (kWh) that is approximately one third of that paid by low voltage consumers (voltage not exceeding 600 V) consuming less than 15 kW monthly.³¹ In 2006, the average rate to the final consumer was B 0.15 kWh, one of the highest rates in Latin America³²; 57 per cent of this amount is attributable to generation, 8 per cent to transmission and 35 per cent to distribution. The authorities have indicated that the increase of around 50 per cent in electricity rates during the period 1999-2006 reflected the rise in international oil prices over the same period.³³

²⁷ Annual statistics on the electricity sector. Consulted at: http://www.ersp.gob.pa/electric/estadisticas_elec.asp.

²⁸ The SIN's margin of reserve is defined as the difference between total installed capacity for generation and maximum demand on the SIN, expressed as a percentage of this maximum demand. The margin does not reflect the generating potential actually available, adjusted, for example, to the water level in hydroelectric power stations' dams.

²⁹ Information provided by the Panamanian authorities.

³⁰ Consulted at: http://www.planpuebla-panama.org/main-pages/avances_EjelPC.htm.

³¹ High voltage consumers are usually industries while low voltage consumers are households.

³² The rate applies to the final consumer, whether a household or a business.

³³ Consulted at: <http://ersp/gob.pa/electric/default.asp>.

(b) Legal framework

52. The legal framework for the electricity sector is composed of Law No. 6 of 3 February 1997, as amended by Decree Law No. 10 of 26 February 1998 and regulated by Executive Decree No. 22 of 19 June 1998. Law No. 26 of 29 January 1996, as amended by Decree Law No. 10 of 22 February 2006, reorganized the structure and responsibilities of the regulatory body, the *Autoridad Nacional de los Servicios Públicos* – ASEP (National Public Service Authority). The rules governing the wholesale electricity market are laid down in Resolution No. JD-605 of 24 April 1998. In addition, Law No. 45 of 4 August 2004 establishes an incentives scheme to promote the generation of hydroelectricity and electricity from other renewable, clean sources of energy.

53. The building and operation of hydroelectric and geothermal power stations, like distribution, are subject to a concessions regime. The building and operation of generating plants using other technologies, on the other hand, are subject to a licensing regime. To obtain a concession or licence, the application must meet the technical requirements specified in the legislation, consisting mainly of approval of the environmental impact study by the *Autoridad Nacional de Ambiente* (National Environmental Authority). Concessions and licences are given for a renewable period of 50 and 40 years, respectively. The ASEP is responsible for granting such concessions and licences and for guaranteeing national treatment of foreign investors.³⁴

54. Electricity generating companies providing a public service may not participate either directly or indirectly in the control of companies distributing electricity. Likewise, distribution companies may only participate directly or indirectly in the control of generating plants when total aggregate generating capacity exceeds 15 per cent of expected demand in their concession area. Generating companies subject to concessions (hydroelectricity) and distribution companies may not apply for new concessions resulting in participation of over 25 per cent and 50 per cent, respectively, in their corresponding domestic markets. The ASEP is empowered to raise these percentages when it deems necessary for the expansion of the electricity system.³⁵ Under Cabinet Resolution No. 76 of 19 October 2005, the 25 per cent participation applicable to hydroelectricity generating companies was temporarily increased to 40 per cent (until 2012).

55. Law No. 6 of 1997 guarantees all operators in the electricity market non-discriminatory access to transmission networks. Transmission companies may not participate in generation, distribution or sales to large clients.

56. Producers (generators and self-powered) and consumers (distribution companies and large clients) buy and sell energy and power in the wholesale electricity market. In the contracts market, participants conclude medium-term and long-term contracts with guarantee of supply through free competition. Distribution companies must contract a sufficient volume to guarantee supply to their end customers for 12 months, but they do not incur any purchasing risk because the legislation guarantees that the costs of their contracts will be covered by the rates charged to end customers.³⁶ In the contingency market, participants conclude short-term contracts to dispose of surpluses or obtain supplies not envisaged in the long-term contracts.

57. Based on the formulas and ceilings established by the ASEP every four years, transmission and distribution companies must submit the proposed rates for the regulated services within their

³⁴ Section 3 of Chapter V of Law No. 6 of 3 February 1997; Resolution No JD-3460 of 19 August 2002; Resolution No. 203 of 7 August 2006; and Resolution No. JD-110 of 14 October 1997.

³⁵ Decree Law No. 10 of 26 February 1998.

³⁶ Consulted at: <http://enteregulador.gob.pa/electric/Anexos/M1-2005.pdf>.

concession area for ASEP approval. In the case of distributors, the rates to end customers are regulated with the exception of large customers, which buy electricity from the wholesale market.³⁷

58. There are no restrictions on the import of electricity. Executive Decree No. 22 of 19 June 1998 provides that supplying the domestic market takes precedence over export of electricity. For example, a market operator may export energy and power if they are not subject to any commitment to other agents in the domestic market. The authorities have indicated that some of these rules may change in the future when the Regional Electricity Market under the SIEPAC framework comes into effect.

(5) SERVICES

(i) Main features

59. The services sector is of the utmost importance to Panama's economy and in 2006 it accounted for 81 per cent of the GDP (Table I.1). Imports of commercial services fell to US\$1,694 million in 2006 while exports rose to US\$3,904 million (Table I.5). Panama's international trade in services has been extremely dynamic with imports growing at an average rate of 6.9 per cent while exports rose by 11.8 per cent on average between 2000 and 2006.

60. Panama's schedule of specific commitments under the GATS, negotiated in connection with its accession to the WTO in 1997, includes both horizontal commitments affecting all sectors and commitments on specific sectors.³⁸ The horizontal commitments concerning market access apply to the presence of natural persons working temporarily in Panama in the following categories: sellers of services, managers, administrators and specialists. Commitments affecting national treatment were not bound.

61. Panama adopted important specific commitments with regard both to market access and to national treatment in the 12 specific sectors in the GATS, with the exception of the "other services" sector (Table AIV.2). The commitments made in the telecommunications and transportation services sector, however, only include value-added telecommunications and the repair of aircraft, respectively.

62. Panama did not take part in the Extended Negotiations on Telecommunications within the GATS framework or the Extended Negotiations on Financial Services and has not accepted the Fourth and Fifth Protocols annexed to the GATS. Nevertheless, it has made broad commitments on financial services (section (iii) below).

63. In the context of the services negotiations under the Doha Round, Panama submitted an initial offer in April 2003.

(ii) Telecommunications

(a) Features of the market

64. The telecommunications sector's contribution to GDP increased from 2.7 per cent in 1997 to 5.7 per cent in 2006. The sector had a total of 6,562 employees in 2005.³⁹ The total number of fixed

³⁷ Decree Law No. 10 of 26 February 1998 and Public Service Tariff Regime for the Distribution and Marketing of Electricity effective from July 2006 to June 2010. Consulted at: http://www.ersp.gob.pa/electric/Anexos/Anexo_JD-5863_A.pdf.

³⁸ WTO document GATS/SC/124 of 1 October 1997.

³⁹ Data from the Department of Statistics and Census.

telephone lines in operation has remained virtually constant since the Panamanian telecommunications sector was privatized in 1997, but teledensity fell from 16.4 in 1999 to 14.5 in 2005.⁴⁰ In 1998, the network became 100 per cent digital. The number of mobile lines increased at an annual average of 29 per cent during the period 2000-2006, reaching a level of mobile teledensity of 54 per cent in 2006. In 2005, there were 11.6 Internet connections per 100 households, of which 2.5 per cent were broadband connections and 9.1 per cent dial-up connections.⁴¹

65. Following the sector's privatization in 1997 and the opening up to competition in 2003, rates have fallen and the quality of services has improved. Basic telephone rates fell sharply after the market was opened up. Average national and international long-distance rates in particular fell by 66 and 94 per cent, respectively, between 2002 and 2006. Mobile telephone rates do not appear to differ significantly from the international average. In general, there has been an improvement in the quality of services. According to the authorities, the number of annual breakdowns per 100 fixed lines fell from 70 per cent in 1998 to 12 per cent in 2005. In mid-2007, the ASEP was developing a project to draw up quality indicators for mobile telephone services.

66. In 1997, by means of a public invitation to tender, the Government sold 49 per cent of its holding in the State-owned company INTEL, which had a monopoly of local basic and long-distance telephony. This privatization led to the foreign company Cable & Wireless taking over administrative control of the new company and 49 per cent of its shares; the remaining shares are held by the State (49 per cent) and by employees of the new company, Cable & Wireless Panamá S.A. (2 per cent). This company had exclusive rights in local and long-distance telephony until the market was opened up in 2003, when competition was introduced by granting new concessions.

67. In early 2007, there were, *inter alia*, 34 local telephony concessionaires in Panama (nine of which were operating in mid-2007), 33 holders of national long-distance concessions (15 in operation), 59 international long-distance concessionaires (16 operating), 20 public telephone concessionaires (four operating), 13 voice circuit leasing concessionaires (13 operating), 94 public Internet concessionaires (19 operating) and two mobile telephony concessionaires (two operating). Many of these concessionaires are companies with foreign capital which provide telephone services in more than one branch.⁴²

68. The companies Cable & Wireless Panamá S.A. and Telefónica Móvil Panamá S.A. share the mobile telephony market. The authorities have indicated, however, that in 2007 the Government plans to begin the process of inviting tenders for two new concessions for the supply of mobile telephony services in 2008. In early 2007, 91 per cent of subscribers had chosen the prepayment model.

(b) Legal framework

69. As part of its specific commitments in the WTO, Panama undertook to liberalize value-added telecommunications services in two stages. Firstly, one year after Panama's accession to the WTO (in September 1997), foreign companies would be allowed to provide such services in a joint venture with the dominant company. In the second stage, five years after accession, foreign companies would

⁴⁰ Teledensity is defined as the total number of telephone lines per 100 inhabitants.

⁴¹ WTO Secretariat calculations based on data consulted at: <http://www.ersp.gob.pa/telecom/estadisticas.asp>.

⁴² Consulted at: <http://ersp.gob.pa/telecom/concesiones/default.asp>.

be allowed to provide the services directly. Panama has no other commitment on telecommunications services under the GATS framework.⁴³

70. Responsibility for formulating and implementing policies in the telecommunications sector lies with the Executive, through the Cabinet Council. The ASEP, an autonomous State body (see section (4) above) is responsible for overseeing companies in the sector, granting concessions and licences for the supply of services, ensuring compliance with quality criteria, and assisting the Consumer Protection and Competition Authority to foster competition in this sector.

71. Law No. 31 of 8 February 1996, as amended by Law No. 24 of 30 June 1999, lays down the general rules governing the telecommunications sector and its implementing regulations are contained in Executive Decree No. 73 of 9 April 1997. Resolution No. JD-2802 of 11 June 2001 prescribes the specific rules for the supply of basic telephony services. Law No. 17 of 9 July 1991 defines the frequency bands for the supply of mobile telephony services and Executive Decree No. 21 of 12 January 1996 regulates operation of this service. Resolution No. JD-107 of 30 September 1997 approved the National Frequency Allocation Plan.

72. Law No. 31 of 1996, underpinned by the Constitution, gives the management and control of the electromagnetic spectrum to the State through the ASEP.⁴⁴

73. As an exception to the general provision in Article 280 of the Constitution (see chapter II(3)), Law No. 31 of 1996 authorizes majority foreign private holdings in the capital of companies providing public telecommunications services in Panama. Foreign companies controlled by the State or with a majority State holding may not, however, obtain direct or indirect majority holdings in Panamanian telecommunications companies. Foreign companies must set up subsidiaries with a local presence in order to operate in Panama.

74. Call-back in international long-distance traffic is not allowed, with the exception of services involving agreements between a Panamanian concessionaire authorized to provide telephony services and a foreign operator of a public international network involving or allowing the intervention of an operator in order to complete the call.⁴⁵

75. All concessions for telecommunications services are granted by the ASEP for a period of 20 years, renewable for a further 20 years. Concessions are granted free-of-charge and without a public invitation to tender to any company interested in providing basic telephony services, private networks, resale services, Internet for public use, data transmission and satellite transmission, *inter alia*, which meets the respective technical criteria. If use of the radio spectrum is not required, the ASEP must grant the concession within 30 working days. If this is not the case, concessions for the radio spectrum are scheduled to be granted three times a year.⁴⁶

76. Unlike other concessions, those for the supply of mobile telephony services are granted through a public invitation to tender and according to a regime that restricts the number of operators in the market; the Cabinet Council is responsible for granting new concessions, which depend on the economic studies conducted by the ASEP, whose criteria are not defined.⁴⁷ Resale services require a

⁴³ WTO document S/DCS/W/PAN of 24 January 2003.

⁴⁴ Article 10 of Law No. 31 of 1996, Decree Law No. 10 of 22 February 2006 and Article 258 of the Panamanian Constitution.

⁴⁵ Article 66 of Executive Decree No. 73 of 9 April 1997.

⁴⁶ Executive Decree No. 73 of 9 April 1997.

⁴⁷ Law No. 17 of 9 July 1991.

concession. The ASEP only grants a concession if the applicant has signed a resale authorization agreement with the concessionaire of the primary service.

77. The provisions on interconnection are to be found in Title V of Executive Decree No. 73 of 1997. The law obliges concessionaires to interconnect their telecommunications networks with those of other concessionaires that so request. Resolution No. JD-3264 of 27 March 2002 sets out a model interconnection agreement to be used as guidance by the concessionaires. Interconnection agreements signed freely between concessionaires do not require approval by the ASEP. Nevertheless, they must be registered with the ASEP, which in turn must make them available to other concessionaires and the public in general. If no agreement is reached within 120 calendar days of receipt of the interconnection request, either of the parties may ask the ASEP to mediate; mediation has a maximum term of three calendar days. If there is still disagreement, the ASEP must, within 90 days, issue a mandatory interconnection decision with retroactive effect; between 1999 and 2006, 42 per cent of the fixed telephony interconnection agreements were determined through a decision by the ASEP.⁴⁸

78. Operators in a dominant position must give access to their infrastructure at non-discriminatory prices and terms. In 2006, the ASEP decided that the concessionaire of the local basic telecommunications service (operator in a dominant position) must include in its network the necessary technical means to provide subscriber loop rental to all concessionaires requesting it. The criteria to be taken into account by the ASEP when determining whether an operator has a dominant position in the market are contained in Resolution No. JD-1334 of 12 April 1999. In Resolution AN No. 566-Telco of 16 January 2007, the ASEP identified those concessionaires in a dominant position for each of the 16 public telecommunications services (according to the ASEP's classification); Cable & Wireless Panamá S.A. was identified as the operator in a dominant position for nine of these services. If it is suspected that telephony companies are adopting predatory or anti-competitive practices, the ASEP must request the Competition Authority to investigate them and impose sanctions.

79. Concessionaires of local basic telephony services must give clients that so request digital portability; in early 2007, the ASEP was examining how to apply digital portability to mobile telephony services.⁴⁹

80. The charges for telecommunications services supplied in a competitive situation are determined by the concessionaires. Although the competition regime is limited, rates for mobile telephony services are freely set by the two existing concessionaires.⁵⁰ In special cases, for example if there are practices restricting competition, the ASEP may impose a tariff regime on the concessionaire, but in practice this has not occurred. If prices rise, concessionaires must publish them 30 days before they come into effect. The law does not allow cross-subsidies among different services and requires the publication of separate accounts for each individual service provided by a concessionaire.⁵¹ Cable & Wireless Panamá S.A. is free to fix the rates for its services, with the exception of prices deemed to be high, for which it must request authorization from the ASEP. In mid-2007, the scheme for controlling prices by means of a ceiling was not in effect.

81. In mid 2007, a draft law drawn up by the ASEP in order to regulate the supply of the universal telecommunications service was being discussed by the Ministry of the Economy and Finance, the governing authority responsible for putting it before the Legislative Assembly.

⁴⁸ Information provided by the authorities.

⁴⁹ Information provided by the Panamanian authorities.

⁵⁰ Consulted at: <http://www.enteregulador.gob.pa/telecom/tarifas.asp>.

⁵¹ Executive Decree No. 73 of 9 April 1997.

82. There are no taxes on local fixed telephony services or residential Internet access.⁵² All international long-distance calls originating and/or invoiced in Panama are, however, subject to an *ad valorem* levy of 12 per cent of their cost.⁵³ Mobile telephony services, except for prepaid services, are subject to the ITBMS and the ISC, each at a rate of 5 per cent (see chapter III(2)(v)).

(iii) Financial services

(a) Features

83. Panama's financial services sector comprises the financial system (banks, finance companies and loan banks), insurance companies and stock market traders. The sector accounted for 7.5 per cent of the GDP in 2006.

84. Panama's specific commitments on financial services are contained in WTO document GATS/SC/124 of 1 October 1997. As it acceded to the WTO in 1997, Panama did not take part in the extended negotiations on these services within the GATS framework. It bound without limitations cross-border supply (mode 1), consumption abroad (mode 2) and commercial presence (mode 3) for loans and acceptance of all types of bank deposits; financial leasing with option to purchase (exclusively movable goods); banking guarantees and commitments; all payment and money transmission services (excluding local transmission services); trading for own account or for account of customers; money market instruments and foreign exchange; derivative products; transferable securities; participation in issues of all kinds of securities (not including agents); money broking; asset management; and advisory services, *inter alia*.⁵⁴ For insurance, on the other hand, the concessions are more limited.

85. For reinsurance and retrocession services, Panama bound modes of supply 1, 2 and 3 without limitations on national treatment, together with modes 2 and 3 for market access, including in its schedule of specific commitments a limitation on fire insurance, for which insurance companies may not cede premiums for reinsurance abroad in an amount exceeding 50 per cent of the total premiums for risks covered in Panama (Table AIV.2). Panama did not bind cross-border supply, consumption abroad or the presence of natural persons for life, accident and health insurance or for non-life insurance, while commercial presence was bound without restrictions. In the special case of transportation insurance, there are no restrictions on cross-border supply with respect to goods exported from Panama from the moment they are outside Panamanian territory.

86. The Government is currently in the final stages of implementing the programme to enhance the transparency and integrity of Panama's financial system, with support from the Inter-American Development Bank (IDB), designed to strengthen the institutions responsible for supervision and control in order to prevent and investigate money laundering and the financing of terrorism. In this context, the Government took a number of measures that led to Panama being removed from the list of non-cooperative countries and territories in the combat against money laundering by the Financial Action Task Force (FATF).⁵⁵ A report on the achievements in this area is published annually.⁵⁶ In 2002, Panama became a reporting country at the Bank for International Settlements (BIS).

⁵² Law No. 6 of 2 February 2005.

⁵³ Law No. 6 of 21 January 2004.

⁵⁴ WTO document GATS/SC/124 of 1 October 1994.

⁵⁵ Banking Supervisory Authority (2006a).

⁵⁶ Consulted at: http://www.superbancos.gob.pa/aspec_preveccion/transplog.asp.

(b) Banks and other financial intermediation institutions

Features

87. In April 2007, Panama's banking system comprised 40 banks with general licences, of which 15 had Panamanian capital and 25 foreign capital; 37 banks with international licences, of which two had Panamanian capital and 35 foreign capital; eight offices licensed as agencies; and two official banks (the National Bank of Panama and the Savings Bank).⁵⁷ The banking sector had some 14,800 employees on that date. In June 2006, the banking sector's consolidated activities represented a total of B 47,660 million. The banking sector's share of GDP in 2006 was 6 per cent.

88. In recent years, credit levels have risen sharply; for example, domestic loans in the private sector increased by 14.4 per cent in 2006. Local banks (whose capital is mainly Panamanian) accounted for 72 per cent of loans in 2006; foreign banks (those whose headquarters are abroad) for 28 per cent. As for deposits, local banks held 75 per cent in 2006. The solvency and profitability indicators for Panamanian banks are high, as are the liquidity indicators. The wealth/assets ratio was 12.16 per cent in December 2006; the ratio of liquid assets to total deposits was 27.04 per cent. The non-performing loans ratio (loans in arrears as a percentage of total gross loans) is low, around 1.48 per cent in December 2006 and provisions for loans as a percentage of net loans was 1.90 per cent.

89. Interest margins are fairly low: the margin between the average lending rate applicable to businesses in December 2006 (8.66 per cent) and the borrowing rate for a legal person at the same date (5.05 per cent) was 3.61 per cent.⁵⁸

Regulatory framework

90. The Banking Supervisory Authority is responsible for oversight of all the banks established in Panama. Foreign banks holding a general licence are supervised jointly with the relevant foreign supervisory body, without prejudice to compliance with the provisions of Panama's banking law; branches or subsidiaries of foreign banks holding international licences are overseen by the Authority and must respect the technical criteria laid down in the legislation and by the foreign regulatory authority.

91. The regulatory framework for Panama's banking sector is mainly to be found in Decree Law No. 9 of 26 February 1998 (Banking Law).⁵⁹ A licence issued by the Supervisory Authority is required to engage in banking activities within or from Panama. The Law provides for three types of licence: (a) general licences, which allow banking in any part of Panama and transactions that are completed, conducted or have effect abroad, as well as any other activities allowed by the Authority; these licences may be granted to both Panamanian and foreign banks, the latter being established as branches or subsidiaries; (b) international licences, which allow transactions completed, conducted or having effect abroad to be managed from an office set up in Panama and also to carry out any other activities allowed by the Authority; and (c) agency licences, which only allow one or more agencies to be set up in Panama, as well as the conduct of any other activities allowed by the Authority. Foreign banks must obtain prior authorization from their foreign supervisory body in order to carry out banking activities within or from Panama or to become established as agencies. The minimum capital required for a general licence is B 10 million and for an international licence it is B 3 million. There is no minimum capital requirement for an agency licence.

⁵⁷ See: http://www.superbancos.gob.pa/aspec_igee/bgenerales.asp.

⁵⁸ Banking Supervisory Authority (2006b).

⁵⁹ Consulted at: http://www.superbancos.gob.pa/aspec_leyes/normas.asp.

92. In addition to meeting the minimum capital requirement, the granting of a licence requires the submission of a business plan showing the bank's viability and its contribution to Panama's economy. The Supervisory Authority must evaluate the application and approve or reject it within 90 calendar days following submission of the requisite documents. Detailed procedures for the granting of licences are contained in Banking Supervisory Authority Agreement No. 3-2001 of 5 September 2001. No licence is required to open branches or establishments in Panama, but prior notification must be given to the Authority. The opening of establishments abroad must receive prior approval from the Authority.

93. Banks with general licences must maintain capital funds equivalent to at least 8 per cent of their total assets and off-balance-sheet transactions, weighted according to their risks. These banks must keep a minimum balance of liquid assets equivalent to the percentage of the gross total of their deposits in Panama or abroad fixed periodically by the Supervisory Authority. This percentage must not exceed 35 per cent. All banks must keep assets in Panama equivalent to a percentage of their local deposits determined by the Authority according to the national economic or financial situation. This equivalent amount is the same for all banks and may not exceed 100 per cent of the said deposits. In April 2007, the percentage was 85 per cent.

94. Banks may not acquire or own shares or holdings in any other non-banking-related companies in an amount exceeding 25 per cent of the bank's capital. Banks are also prohibited from directly or indirectly giving a loan to a single natural or legal person or undertaking any other commitment with such a person if the total exceeds 25 per cent of the bank's capital. Banks with international licences are not subject to these restrictions.

95. Foreign banks are given national treatment in accordance with the type of licence they have been granted. There are no nationality requirements applicable to board members and directors of a bank. Branches of foreign banks, however, must appoint at least two general agents, both natural persons resident in Panama, at least one of whom must be a Panamanian national.

96. The Banking Supervisory Authority has adopted the basic rules on capital adequacy laid down by the Basel Committee on Banking Supervision and requires a minimum total capital-to-risk-weighted assets ratio of 8 per cent. The Authority requires banks to submit information on their asset situation and on compliance with technical and operating rules, together with information of an institutional nature.

97. Panama has no deposit insurance as such. Nevertheless, preference is given to depositors with up to US\$5,000 when a financial intermediary is dissolved.⁶⁰

98. A tax on banking transactions applies above a certain amount. Article 128 of Law No. 22 of 27 June 2006 provides that the interest rate on local personal and business loans exceeding B 5,000 granted by banks and financial entities as of the entry into force of the Law shall include and retain an amount equivalent to 1 per cent annually of the amount used as a basis to calculate the interest. Of this amount, 50 per cent goes to the Agricultural Development Bank and the remaining 50 per cent to the *Fondo Especial de Compensación de Intereses* – FECCI (Special Interest Compensation Fund).

99. The FECCI was created by Law No. 4 of 17 May 1994 and its implementing regulations are contained in Executive Decree No. 29 of 8 August 1996. It establishes a scheme for loans on preferential terms for the agricultural sector by means of a mechanism that consists in the Fund's financing a discounted interest rate agreed with the lending bank or financial institution. The maximum amount is B 200,000 and the maximum duration is one year. Each year, 75 per cent of the

⁶⁰ Pérez, Oscar Armando, President, Deposit Guarantee Institute (El Salvador) (2006).

surplus in the FECCI's operations goes to the Agricultural Development Bank and 25 per cent to agricultural credit cooperative associations at an annual interest rate of 1 per cent. The authorities have indicated that, in 2006, the FECCI received funds amounting to US\$20 million.

(c) Insurance

Features

100. At 31 March 2007, 20 insurance companies were operating in the Panamanian insurance market, of which ten held reinsurance licences, five were reinsurers, four were captive insurers, four reinsurance brokers, one insurance brokers' portfolio manager, and four managers of captive insurers.⁶¹ In addition, 275 insurance brokers' licences had been granted to legal persons and 1,792 to natural persons. It is estimated that, at the same date, insurance activities provided 1,773 direct jobs. The market comprises both companies set up in Panama (with Panamanian or foreign capital) and branches of foreign companies.

101. During the 12 months up to December 2005, premiums in the insurance market amounted to B 430 million. Insurance against loss or damage and against non-material loss accounted for 40 per cent of total insurance, 36 per cent corresponded to life insurance, 15 per cent to health insurance, 4 per cent to transportation insurance and 2 per cent to personal accident insurance. In 2005, the insurance branch's share of GDP was 2.8 per cent and insurance companies' assets amounted to B 765.2 million in 2004 (the last year for which figures are available). Insurance showed net profits of B 21.4 million, equivalent to 7.6 per cent of the companies' net wealth in 2004.⁶²

Regulatory framework

102. The Panamanian Insurance and Reinsurance Supervisory Authority is a decentralized public body of the MICI and is the insurance regulatory and supervisory authority. It has a National Reinsurance Commission which regulates reinsurance.

103. The legal framework for insurance in Panama is provided in the Insurance Law No. 59 of 29 July 1996, the Reinsurance Law No. 63 of 19 September 1996 and the Law on Captive Insurance No. 60 of 29 July 1996. The Insurance Law regulates insurance companies, managers of companies and insurance brokers or adjusters, as well as the profession of broker or provider of insurance throughout Panama. Insurers may be established in the form of public limited companies or branches or agencies of foreign companies. In the case of a branch of a foreign company, a certificate from the competent supervisory authority in the country of origin is required showing that the parent company has been duly established in that country and that it has been totally solvent according to its legislation for a minimum of five years. Authorization to operate a branch in the Republic of Panama is restricted to those areas in which the company is engaged in its country of origin. The authorities have indicated that the preliminary draft of a new insurance law is under consideration (June 2007).

104. Companies seeking authorization to operate as an insurance company, whether Panamanian or foreign, must constitute and pay up minimum capital in cash of B 2 million. Moreover, they must set aside in their liabilities reserves for their activities in Panama according to the type of risk. Insurance companies must also keep a contingency reserve for statistical deviations of between 1 and 2.5 per cent, as well as a reserve for disaster risks, also between 1 and 2.5 per cent for all areas. In

⁶¹ Panamanian Insurance and Reinsurance Supervisory Authority. Consulted at: <http://www/mici.gob.pa/seguros.php>.

⁶² Panamanian Insurance and Reinsurance Supervisory Authority, MCI, statistical information. Consulted at: http://www/mici.gob.pa/sector_seguros/Informacion%20financiera/pasivos_y_patrimonio.htm.

addition to these reserves, all insurance companies must establish and maintain a reserve fund with 20 per cent of their net profits until it reaches B 2 million and thereafter with 10 per cent. There is also a requirement on investing the reserves built up in accordance with the Insurance Law in Panama: 75 per cent must be invested in Panama in State bonds and securities or real estate registered in Panama. The remaining 25 per cent may be invested outside Panama in assets with an adequate investment rating given by a reputed risk assessor.

105. Insurance companies are subject to a tax of 2 per cent on the premiums net of cancellations collected under policies issued in Panama covering risks situated in Panama, except in the case of bonds, whose invoicing is not considered to be an insurance premium. Insurance premiums are also subject to a consumption tax of 5 per cent, except for personal and collective life insurance. The consumption tax on premiums for fire insurance is exclusively for the Republic of Panama's fire brigade.

106. Under the Insurance Law, insurance to cover goods and persons in Panama may only be taken out with insurance companies authorized to operate in Panama. If this is not possible, the Supervisory Authority is empowered to authorize the insurance to be taken out abroad. Such authorization must be registered with the Authority. Insurance and reinsurance companies established in Panama may place or accept reinsurance with other insurers or reinsurers domiciled in Panama or abroad.

107. The Supervisory Authority's Technical Council is responsible for granting licences to insurance companies. Insurers must have a licence for each area in which they wish to operate and also to open up or close down branches in Panama or branches or agencies abroad. There are three areas each with its corresponding type of licence: life insurance, general insurance and bond insurance. The model policies must receive prior authorization from the Authority before they can be sold to the public. Insurers may freely fix premiums and commission. The Council also grants authorizations for engaging in the activity of insurance broker and insurance manager. An insurance broker's licence requires the holder to be a Panamanian national domiciled in Panama or abroad and already exercising the activity when the Insurance Law was enacted.

108. Reinsurance is supervised by the Insurance and Reinsurance Supervisory Authority. The Commission is responsible for approving or rejecting applications made to the Authority for the purpose of operating as a reinsurance company in Panama or for any type of licence whose purpose is to carry out reinsurance transactions. Reinsurance premiums covering risks situated abroad are not subject to tax. The minimum capital required is B 1 million; technical reserves must not be less than 35 per cent of the net premiums determined up. Law No. 63 of 19 September 1996 provides that companies authorized to conduct reinsurance activities must appoint at least two general agents, both of whom must be resident in Panama and one of whom must be a Panamanian national.

109. Law No. 60 of 29 July 1996 is intended to encourage the creation of captive insurers, which are offices established in Panama to insure or reinsure individual or specific risks abroad. Captive insurers must receive prior authorization in the form of a licence granted by the Insurance Supervisory Authority.⁶³ The Law provides that captive insurers must keep an actual office in Panama. They may also obtain licences for long-term risks and for general insurance for Panamanian and foreign companies. In the case of general insurance, the registered capital must not be less than B 150,000; if the company is involved in long-term risk or both areas, the paid-up registered capital must not be less than B 250,000. Premiums derived from captive insurers' activities are not subject to tax in Panama.

⁶³ Panamanian Association of Attorneys (<http://www.apadea.com/legales.html>).

110. The agricultural sector may take out insurance through the *Instituto de Seguros Agropecuarios* – ISA (Agricultural Insurance Institute), which is the autonomous State body created by Law No. 34 of 29 April 1996 to act as an agricultural insurance finance company to support investment in the primary production sector.⁶⁴

(d) Securities market

111. Panama's securities market is mainly composed of the *Bolsa de Valores de Panamá* - BVP (Panamanian Stock Exchange), 34 securities companies, ten investment advisers, 13 investment company managers, two pension fund and complementary private pension fund managers and one securities exchange. All the foregoing must receive a licence from the *Comisión de Valores* – CNV (National Securities Commission) before they can operate and are subject to its supervision and control. They are also five risk assessors, which also require prior registration. Banking institutions, funds (investment companies) and companies with private capital issue securities on the Panamanian market. The amount traded in the Panamanian Stock Exchange during 2006 was US\$2,243 million. The market's total capitalization at the same date was US\$9,935 million, equivalent to 64 per cent of the GDP, of which US\$7,127 million corresponded to capitalization of the shares market.

112. Decree Law No. 1 of 8 July 1999 and the agreements issued by the CNV in order to implement it regulate the securities market as a whole. The Law provides that prior authorization by the CNV is required before securities issued by private companies and joint ventures can be offered to the public. Other laws regulating the securities market include Law No. 10 of 16 April 1993, establishing incentives for setting up funds for retirement, pensioners, pensions and other benefits, and Law No. 42 of 2 October 2000 establishing measures to prevent money laundering. All securities listed on the Panamanian Stock Exchange, public offering of securities by an issuer and shares of issuers domiciled in Panama with 50 or more shareholders that are the actual owners of at least 10 per cent of the issuer's paid-up capital must be registered with the CNV.

113. The CNV is the controlling body for Panama's securities market. It grants licences and keeps the register of securities brokers, principal directors, analysts, advisers and investment managers. It is also the regulatory and supervisory body for private pension and retirement schemes.⁶⁵ The CNV has signed memorandums of understanding on cooperation and regulation with ten regulatory bodies and one self-regulating entity.⁶⁶ It recognizes the validity of registration of securities in jurisdictions recognized by Panama and has declared exempt from registration securities issued by States or jurisdictions declared to be recognized jurisdictions.⁶⁷

(e) Finance companies

114. The law defines finance companies as natural or legal persons that offer to the public loans or financing facilities in cash. At December 2005, 136 finance companies were operating, governed by Law No. 42 of 23 July 2001 and Law No. 33 of 26 June 2002. At the same date, these companies' total assets were B 599 million, of which some three-quarters were personal loans. Since 2006, activities by finance companies have been open to foreign investors pursuant to Resolution No. 18 of 15 February 2006.

⁶⁴ See: <http://www.isa.gob.pa/portada2.htm>.

⁶⁵ See: <http://www.conaval.gob.pa/principal.asp?id=inf&sb=hac/>.

⁶⁶ Argentina, Chile, Costa Rica, the Dominican Republic, El Salvador, Honduras, Mexico, Puerto Rico and Spain.

⁶⁷ The following jurisdictions are recognized by the CNV: Australia, Costa Rica, El Salvador, France, Hong Kong, China, Italy, Japan, Mexico, the Netherlands, Provinces of Quebec and Ontario (Canada), Spain, Switzerland, the United Kingdom (not including its dependencies) and the United States of America.

115. The MICI's Finance Companies Department is the body that governs, controls and regulates finance companies. The latter must have minimum paid up registered capital of B 500,000. They may freely determine the amount of the nominal interest rate for their transactions and the effective interest rate charged, but must indicate in their advertising, quotations and loan agreements the effective interest rate charged, calculated according to the method provided in the Law on Finance Companies. Finance companies granting loans exceeding B 5,000 are subject to a deduction of 1 per cent for the FECI.

(iv) Air transport and airports

(a) Features of the market

116. Panama has a total of 68 airports, of which 38 are private and 29 public; five of the public airports are international, with proper immigration control and customs facilities. The major airport is the Tocumen International Airport in Panama City. In 2006, this airport handled 82,000 tonnes of freight and is an important exit point for exports of fruit and shellfish, as well as being the largest centre for express freight operators in Central America. It was also used by almost 3.2 million passengers, 1.1 million of whom were in transit.⁶⁸

117. At the end of 2006, ten international passenger airlines were operating regularly at Tocumen International Airport. Copa Airlines, a company incorporated in Panama and quoted on the New York Stock Exchange, whose major investor and strategic partner is the foreign airline Continental Airlines⁶⁹, is the leading company in the Panamanian market with approximately 66 per cent of passenger traffic. There are also four domestic freight carriers and 15 freight carriers with foreign capital operating in Panama.⁷⁰ The market for domestic passenger transport is mainly shared by two companies the majority of whose capital is Panamanian-owned.

(b) Legal framework

118. As far Panama's commitments within the GATS framework are concerned, it bound full commitments for aircraft maintenance and repair services for all modes of supply with the exception of the presence of natural persons.⁷¹

119. The Executive, through the Ministry of the Interior and Justice, determines government policy in the air transport sector. Law No. 22 of 29 January 2003 reorganized the regulatory authority by creating the *Autoridad Aeronáutica Civil* – AAC (Civil Aviation Authority), an autonomous State body. It is the AAC's responsibility to direct and regulate air transport services, determine the operating criteria for airports and the services provided there and to grant certificates and licences for the operation of aircraft and airlines. Law No. 21 of 29 January 2003 regulates the civil air transport sector and replaces Decree Law No. 19 of 1963. Air fares must be submitted to the AAC for registration or approval, according to the tariff clause laid down in the air transport agreement with the foreign country concerned. The authorities have indicated, however, that in practice fares are automatically approved.

⁶⁸ Detailed information can be found on the Internet sites of the *Autoridad Aeronáutica Civil* (Civil Aviation Authority) and the Tocumen International Airport. Consulted, respectively, at: <http://www.aeronautica.gob.pa/> and <http://www.tocumenpanama.aero/index.php?id=cccpagqp0qpeestadisticas>.

⁶⁹ Consulted at: <http://files.shareholder.com/downloads/CPA/101880921x0x46038/CEB6F36E-2A12-4BD5-BF14-FFAD868B817A/2005AR.pdf>.

⁷⁰ Consulted at: <http://www.aeronautica.gob.pa/> and <http://www.tocumenpanama.aero/index.php?id=cccpagqp0qpindex>.

⁷¹ WTO document S/DCS/W/PAN of 24 January 2003.

120. Law No. 23 of 29 January 2003 provides that Panama's public airports, including Tocumen International Airport, shall be 100 per cent State-owned and that their management may be entrusted to public limited companies that are also 100 per cent State-owned. These companies have some degree of financial independence and may grant concessions for the commercial operation of certain areas inside the airport, as well as for the supply of auxiliary services such as baggage handling and the sale of fuel. Law No. 21 of 2003 guarantees national treatment to suppliers of aircraft maintenance and repair services. The airport management must submit decisions concerning the allocation of slots to the AAC for approval in order to ensure that applications are dealt with rapidly without any discrimination; there are, however, no regulations in this respect.

121. The authorities have indicated that airlines have the right to provide sales and marketing services in Panama either directly or through agents, including the right to set up offices even if the transporter does not offer scheduled services in Panama. This condition is contained in the various air transport agreements between Panama and other countries.

122. Cabotage traffic is in principle restricted to companies 60 per cent of whose shares are in the name of Panamanians.⁷² Nevertheless, the AAC may liberalize some cabotage with other countries. By early 2007, Panama had not signed any cabotage agreement.

123. The AAC grants permits to foreign companies to operate international air traffic under various freedoms in accordance with bilateral agreements or where there is due reciprocity on the part of the other government.⁷³

124. Panama has 32 bilateral air transport agreements, of which some are considered to be open skies agreements by the Panamanian authorities.⁷⁴ In the most liberal of the agreements, the other party has been given as much as the seventh freedom for freight transport; routes and the capacity offered can be freely determined; the rates are fixed freely by the airlines and are registered or approved by the AAC.⁷⁵

(v) **Maritime transport, including the Panama Canal**

(a) Features

125. Panama made no commitments on maritime transport under the GATS.

126. Maritime transport is a highly important sector for Panama: in 2006, the contribution to the GDP by maritime transport and related activities was equivalent to 1.8 per cent of the GDP, while that by the Panama Canal corresponded to 5 per cent of the GDP. Panama has 29 major ports, 12 managed by the State through the *Autoridad Marítima de Panamá* – AMP (Panamanian Maritime Authority) and 17 by private operators. The AMP-operated ports are mostly small ports serving international and cabotage transport. The other seven ports, the country's largest, are managed and operated by private companies that conduct their activities under the AMP's supervision.

⁷² Article 79 of Law No. 21 of 29 January 2003.

⁷³ Information provided by the authorities, based on Law No. 21 of 29 January 2003.

⁷⁴ Air transport agreements have been signed with the following: Argentina, Aruba, Belgium, Bolivia, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, Germany, Guatemala, Haiti, Honduras, Jamaica, Korea, Mexico, the Netherlands, Nicaragua, Paraguay, Peru, Russia, Spain, Switzerland, Trinidad and Tobago, the United Arab Emirates, the United Kingdom, the United States of America, Uruguay and Venezuela.

⁷⁵ Law No. 48 of 7 December 2005.

127. The port of Colon is the biggest in the country and the second largest in Latin America in terms of cargo traffic. It is on the Atlantic seaboard and handles 67 per cent of container traffic; the next most important is Balboa, on the Pacific, with 32 per cent of container traffic.⁷⁶ Of the total cargo handled in Panama's ports in 2006, 97 per cent was import or export traffic and 3 per cent cabotage. A new cargo terminal on the Pacific involving investment of over B 600 million is being put out to tender.

128. Panama has the largest number of ship registrations in the world, a total of 7,183 ships of over 100 tonnes gross registered tonnage (GRT) registered in December 2006, giving a total of close to 155 million GRT, over twice that of the second largest register.⁷⁷ If ships of lesser tonnage are included, the number of vessels registered in Panama rises to 11,019, corresponding to 178.2 million GRT.⁷⁸

129. The main policy guidelines for the maritime transport sector are to be found in the National Maritime Strategy, Cabinet Resolution No. 3 of 28 January 2004. The objectives of this Strategy are to make Panama a leader in trade, transport and logistics, industrial and maritime traffic services, and to strengthen and use to the full its maritime conglomerate (maritime transport, related and port services) in a context that promotes free enterprise and the market.⁷⁹

(b) Maritime transport services

130. The main laws relating to maritime transport are Law No. 8 of 12 August 1925 and amendments thereto. The AMP, an autonomous State body, was established by Decree Law No. 7 of 10 February 1998 and is responsible for maritime transport services in Panama. It is entrusted with administering, promoting and implementing the strategies and rules relating to the operation and development of the maritime transport sector and for administering Panama's ship register. The AMP also proposes and coordinates development plans for the national port system, exploits and operates port services and oversees those which it does not operate directly.⁸⁰

131. Panama has the largest and oldest open register of ships in the world (national merchant navy). There are no restrictions on nationality for registration, including cabotage services, and it is open to Panamanian nationals and foreigners without distinction. Decree Law No. 8 of 26 February 1998, however, provides that, to the extent possible, Panamanian nationals should be recruited for the crew of Panamanian-registered vessels. A ship-owner must have an attorney or legal representative in Panama in order to register a vessel under the Panamanian flag.

132. Law No. 4 of 24 February 1983 and amendments thereto regulate the taxation regime to which Panamanian-registered ships are subject. Any Panamanian-registered ship to be used for service abroad must pay an annual tax of B 0.10 per registered tonne; this does not apply to ships only engaged in cabotage. They must also pay an annual consular fee determined pursuant to

⁷⁶ Information provided by the authorities and the Republic of Panama, Panamanian Maritime Authority, Directorate of Planning and Maritime Sector Development (2006).

⁷⁷ The following are the major countries of domicile of the ships in Panama's open register: Japan (45 per cent of the total), Greece (11.5 per cent), Korea (8 per cent), China (5.7 per cent), Chinese Taipei (4.9 per cent), Hong Kong, China (4.8 per cent), Switzerland (3.5 per cent) and the United States of America (1.1 per cent).

⁷⁸ Panamanian Maritime Authority, Directorate of Planning and Maritime Sector Development (2006).

⁷⁹ Cabinet Council, Cabinet Resolution No. 3 of 28 January 2004, "Approval of the final document of the National Maritime Strategy".

⁸⁰ See <http://www.amp.gob.pa/newsite/spanish/home.html>.

Law No. 44 of 9 October 1979 and amendments thereto⁸¹ depending on the type of vessel and rising in proportion to the tonnage; it ranges from B 850 to B 3,000. In addition, there is an annual inspection tax, which ranges from B 500 to B 1,800, and an annual tax for accident investigation and participation by the administration in international conferences and treaties, which ranges from B 300 to B 850.

133. Registration confers fiscal benefits such as exemption from tax on profits earned from the activity carried out. Law No. 25 of 3 June 2002 allows an additional rebate of up to 25 per cent on the annual tax per tonne and 50 per cent on the annual consular fee for a period of four years for registered entities that operate at least four newly-built vessels with a minimum of over 50,000 GRT up to 100,000 GRT; for groups of four ships exceeding 100,000 GRT, the additional annual tax rebate is up to 35 per cent. In order to obtain these advantages, the owners must undertake to keep the vessels under Panamanian registration for a period of four years. Law No. 36 of 6 July 1995 also allows reductions for the registration of groups of ships (at least three) or for large vessels, which may be 20 or 50 per cent depending on the tonnage.

134. Panama is a member of the International Maritime Organization (IMO) and is party to 64 international maritime transport conventions.⁸² It has agreements on recognizing the measurement of ships' tonnage with Russia, Ukraine and the United States of America, and on trade and navigation with France, Italy and Spain.

(c) Port services

135. The AMP, through the Directorate General of Ports and Auxiliary Maritime Industries, is responsible for drawing up, implementing and monitoring policies relating to port services. It is the Directorate's task to schedule and coordinate the development plans of the National Ports System and to manage State-owned ports. It is also responsible for providing navigation facilities and other services required by ships.

136. There is no special law on ports in Panama. In May 2007, a draft Law on Ports was put before the National Assembly. Port activities are covered by Law No. 7 of 26 February 1998. The AMP is the authority responsible for granting concessions to provide port services, including auxiliary maritime industries. If such services are to be supplied within the Canal's jurisdictional waters, a compatibility permit from the ACP is also required.

137. There is no special bidding system for port services, which come under Law No. 16 of 14 July 1992 on privatization of State-owned companies and the Government Procurement Law. Nevertheless, there are regulations on concessions – Agreement No. 9-76 – for the building and operation of maritime and port facilities. The authorities have indicated that there are many gaps in these regulations and that new regulations on concessions had been prepared, although by mid-2007 these still had to be submitted to the AMP and other State bodies. There are no nationality restrictions for concessions. Individuals may build, manage and operate ports. The fees for privately-managed ports are freely determined. Fees in AMP-managed ports are set by the Authority.

138. Pilotage, marshalling and towing services are compulsory for a certain size of ship and they require a permit issued in Panama. Ships going through the Panama Canal are subject to special pilotage regulations and the services are provided by the ACP.

⁸¹ Law No. 4 of 1983 and amendments thereto contained in Law No. 19 of 1992, Decree Law No. 7 of 1998, Cabinet Decree No. 76 of 1990 and Decree No. 293-2003 DM and SC of 28 November 2003 of the Comptroller General of the Republic.

⁸² The full list can be consulted at: http://www.amp.gob.pa/newsite/spanish/ami/convenios_int.pdf.

(d) Panama Canal

139. The Panama Canal was handed back to Panamanian administration on 31 December 1999.

140. Title XIV of the Political Constitution of the Republic of Panama set up the ACP. The Organizational Law on the Panama Canal (Organizational Law No. 19 of 11 June 1997, "Organization of the Panama Canal Authority") establishes the ACP as an autonomous legal person under public law which has exclusive charge of the operation, functioning, administration, preservation, maintenance, improvement and modernization of the Canal and for its related activities and services. The Law does, however, allow the ACP to delegate to third parties, in full or in part, the performance of certain works or services. The Law provides that the Canal is the inalienable heritage of the Panamanian nation and may not be sold, assigned or mortgaged.

141. Administration of the ACP is the responsibility of a Board of Directors whose Chairman is appointed directly by the President of the Republic and has the status of Minister of State for Canal Affairs. The ACP receives income from the tolls, duties and taxes charged for using the Canal, for the services supplied and for the concessions granted. It draws up its budget independently, but this is submitted to the Cabinet Council for approval and then to the National Assembly, which may only approve or reject it, but may not amend it.

142. Law No. 19 of 1997 provides that, once the operating costs, investment and the costs of modernizing and enlarging the Canal have been met and the required reserves stipulated in the Law and the regulations have been set aside, the surplus is handed over to the National Treasury during the subsequent fiscal period. The ACP also pays annually to the National Treasury fees per net tonne, or its equivalent, collected from ships subject to tolls for going through the Canal and for the services rendered. These fees are set by the ACP. The ACP's resources may not be utilized to grant loans to public bodies or the Government and the Government may not use the income received by the ACP or its assets to guarantee borrowing by the State.

143. The ACP is empowered to engage the services of third parties, to lend them to the State under a contract and, subject to authorization by the Cabinet Council, to contract loans and any other type of credit commitment. The Law provides that the maximum normal term of contracts for concessions or leases is 20 years, although contracts for a maximum period of 40 years may be concluded on an exceptional basis. The ACP has its own public procurement system (chapter III(4)(v)).

144. During the 2006 fiscal year, 43.8 per cent of traffic through the Canal was trade between the eastern seaboard of the United States of America and Asia; trade between the United States and the west coast of South America comes in second place (10.3 per cent), and third place is occupied by trade between the west coast of South America and Europe (6.7 per cent). In the same year, the container vessel component accounted for 113 million PC/UMS (Panama Canal Universal Measurement System) tonnes, 38 per cent of the total PC/UMS volume going through the Canal and 49 per cent of its revenue. The same year also, the dry bulk component represented 59 million PC/UMS tonnes and 20 per cent of revenue, while vehicle carriers accounted for 37 million PC/UMS tonnes and 13 per cent of revenue.

145. Pursuant to the Constitution, in accordance with Law No. 19 of 1997 and its implementing regulations the ACP sets the tolls, taxes and fees for using the Canal and related services after a consultation and public hearing procedure in the case of tolls and subject to approval by the Cabinet Council. The ACP sets and collects tolls and the fees for transit and related services. Rates are calculated on the basis of the cost of operating, preserving, maintaining and modernizing the inter-ocean waterway and the competitive advantage of the maritime route through the Panama Canal. The

revenue earned from tolls is used to finance capital investment and improvements to the Canal. During the period 2002-2003, the ACP embarked upon the first phase of changing its pricing policy and introduced a new structure that established a price difference according to size of the vessel. In 2005, the ACP changed the tonnage measurement system applicable only to container vessels and those with container-carrying capacity on deck. This change modified the measurement system utilized as a basis for charging these vessels, from PC/UMS tonnes to a 20-foot container, and established as the basis the total cargo capacity of the vessels, including on-deck containers. This change was implemented over a period of three years, beginning on 1 May 2005 and ending on 1 May 2007. For other types of vessel with on-deck container-carrying capacity, the ACP continues to apply the PC/UMS tonnage to measure the enclosed and below deck spaces and charges a per TEU (20-foot equivalent unit) fee for containers carried on deck at the time of transit.⁸³ In 2007, the ACP modified the tolls and tonnage measurement rules. For passenger vessels, the ACP imposes tolls on the basis of the maximum passenger capacity.

146. Toll rates have increased since 2002; between 2000 and early 2007, the aggregate increase in the average toll was 15 per cent. In mid-2007, tolls increased by a further 10 per cent, with a new increase of 11.3 per cent planned for May 2008 and third of 7.4 per cent for May 2009 (average increase per tonne of cargo); the increases applicable to containers are 10 per cent in 2007, 16.7 per cent in 2008, and 14.3 per cent in 2009, per container, respectively. Maritime rates can be consulted on the ACP's Internet site.⁸⁴

147. The Panama Canal makes a vital contribution to Panama's economy. In 2006, the ACP's contribution to Panama's balance-of-payments current account was B 1,537.6 million, or 9 per cent of the current GDP.⁸⁵ In 2005, the Canal's direct contributions to the National Treasury amounted to B 569.7 million or 3 per cent of GDP. Total direct contributions transferred to the Treasury since Panama started to administer the Canal, in the 2000 fiscal year up to the 2006 fiscal year, amounted to B 2,390.8 million.

148. During the 2006 fiscal year, total tolls amounted to B 1,026.4 million and the ACP's total revenue was B 1,494.8 million.⁸⁶ In the same year, 14,194 vessels went through the Panama Canal. These ships represented a total of 296.3 million PC/UMS tonnes in terms of cargo capacity, equivalent to 86 per cent of the Canal's maximum sustainable capacity.⁸⁷ The latter is estimated to be 340 million tonnes a year. There are not sufficient vacant reservations for all those requesting one. In 2005 and 2006, the Canal was unable to accept approximately 20 per cent of vessels seeking a reservation.

149. In 2006, a public referendum approved the Canal's enlargement through the building of a third set of locks. Law No. 28 of 17 July 2006 approved the proposed construction of the new locks. The Law provides that all the costs of the works and the corresponding financial commitments and obligations of any other nature caused by the work of enlarging the Canal will be paid out of the funds generated by the Canal's operation and by increased tolls and that there will be no subsidies from the State. The project's financing will be neither be backed nor guaranteed by the State.

⁸³ Prior to the entry into force of the new system, the ACP charged container vessels for a small proportion (8.78 per cent) of the cargo on deck, and applied the PC/UMS tonne to enclosed and below deck spaces. See: <http://www.acp.gob.pa/esp/maritime/tolls.html>.

⁸⁴ See: <http://pancanal.com/>.

⁸⁵ See: <http://pancanal.com/common/general/reports/informe-anual-2005.pdf>.

⁸⁶ ACP (2006).

⁸⁷ One PC/UMS tonne is equivalent to approximately 100 cubic feet of cargo space and a container 20-foot long is equivalent to approximately 13 PC/UMS tonnes (ACP, 2006b).

150. The estimated cost of the project is B 5,250 million. It is estimated that it will take a maximum of eight years to complete the project, between 2007 and 2014. The third set of locks will start to operate in 2015. The authorities forecast that traffic through the enlarged Canal will increase from the 280 million PC/UMS tonnes that went through the Canal during the 2005 fiscal year to around 510 million PC/UMS tonnes in the 2025 fiscal year. It is estimated that the possibility to use ships of larger tonnage will lower the operating costs by between 7 to 17 per cent. It is also hoped to increase the Panama Canal's market share, for example, on the container route between North-East Asia and the eastern seaboard of the United States.

151. Although it is hoped to obtain considerable benefits from the Canal's enlargement, there are also some risks because of the possibility that the costs and time-limits for implementing the project may not be respected. The ACP identified some of these risks and their possible causes: for example, in the case of delays, which are considered to be the principal risk, it is indicated that these could be caused by problems relating to the contractors or the labour force, as well as logistical problems. The ACP also recruited the services of an international consultant to identify the risks and make recommendations on how to avoid or manage them. In this connection, the company AON Enterprise Management identified as the major risk the organizational structure of the ACP, which might lead to inefficiency in enlarging the Canal; the study recommended that the ACP be reorganized in order to avert this possibility and proposed possible solutions to overcome the other risks identified.⁸⁸

(vi) Professional services

(a) Features

152. Panama has no general law regulating the supply of professional services. The various professions have their own regulations and are organized in special technical or professional associations. Formally speaking, under the law, for most of these professions Panamanian nationality is a prerequisite.

153. Panama has signed the Protocol to the General Treaty on Central American Integration (Guatemala Protocol) of 29 October 1993 under which the parties agreed to harmonize their legislation in order to allow the free exercise of university-level professions in any country in the region. By mid-2007, however, this Protocol had not been ratified by Panama's Legislative Assembly.

154. Panamanian professionals possessing a qualification or diploma from a foreign university must have it revalidated, depending on the course, by the University of Panama or the Technological Institute. All documents required for the revalidation procedure must be authenticated by the Panamanian diplomatic or consular authorities accredited to the country of origin and by Panama's Foreign Ministry. The various technical and professional associations are also empowered to set a revalidation examination in order to evaluate the applicant's knowledge.

155. If a qualification or diploma has been obtained from a university with which the University of Panama or the Technological Institute has an international agreement, no revalidation examination is required and revalidation is automatic. In mid-2007, the two aforementioned Panamanian institutions had agreements on mutual recognition of university qualifications (international agreement) with universities in Brazil, Colombia, Cuba, Ecuador, El Salvador, Mexico, Nicaragua, Peru, Spain and Venezuela.

⁸⁸ AON Enterprise Risk Management (2005).

(b) Legal services

156. A certificate of competence issued by the Supreme Court of Justice is required in order to act as an attorney. The following requirements must be met in order to obtain the certificate: the applicant must be a Panamanian national and have a professional law qualification awarded by a university recognized and established in Panama or by a foreign university whose diploma has already been revalidated by the University of Panama. The Supreme Court of Justice has 15 days in which to issue or refuse the certificate. Under the specific terms of international agreements, however, foreign attorneys may provide consultancy services exclusively in relation to international law, and in the legislation of the jurisdiction in which the foreign attorney is qualified. Consultancy services may not include appearance before the tribunals, courts or judicial authorities in Panama.⁸⁹

157. Law may not be practised through public limited companies. Legal companies must be in the form of a partnership and established by qualified attorneys in Panama.

158. Under the GATS, Panama made full specific commitments guaranteeing market access and national treatment for the supply of consultancy services on international law, although it did not bind commitments on the supply of such services through the presence of natural persons in Panama. It did not accept commitments relating to legal services other than consultancy on international law.⁹⁰

(c) Accounting services

159. Law No. 57 of 1 September 1978 regulates the profession of certified public accountant in Panama. In order to engage in this profession, a licence issued by the *Junta Técnica de Contabilidad* – JTC (Accountancy Technical Council), appointed by the Executive, is required. The following criteria must be met in order to obtain a licence: the applicant must be a Panamanian national and be in possession of a university qualification with specialization in accountancy awarded by a Panamanian university authorized by the State or by a foreign university recognized by the University of Panama. The JTC must grant a licence within a maximum term of 30 days or reject the application giving the reasons. A request for review of the decision may be made to the JTC itself and an appeal lodged with the Ministry of Trade and Industry.

160. The JTC may grant special permits for the purpose of carrying out professional acts, except the power to attest to the authenticity of documents, to foreign professionals in the following cases: a professional from a country that gives Panamanian nationals reciprocal treatment; internal auditors employed by foreign companies with subsidiaries established in Panama or international organizations under public international law; if it can be proved that no Panamanian professionals were available at that particular time; or professionals married to Panamanian nationals or with over ten years' residence in Panama.⁹¹

161. Only certified public accountants properly licensed in Panama may set up companies to provide accounting services. Such companies are allowed to enter into partnerships with foreign firms.⁹²

162. Under the GATS, Panama undertook to allow Panamanian companies to conclude agreements in order to coordinate practice of the profession of certified public accountant at the international level and to add the name of foreign firms to their letterheads. Professional acts that include the power to

⁸⁹ Law No. 9 of 18 April 1984, as amended by Law No. 8 of 16 April 1993.

⁹⁰ WTO document GATS/SC/124 of 1 October 1997.

⁹¹ Law No. 57 of 1 September 1978.

⁹² *Idem*, Articles 9 and 10.

attest to the authenticity of documents are restricted to Panamanian certified public accountants. Panama did not bind commitments on any mode of supply other than commercial presence.⁹³

(d) Engineering and architectural services

163. A certificate of competence issued by the *Junta Técnica de Ingeniería y Arquitectura* (Engineering and Architecture Technical Council), chaired by the President of the *Sociedad Panameña de Ingenieros y Arquitectos* – SPIA (Panamanian Society of Engineers and Architects) is required in order to exercise the profession of engineer or architect. The following criteria must be met in order to obtain a certificate: the applicant must be a Panamanian national or a foreign national married to a Panamanian or with children of Panamanian nationality, or the national of a country that allows the profession to be exercised by Panamanian nationals on a reciprocal basis;⁹⁴ a qualification in the area concerned awarded by a Panamanian university or by a foreign university whose academic competence has been recognized by the University of Panama.⁹⁵ Law No. 15 of 26 January 1959, which regulates the profession, does not lay down any time-limit for issuing a certificate of competence, but the authorities have indicated that in practice the procedure takes approximately one month.

164. Unless they are the subject of international treaties signed by the Executive, engineering and architectural works can only be carried out by companies domiciled in Panama and duly registered with the Technical Council and those responsible for the works must be professionals licensed in Panama.⁹⁶

165. Under the GATS, Panama made commitments on the supply of engineering and architectural services, including urban planning and landscape architecture. It did not bind commitments for modes of supply 1 and 2, but undertook to allow the commercial presence of foreign companies provided that the persons responsible for the works were properly licensed professionals. Panama also undertook to allow the employment of foreign architects provided that it was proven to the Technical Council that no suitable Panamanian professionals were available to provide the service. If a foreign architect is employed for a period exceeding 12 months, the hiring company must train a Panamanian professional to replace the foreigner at the end of his contract.⁹⁷

(vii) Retail trade

166. The retail trade sector accounts for 3.9 per cent of the GDP. The sector's GDP grew at an average rate of 4.9 per cent during the period 2002-2006.⁹⁸

167. Article 293 of Panama's Constitution provides that only Panamanian citizens, including foreigners naturalized as Panamanian citizens three years after they have received their definitive permit, may engage in retail trade. Law No. 25 of 26 August 1994 defines retail trade as the activity involving the direct sale of goods to the consumer or acting as the agent of trading companies. Foreigners not authorized to engage in retail trade may, however, possess a share of the capital of companies that sell the products they manufacture directly to consumers. Farmers or persons manufacturing handicrafts and selling their own products constitute an exception to this rule.

⁹³ WTO document GATS/SC/124 of 1 October 1997.

⁹⁴ Resolution of the Engineering and Architecture Technical Council of 2004.

⁹⁵ Chapter I of Law No. 15 of 26 January 1959, as amended by Law No. 53 of 1963.

⁹⁶ *Idem*, Chapter IV.

⁹⁷ WTO document GATS/SC/124 of 1 October 1997.

⁹⁸ Comptroller General of the Republic. For statistical purposes, the sector includes the retail sale of foodstuffs, beverages and tobacco in shops, as well as the sale of motor vehicles.

168. The authorities have pointed out that Panama negotiated increased liberalization of retail trade in the free-trade agreement negotiated with the United States of America, but by mid-2007 it had still not been ratified. As a result, a new draft law is being prepared with the objective of incorporating the provisions negotiated bilaterally with the United States through an even more limited definition of the types of retail trade to which restrictions on foreign presence will continue to apply.

169. Foreigners may be directly involved or participate in companies engaged in wholesale trade.⁹⁹

170. Panama did not adopt any specific commitments on retail trade under the GATS.¹⁰⁰

⁹⁹ Article 289 of Panama's Constitution.

¹⁰⁰ WTO document GATS/SC/124 of 1 October 1997.

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