

# PANAMA

## TRADE SUMMARY

U.S. goods exports in 2014 were \$10.4 billion, down 1.6 percent from the previous year. Panama is currently the 30th largest export market for U.S. goods. Corresponding U.S. imports from Panama were \$400 million, down 10.8 percent. The U.S. goods trade surplus with Panama was \$10.0 billion in 2014, a decrease of \$118 million from 2013.

The stock of U.S. foreign direct investment (FDI) in Panama was \$5.8 billion in 2013 (latest data available), up from \$5.2 billion in 2012. U.S. FDI in Panama is led by the nonbank holding companies, and manufacturing sectors.

## Trade Promotion Agreement

The United States-Panama Trade Promotion Agreement (TPA) entered into force on October 31, 2012. The TPA includes important disciplines relating to customs administration and trade facilitation, technical barriers to trade, government procurement, investment, telecommunications, electronic commerce, intellectual property rights, and labor and environmental protection.

## TECHNICAL BARRIERS TO TRADE / SANITARY AND PHYTOSANITARY BARRIERS

### Sanitary and Phytosanitary Barriers

In June 2014, Panama and the United States reached agreement on amendments to certification statements for U.S. pet food containing animal origin ingredients included in a December 2006 agreement between Panama and the United States. The mutually agreed upon amendments reflect changes in the United States' status with regard to bovine spongiform encephalopathy (BSE) since 2006, and will allow will allow the export of U.S. pet food that contains ruminant ingredients. Panama completed its domestic procedures to implement the provisions of the June 2014 bilateral agreement by publishing Resolution No. 002, of February 10, 2015.

## IMPORT POLICIES

### Tariffs

The first tariff reduction under the TPA took place on October 31, 2012, and subsequent tariff reductions occur on January 1 of each year; the fourth round of tariff reductions took place on January 1, 2015. Over 87 percent of U.S. exports of consumer and industrial products to Panama became duty free immediately upon entry into force of the TPA. The remaining tariffs on consumer and industrial products will be phased out over the course of 10 years. The TPA provides for immediate duty-free treatment for over half of U.S. agricultural exports to Panama (by value). Duties on most other agricultural goods will be phased out over the course of 5 years to 12 years, with duties on the most sensitive products phased out over 15 years to 20 years. For some agricultural goods, Panama's current applied tariff is lower than the bound tariff required under the TPA. The TPA also creates expanded market access opportunities for some of the most sensitive agricultural products through tariff-rate quotas (TRQs), which provide immediate duty-free access for specific quantities of certain agricultural products. This access will rise as quotas are increased and over-quota duties are phased out over the course of the applicable implementation period.

Panama's average MFN tariff on industrial and consumer goods is relatively low, at about 7.6 percent, although tariffs on some products are as high as 81 percent. Panama's average MFN tariff on agricultural goods is 13.7 percent, but some agricultural imports face tariffs as high as 260 percent.

### **Nontariff Measures**

In addition to tariffs, all goods and most services sold in Panama, except for foods and feeds, are subject to a seven percent ITBMS (value-added tax). In the case of imported goods, the ITBMS is levied both on the cost, insurance, and freight value, as well as on import duties and other handling charges, which artificially inflate the tax compared to domestic products. The ITBMS is higher for cigarettes and alcohol. Pharmaceuticals, foods, school supplies, goods that will be re-exported, and all products related to transactions occurring in any free zone when using endorsable documents are exempt from the ITBMS. In 2012, the government introduced an excise tax on vehicle sales, which varies from 5 percent to 25 percent based on the value of the vehicle.

Importing entities are required to hold a license to operate in Panama in order to import manufactured goods into the country. The license may be obtained through Panama's online business registration service, "Panama Emprende." Importing entities holding such a license are not required to have a separate import license for individual shipments, except for imports of certain controlled products such as weapons, medicine, pharmaceutical products, and certain chemicals.

Law 42 of April 2011, which entered into force in 2013, promotes the production and use of domestically-produced biofuels through the provision of various incentives. For example, Law 42 imposes a tax on the use of anhydrous bioethanol and biodiesel blended with gasoline and diesel, respectively, while at the same time establishing an offsetting tax credit that can be earned through the purchase of bioethanol and biodiesel produced for domestic sources. The United States has expressed concerns with Law 42 in light of Panama's WTO commitments. In 2014, Panama mitigated the commercial impact of the discriminatory provision of Law 42 by suspending the previous requirement that gasoline sold in Panama contain ethanol and also changing the official price of ethanol significantly from a price set above the world market price to a price linked to a reference price based on the U.S. Gulf price.

### **GOVERNMENT PROCUREMENT**

Panamanian Law 22 of 2006, as amended, regulates government procurement and other related issues. Law 22 requires publication of all proposed government purchases, and established "Panama Compra," an Internet-based procurement system. Panama has an administrative court to handle all public contracting disputes. The rulings of this administrative court are subject to review by Panama's Supreme Court.

Despite the oversight of the administrative court, political interests often appear to influence procurement decisions. Panamanian business leaders have expressed concerns regarding what they believe is excessive use of sole-source contracting, and U.S. firms have expressed concern about how the government of Panama establishes and evaluates the criteria used to select a procurement winner.

The TPA introduced new disciplines on covered government procurements. The goal of the disciplines is to ensure the integrity and fairness of the procurement process. The TPA applies to procurements by covered entities for procurements that are above the value thresholds. Not all Panamanian governmental entities are covered under the TPA. The thresholds vary, but for covered central government entities, the threshold for procurements of goods and services is a minimum \$204,000, while the threshold for construction procurements is \$7,864,000. Higher thresholds apply to sub-central and other government entities.

When Panama became a WTO Member, it committed to accede to the WTO Agreement on Government Procurement (GPA). However, on July 30, 2013, Panama withdrew its application for accession to the GPA, and the obligation remains outstanding.

## **EXPORT SUBSIDIES**

Panama's Law 82 of 2009 created an agricultural export promotion program, known as the Certificate of Promotion of Agricultural Exports (CEFA) program. The CEFA gives incentives to agricultural exporters to reduce packing and transportation costs for specified nontraditional agricultural products. Under the TPA, both countries committed to not using such export subsidies on any agricultural good destined to each other's markets. In 2014, the government of Panama issued 537 certificates valued at \$7,771,841 to non-U.S. destinations.

A number of export industries, such as tourism, and special economic areas, such as free trade zones, are exempt from paying certain types of taxes and import duties. The government of Panama established this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that benefit from these exemptions are not eligible to benefit from the CEFA program for their exports. The 99 companies operating in Panama's 15 free zones may import inputs duty free, if products assembled in the zones are to be exported. There are 75 call centers officially registered under the free zones regime.

Under the TPA, Panama may not adopt new duty waivers or expand existing duty waivers conditioned on the fulfillment of a performance requirement (*e.g.*, the export of a given level or percentage of goods or the use of domestic content in the production of goods).

## **INTELLECTUAL PROPERTY RIGHTS PROTECTION**

The government of Panama is making efforts to strengthen the enforcement of intellectual property rights (IPR). A Committee for Intellectual Property (CIPI), comprising representatives from five government agencies (Colon Free Zone, Offices of Intellectual Property Registry and Copyright under the Ministry of Commerce and Industry, Customs, and the Attorney General), under the leadership of the Ministry of Commerce and Industry, is responsible for development of intellectual property policy in Panama.

In 2012, Panama updated its legislative framework in order to implement the requirements of the TPA, which called for improved standards for the protection and enforcement of a broad range of IPR. These include enhanced protections for patents, trademarks, undisclosed test and other data submitted to obtain marketing approval for pharmaceuticals and agricultural chemicals, digital copyrighted products such as software, music, text, and videos, and further deterrence of piracy and counterfeiting.

In 2013, Panama began implementing a system identifying geographical indications (GIs) in response to European Union applications to register a range of GIs in Panama. The United States has engaged extensively with Panama to ensure that market access for U.S. agricultural producers is preserved and will continue to do so.

## **INVESTMENT BARRIERS**

While Panama maintains an open investment regime and is generally receptive to foreign investment, U.S. investors and individual property holders continue to raise concerns about property disputes. Many of these disputes appear to stem from the general lack of titled land in Panama and inadequate government administration of the property system. Although Panama enacted a law in 2009 (Law 80) that attempted to address the lack of titled land in certain parts of the country, decisions taken by the National Land Authority

established by the law have reinforced investors' concerns regarding government administration, corruption, and the ability of the judicial system to resolve these types of disputes.

In 2013, Panama enacted Law 41, which stipulates that Panamanian nationals must own at least 75 percent of companies or vessels engaged in auxiliary maritime services. The United States and the EU each expressed concern regarding aspects of this law in light of Panama's obligations under its free trade agreements. On February 11, 2015, in Law 4 of 2015, Panama rescinded the provisions of concern in Law 41.

## **OTHER BARRIERS**

### **Corruption**

Panama has domestic anticorruption mechanisms, such as asset forfeiture, protection for witnesses and whistleblowers, and conflict-of-interest rules. In addition, Panama ratified the United Nations Convention against Corruption in 2005 and the Organization of American States Inter-American Convention against Corruption in 1998. However, the general perception is that anticorruption laws are not applied rigorously, and that government enforcement bodies and the courts have been ineffective in pursuing and prosecuting those accused of corruption, particularly in high profile cases. There is also a perception that Panama could do more to implement the conventions and respond to official recommendations.

There is also a low level of confidence in the competence and independence of the judicial system. The United States continues to stress the need to increase transparency and accountability in government procurement and judicial processes.

President Juan Carlos Varela, inaugurated on July 1, 2014, has pledged to pursue reports of corruption, for example, by increasing transparency in tendering for government procurement and ensuring that government tenders are awarded transparently and fairly. In December 2014, the government cancelled the contract for a 550 MW Liquid Natural Gas plant that was awarded by the previous administration on the ground that the tendering had not been transparent.