

# PANAMA

In 1997, the U.S. trade surplus with Panama was \$1.2 billion, an increase of \$138 million from the U.S. trade deficit of \$1.0 billion in 1996. U.S. merchandise exports to Panama were \$1.5 billion, an increase of \$160 million (11.6 percent) from the level of U.S. exports to Panama in 1996. Panama was the United States' forty-seventh largest export market in 1997. U.S. imports from Panama were \$367 million in 1997, an increase of \$21 million (6.2 percent) from the level of imports in 1996.

The stock of U.S. foreign direct investment (FDI) in Panama in 1996 was \$18.3 billion, an increase of 12.6 percent from the level of U.S. FDI in 1995. Most U.S. FDI in Panama is in the financial, petroleum, and wholesale sectors.

## IMPORT POLICIES

Panama joined the World Trade Organization (WTO) in October 1997. The WTO accession and implementation laws passed by Panama's Legislative Assembly in June 1996 liberalized several aspects of the country's trading regime, primarily in the areas of import licensing and phytosanitary standards. Subsequent reductions in tariff rates further opened trade opportunities in Panama.

Panama embarked on a program of massive tariff reductions in 1997 subsequent to the reductions implemented in joining the WTO. In July 1997, President Balladares signed a decree lowering tariff rates on selected food products and construction materials to a uniform 10 percent. A second decree, in November, lowered rates to 15 percent or below on all remaining products except rice, milk products and autos. This two-phase tariff reduction has resulted in an unweighted average tariff rate of 8.25 percent. Rice is still protected with a 50 percent tariff. Milk products are protected at 40 percent.

Panama is not a member of the Central American Common Market or any other subregional economic group. It is close to signing a free trade agreement with Chile and another with Mexico is being considered.

## STANDARDS, TESTING, LABELING, AND CERTIFICATION

Panama's standards and certification regime generally conforms to WTO standards. However, application of phytosanitary standards to recent U.S. rice imports has caused problems. Rice growers claimed that imported paddy rice was contaminated by the *T. Barclayana* fungus. The fungus is considered harmless and is already present in Panama.

Panama requires certification by GOP officials of U.S. processing plants as a condition for the importations of poultry, pork and beef products. U.S. exporters have assisted GOP officials in making inspection visits to U.S. plants. There is no instance of U.S. plant failing to be certified.

Importers of non-agricultural products must register them before distribution or sale in Panama. Cosmetics present the only area affected by a non-standard certification requirement. Panama does not accept producer certification, requiring that all newly formulated cosmetic products be certified by the GOP.

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### **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 have raised doubts about transparency. The most prominent example is the 1996 bid in which Hutchison International Terminals won the concession to operate ports at both ends of the Panama Canal. The bidding procedure was criticized as lacking transparency. U.S. firms appeared to be disadvantaged in this instance. In contrast, the April 1997 bid for the state telecommunications company was praised by NGO Transparency International for being well organized, open and transparent.

### **EXPORT SUBSIDIES**

Panamanian law allows any company to import raw materials or semi-processed 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 15 percent of the exports' national value added until after the year 2000, down from 20 percent prior to 1998. After 2000 the program 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 five EPZ's are operating, two in colon and three in Panama City. All are in early stages of development with few tenants.

### **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. In addition to the revenues lost by companies due to piracy and counterfeiting, deficiencies in the IPR protection and enforcement regime constitute a significant impediment to foreign investment and technology transfers.

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.

The Government of Panama has been ineffective at enforcing intellectual property rights in the Colon Free Zone (CFZ). Although commitments have been made to improve enforcement in the CFZ on a number of occasions prior to and during its WTO accession negotiations, Panama has not fulfilled these commitments. U.S. companies, especially software, footwear and apparel, have complained about the failure of the Government of Panama to seize illegal products in the CFZ.

### 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.

Since December 1996, the 10th Prosecutor's Office (FISCALIA) of Panama City has conducted some 70 raids on video clubs, seizing approximately 30,000 videos. It has also broken up several major illicit video reproduction operations. Charges are pending against several large-scale video pirates, one of whom has been driven out of business. Several criminal and civil cases arising out of investigations of stores and businesses accused of software piracy have been settled out of court.

### 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.

### Trademarks

Law 35 also provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. 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. Decrees 123 of November 1996 and 79 of August 1997 specify the procedures to be followed by customs and CFZ officials in conducting investigations and confiscating merchandise. As required by Decree 123, the Customs Directorate in February 1997 created a special office for IPR enforcement. Decree 79 requires the CFZ administration to establish a similar office, but it has not yet done so.

Trade secrets have, up to now, enjoyed little formal protection in Panama. The 1996 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 commercial cases, including IPR. Two district courts and one superior tribunal began to operate in June

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1997 and have been adjudicating patent and trademark disputes. The Panamanian Government and private interests sponsored numerous seminars in 1997 to train prosecutors, judges, and other officials in IPR laws.

Under Law 35, IPR policy and practice in Panama is the responsibility of an Inter-institutional Committee. This committee consists of representatives of six government agencies and currently operates under the leadership of the finance minister. It coordinates enforcement actions and develops strategies to improve compliance with the law.

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 April 1997, Panama was placed on the Special 301 Watch List, but was moved to the "other observations" category in October, following an out-of-cycle review. Though the government made significant progress in fighting video piracy in 1997, it has been less successful in reducing widespread piracy of sound recordings and software. Merchandise pirated in Panama is distributed throughout Latin America. Transshipment of pirated goods through the CFZ remains a major concern and continues to receive insufficient government attention. Trademark violations in the CFZ remain a serious problem.

### **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, which require land as collateral 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 easier for companies to dismiss employees.

### **OTHER BARRIERS**

The judicial system, due to poorly trained personnel, huge case backlogs, lack of independence, and vulnerability to outside influences, can pose a problem for investors.

Rumors of corruption are fueled by public bids which lack transparency, such as the ports privatization discussed under Government Procurement. The Customs Director fired over 50 officials in 1996 for corruption, which remains a continuing problem in part because customs employees are poorly paid. The perception of corruption, can deter U.S. companies from deciding to invest in Panama, and is clearly of deep concern to representatives of U.S. firms already located in Panama.