

PANAMA

In 1996, the U.S. trade surplus with Panama was \$1.0 billion, a decrease of \$52 million from the U.S. trade surplus of \$1.1 billion in 1995. U.S. merchandise exports to Panama were \$1.4 billion, a decrease of \$13 million (0.9 percent) from the level of U.S. exports to Panama in 1995. Panama was the United States' forty-ninth largest export market in 1996. U.S. imports from Panama were \$346 million in 1996, an increase of \$39 million (12.7 percent) from the level of imports in 1995.

The stock of U.S. foreign direct investment (FDI) in Panama in 1995 was \$15.9 billion, an increase of 17.5 percent from the level of U.S. FDI in 1994. U.S. FDI in Panama is concentrated largely in the finance, petroleum, and wholesale sectors.

IMPORT POLICIES

Late in 1995, the government reduced tariffs on almost 2,000 products used as industrial inputs. (There is no local producer for the vast majority of these imports.) Tariffs on agricultural products are also declining as a result of agreements with international financial institutions. Panama's October 1996 accession to the World Trade Organization (WTO), when completed, will result in an applied effective rate of protection of 30 percent on non-agricultural products. In December 1996, the government issued a decree reducing tariffs on some items, converting other tariffs to ad valorem, and eliminating all non-tariff barriers.

In general, Panama's agricultural sector is still heavily protected by non-tariff barriers. Rice, corn, beef, dairy products, soybeans, and wheat are controlled by the Ministry of Agriculture and/or the Agricultural Marketing Institute (IMA). Permits are required from the Ministry of Agriculture for imports of animal products, animal by-products, and seeds. The Ministry strictly enforces the prior approval requirement (Decree 15 of May 18, 1967) for all imports of meat products, and imposes stringent phytosanitary requirements. These requirements were erected to protect domestic production of beef and pork. IMA maintains a list of 39 agricultural products under import quota, and 19 products under import permit. Elimination of these controls is included in Panama's WTO accession legislation.

Panama is not a member of the Central American Common Market or any other subregional economic group. It is, however, in the process of negotiating bilateral free trade agreements with Mexico and Chile, and has expressed interest in NAFTA membership or a bilateral agreement with the United States.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

Panama requires certification of U.S. processing plants by Panamanian officials as a condition for the importation of poultry, pork, and beef products. The United States is seeking Panamanian acceptance of U.S. Department of Agriculture (USDA) certification of these plants. The United States would then accept Panamanian certification of its processing plants when the Government of Panama demonstrates that its

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inspection system is equivalent to that of the United States. Importers of non-agricultural products must now register their products before distributing them or offering them for sale in Panama.

As part of Panama's WTO legislative package, Panama's Legislative Assembly will consider in early 1997 a law bringing Panama's standards regime into compliance with WTO requirements.

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Finance and Treasury. The law provides for a transparent bidding process for government contracts. However, several recent cases call into question the Panamanian Government's commitment to an open process with consistently applied rules. In mid-1996, the government solicited sealed bids for the operation of the Ports of Balboa and Cristobal, which the government had decided to privatize. When the sealed bids were opened, the government discarded the result and called for another round of bidding. During a third round of bidding, the government changed bid specifications in a manner which favored one company. The contract subsequently negotiated between the winning bidder and the Government of Panama contained two provisions favoring the firm which were not part of the original bid specifications.

Also in mid-1996, the government held a public bid for a hydroelectric dam. The government threw out the result and ordered the whole process restarted, for reasons that have not been made clear. This project has been bid four times in the past three years. A fifth bid is scheduled for early 1997.

In the fall of 1996, a similar situation occurred in the bidding to modernize the computer systems of the Social Security Administration (SSA). SSA waited several weeks before announcing the bid winner, then decided to call for a second round of bidding. Several months later the contract is still pending.

EXPORT SUBSIDIES

The Universalization Law allows any company to import raw materials or semiprocessed goods at a duty of three percent for domestic consumption or production, or duty free for export production. In addition, companies not already receiving benefits under the Special Incentives Law of 1986 are allowed a tax deduction of up to 10 percent of their profits from export operations through 2002.

Because of its WTO obligations, Panama has revised its export subsidies policies. The Tax Credit Certificate (CAT), which used to be given to firms producing non-traditional exports when the exports' national content and value added both met minimum established levels, will be gradually phased out. The new policy allows exporters to receive CATs equal to 20 percent of the exports' national value added until 1997. From 1997 until 2000, the CATs will decrease to 15 percent, and after 2000 will be eliminated entirely. The certificates are transferable and may be used to pay tax obligations to the government, or can be sold in secondary markets at a discount. The government has become stricter in defining national value added, attempting to reduce the amount claimed by exporters.

A number of industries which produce exclusively for export are exempted from paying certain types of taxes and import duties. The Government of Panama uses this policy to attract foreign investment. Companies which profit from these exemptions are not eligible to receive CATs for their exports.

Law 25 of 1996 provides for the development of "export processing zones" (EPZ's) as part of an effort to broaden the Panamanian manufacturing sector while promoting investment in former U.S. military bases reverting to Panamanian control. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be exported. The government also provides other tax incentives to EPZ companies. Thus far three small EPZ's have opened in the vicinity of Panama City, and a group of Taiwan investors in partnership with the Interoceanic Regional Authority (ALI) is developing an ambitious EPZ on the site of former Fort Davis. Industries expected to locate in the Zone include textiles and apparel, food processing, plastic manufacturing, and auto parts and engine rebuilding. Export destinations are primarily the United States and South America. While initially only Taiwan and Panamanian companies are allowed to operate in the zone, after one year it will be opened to all investors.

LACK OF INTELLECTUAL PROPERTY PROTECTION

Panama became a member of the Geneva Convention in 1974 and the Berne Convention in 1996 and is a member of WIPO. Recent legislation has strengthened Panama's IPR regime, but inadequate enforcement continues to be a major problem.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for protection of intellectual property in Panama. Panama's accession to the WTO in 1996 required it to implement the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon the date of accession, with no transition. Panama has been deficient in meeting this obligation.

Copyrights

The Copyright Law, which took effect in October 1995, strengthens copyright protection, facilitates prosecution of copyright violators, and makes copyright infringement a felony punishable by fines and incarceration. The bill also protects computer software as a literary work. However, in July 1996, the Supreme Court ruled that the Copyright Office does not have the authority to seize counterfeit videos. In November 1996, the administration submitted to the Legislative Assembly a series of amendments to the law to correct this problem, while at the same time increasing maximum fines for copyright violation from \$20,000 to \$50,000. The Legislative Assembly is expected to consider these amendments in the spring of 1997. In December 1996 and January 1997, the Technical Judicial Police, acting on private industry complaints, conducted a series of raids against video stores and seized large quantities of pirated videos. Industry spokesmen, however, expressed frustration over authorities' unwillingness to arrest violators and pointed out that raided stores reopened and operated as usual within days of the official action.

U.S. copyright industries estimate losses in Panama due to copyright infringements in 1996 cost U.S. firms \$29.1 million annually

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Patents

Law 35 of 1996 (the Industrial Property Law) provides 20 years of patent protection from the date of filing in place of the former period of 5 to 15 years for foreigners and 5 to 20 years for Panamanians. Pharmaceutical patents are granted for only 15 years, but can be renewed for an additional 10 years if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent.

The Government of Panama has been ineffective at enforcing intellectual property rights in the Colon Free Zone. Although commitments were made to increase enforcement in the CFZ on a number of occasions prior to and during its WTO accession negotiations, Panama has not fulfilled these commitments. The U.S. Government continues to receive complaints from U.S. companies, especially footwear and apparel, regarding the failure of the Government of Panama to seize illegal products in the CFZ.

Trademarks

Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. The law entered into force in November 1996, but the implementing regulations are still being developed. The law's most important feature is the granting of ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited. It also gives administrators in the CFZ, where copyright and trademark infringement has been the heaviest, greater authority to discipline IPR offenders. Implementing regulations that permit the exercise of that authority are pending.

Trade secrets have, up to now, enjoyed little formal protection in Panama. The new Industrial Property Law provides specific protection for trade secrets. It is too early to assess the impact of this law.

Law 29 of February 1996 (the Anti-Monopoly Law) provides for the establishment of special courts to deal with antitrust and IPR cases. Funding to set up these courts is included in the government's 1997 budget, and they are expected to begin to function by the end of this year. Technical and judicial expertise are sorely lacking.

In November 1996, as part of the implementation of Law 35, the Panamanian Government created an Anti-Piracy Task Force to coordinate IPR enforcement. Representatives of six government agencies with IPR responsibilities participate in the task force.

U.S. firms continue to complain about the lack of effective IPR protection. Nintendo of America filed a petition to withdraw Panama's GSP benefits for failure to protect IPR. In 1996, Panama merited other "observation status" on the Special 301 List. Piracy of video, sound recordings, and software is rampant, and material pirated in Panama is distributed throughout Latin America. Transshipment through the CFZ to date has received little government attention. Trademark violations in the CFZ remain a major problem. Losses to U.S. industry resulting from inadequate trademark protection are large, though difficult to quantify with any accuracy.

INVESTMENT BARRIERS

The government's economic reform program of export-led growth is dependent on foreign investment. Accordingly, Panama has an open investment regime and actively seeks foreign investment and promotes its long-standing reputation as an international trading, banking, and services center. A limitation in Panamanian law on foreign government ownership of land affects a few U.S. Government insurance programs, but places no legal limitations on foreign private investment or ownership. There are no performance requirements such as minimum export percentages or significant local procurement rules. Panama does not have an investment screening mechanism.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty (BIT), Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, however, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business. A recent revision of the labor code now makes it less difficult than previously for companies to dismiss employees.

OTHER BARRIERS

Rumors of corruption are fueled by public bids which lack transparency, such as those described above. The Customs Director fired over 50 officials in 1996 for corruption, which remains a continuing problem since customs employees are poorly paid. The incidence of corruption, or the perception of corruption, can be a deterrent for U.S. companies in deciding whether to invest in Panama, and is clearly of deep concern to representatives of U.S. firms already located in Panama.

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