

# PANAMA

In 1998, the U.S. trade surplus with Panama was \$1.4 billion, an increase of \$270 million from the 1997 surplus of \$1.2 billion. U.S. merchandise exports to Panama were \$1.8 billion, an increase of \$215 million (14 percent) over 1997. Panama was the United States' 46th largest export market in 1998. U.S. merchandise imports from Panama were \$313 million in 1998, a decrease of \$54 million (15 percent) from 1997. The most recent available statistics (1997) indicate the stock of U.S. foreign direct investment (FDI) in Panama was \$21.0 billion. Most U.S. FDI in Panama is in the financial, maritime, petroleum, telecommunications, energy, and wholesale sectors.

## IMPORT POLICIES

Panama joined the World Trade Organization (WTO) in 1997, after implementing laws liberalizing several aspects of the country's trading regime (primarily tariff reductions, import licensing and phytosanitary standards). In 1997 tariff rates were lowered on selected food products and construction materials to a uniform 10 percent and rates on all remaining products except rice, milk products and autos to 15 percent or below. This two-phase tariff reduction resulted in an unweighted average tariff rate of 8.25 percent. Rice and milk products are still protected with tariff rates of 50 percent and 40 percent respectively. If tariffs were to fall to the 15 percent ceiling, the impact on the Panamanian rice and milk products markets would be substantial, although trade would likely increase less than \$10 million due to the small market. In May 1998, Panama enacted safeguard measures for sugar, raising tariff rates to 50 percent.

Panama is not a member of the Central American Common Market or any other subregional economic group. It continues free trade negotiations with Chile and Mexico.

## STANDARDS, TESTING, LABELING AND CERTIFICATION

Panama's standards and certification regime generally conforms to WTO standards. However, phytosanitary restrictions have been applied from time to time in response to sectoral unease with Panama's trade opening. Although some U.S. rice imports were delayed in the past when Panamanian growers claimed contamination by the *T. Barclayana* fungus, imports were eventually allowed to proceed when Panamanian authorities addressed underlying sectoral concerns. The fungus is considered harmless and is already present in Panama.

In 1998, firms importing U.S. pork products had trouble obtaining import permits from the Ministry of Agriculture, in violation of Panama's WTO commitments. In addition, Panama enacted a WTO-inconsistent 15-day waiting period for import permits for fruits and vegetables. Panama requires certification by Government of Panama (GOP) officials of U.S. processing plants as a condition for the imports of poultry, pork and beef products. U.S. exporters have assisted GOP officials in making inspection visits to U.S. plants. While there is no instance of a U.S. plant failing to be certified, the U.S. is seeking Panama's acceptance of USG certification of packing plants on a reciprocal basis. While importers of non-agricultural products must register them before distribution or sale in Panama, procedures for registration are straightforward and evenly applied.

## GOVERNMENT PROCUREMENT

Panama's government procurement regime (Law 56) provides for a transparent bidding process and is managed by the newly formed Ministry of Economy and Finance. (The Ministry of Policy and Economic Planning merged with the Ministry of Treasury and Finance in January 1999.) However, one prominent case in 1996

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raised doubts about transparency when Hutchison International Terminals won the concession to operate ports at both ends of the Panama Canal. The bidding procedure was criticized as being unorthodox and lacking transparency; U.S. firms appeared to be disadvantaged. In contrast, later bids for the state telecommunications company and power generation and distribution facilities were well organized 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 1986 Special Incentives Law are allowed to deduct from taxes up to 10 percent of profits from export operations through 2002. The 1994 Tourism Law (Law 8) allows deduction from taxable income of 50 percent of any investment by Panamanian citizens in tourism development.

Panama has revised its export subsidy policies to be WTO-consistent. Tax Credit Certificates (CATs), 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 phased out by 2001. Until then exporters may receive CATs equal to 15 percent of the exports' national value added. The certificates are transferable and may be either used to pay tax obligations or 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.

To attract FDI, the GOP exempts industries that produce exclusively for export (e.g. shrimp farming and tourism) from paying certain types of taxes and import duties. These companies are not eligible to receive CATs. "Export processing zones" (EPZ's) are part of an effort based on the "maquila" model to broaden the Panamanian manufacturing sector and promote investment in former U.S. military bases reverting to Panamanian control. Companies operating in EPZs may import inputs duty-free if products assembled in the zones are to be exported. The GOP 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

Recent legislation strengthened Panama's IPR regime and enforcement has improved, but piracy and counterfeiting remain problems, especially in the Colon Free Zone (CFZ). 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. A report prepared by the International Intellectual Property Alliance (IIPA) estimates that copyright infringements in Panama cost U.S. firms \$25.7 million in 1998.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the intellectual property protection framework. Panama implemented the WTO Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) upon WTO accession, with no transition. Early in 1999, the GOP is expected to present draft legislation to consolidate the Copyright Office and the Industrial Property Registry into an autonomous Institute for Intellectual Property. In 1998 the GOP made some efforts to enforce intellectual property rights in the CFZ. A new IPR Department in the CFZ teamed with CFZ Customs office conducted 20 raids. Nevertheless, enforcement in the CFZ against piracy has not improved significantly and piracy abounds. U.S. companies continue to view the CFZ with concern.

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### **Copyrights**

Large and medium-sized illicit video reproduction laboratories and wholesale distributors of pirate product exist throughout Panama. While the GOP has raided many video clubs in Panama City and seized thousands of videos, the Panamanian courts have not imposed penalties sufficient to deter piracy.

### **Patents**

The Industrial Property Law provides 20 years of patent protection from the date of filing for all patent holders. 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 provides trademark protection, simplifying the process of registering trademarks and making them renewable for ten-year periods. It grants ex-officio authority to government agencies to conduct investigations and to seize materials suspected of being counterfeited, although there have been several instances where officials in the CFZ claimed they did not possess this authority. Although the 1996 Industrial Property Law specifically protects trade secrets, it has yet to be tested. The 1996 Anti-Monopoly Law (Law 29) established special courts to deal with IPR cases; in 1997 two district courts and one superior tribunal began adjudicating patent and trademark disputes. Under Law 35, IPR policy and practice in Panama is the responsibility of an Inter-institutional Committee, which coordinates enforcement actions and develops strategies to improve compliance with the law.

In April 1998, Panama was again placed in the Special 301 “other observations” category. USTR ended its out-of-cycle review of Panama's protection of intellectual property in October 1998, which was undertaken in response to a 1995 petition filed by Nintendo of America and associated U.S. companies under the Generalized System of Preferences (GSP) program. USTR concluded that Panama has improved its IPR protection over the past several years. Nevertheless, the GOP needs to strengthen its enforcement capacity in the CFZ, where counterfeit merchandise continues to be transshipped for distribution.

## **INVESTMENT BARRIERS**

Panamanian law prohibits foreign government ownership of land, limiting OPIC programs that require land as collateral, but it 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 1995 revision of the labor code eased restrictions on companies for dismissing employees.

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### **ELECTRONIC COMMERCE**

There are no known tariff or non-tariff measures, burdensome or discriminatory regulations, or discriminatory taxation affecting electronic commerce.

### **OTHER BARRIERS**

The judicial system can pose a problem for investors, due to poorly trained personnel, huge case backlogs, lack of independence, and vulnerability to potential outside influences. In addition, corruption persists. High profile cases such as the ports privatization discussed under Government Procurement, the firing of over 50 Customs officials in 1996, and the dismissal of the airport Customs chief in 1998 amid allegations of corruption fuel the perception of corruption. This issue is clearly a serious concern of representatives of U.S. firms already located in Panama.