

PANAMA

TRADE SUMMARY

In 1999, the U.S. trade surplus with Panama was nearly \$1.4 billion, a decrease of \$64 million from the 1998 surplus of just over \$1.4 billion. U.S. merchandise exports to Panama were \$1.7 million, a decrease of \$12 million over 1998. Panama was the United States' 43rd largest export market in 1999. U.S. merchandise imports from Panama were \$365 million in 1999, an increase of \$52 million from 1998. The most recent available statistics (1998) indicate the stock of U.S. foreign direct investment (FDI) in Panama was nearly \$27 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 October 1997. 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 tariff reductions, import licensing and phytosanitary standards. Panama's tariffs were lowered significantly, to an average of 15 percent for agricultural goods and 8.25 percent overall.

A new Government has raised some agriculture tariffs substantially, thus completing a campaign promise. On October 15 the Government raised tariffs on 44 farm products with very little notice. New tariff rates for these products average well over 100 percent. Examples include: milk (from 40 percent to 167 percent), poultry (from 15 percent to 300 percent), rice (from 50 percent to 154 percent), pork (15 percent to 83 percent) and produce (15 percent to 77-87 percent). The Government has announced further increases in agricultural tariffs to take effect this year. Panamanian

authorities maintain that these moves are only temporary.

Panama is not a member of the Central American Common Market or any other subregional economic group. It currently has limited bilateral agreements with Costa Rica, Nicaragua, and El Salvador. Panama had been conducting trade negotiations with Chile, the Dominican Republic and Mexico, although the Government recently decided to suspend these discussions in favor of focusing trade efforts on Central America.

STANDARDS, TESTING, LABELING AND CERTIFICATION

Panama's standards and certifications regime generally conforms to WTO standards. However, phytosanitary permits are sometimes used to control import levels. Administration of phytosanitary regulations has also been tightened, with the previous *de facto* two-day waiting period for phytosanitary permits lengthened to 30 working days. The Government often fails to comply with its own time frame, delaying the issuance of working permits even longer. Beef and potato exporters experience especially long delays in obtaining imports.

Panama requires that U.S. poultry, pork and beef plants be certified for import by Panamanian officials. U.S. exporters have assisted Panamanian officials in making inspection visits to U.S. plants. There is no instance of a U.S. plant failing to be certified, but inspections have been delayed many times due to the lack of personnel and budgetary constraints on the Panamanian side. The U.S. considers it a high priority to obtain Panamanian recognition of U.S. certification to avoid such problems.

While importers of non-agricultural products must register them with the Ministry of Commerce and Industry before distribution or sale in Panama, procedures for registration are straightforward and evenly applied, an

PANAMA

improvement over previous years. There are no overall labeling or testing requirements for imports.

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Economy and Finance. The Law provides for a transparent bidding process for government contracts, but allows for exceptions. One such exception was the bidding process for a major port concession awarded to Hutchinson-Whampoa, a Hong Kong based company, which raised concerns in the business community. This case raised concerns in the business community because of the unorthodox nature of the tendering process.

In contrast, bids for the state telecommunications company and power generation and distribution facilities were well-organized and transparent. The quasi-independent Panama Canal Authority (formed December 31, 1999), although not held to the same regulations as other government entities, has generally used a transparent and fair bidding process for procurement. The inter-oceanic regional authority, ARI, is the entity responsible for procurement relating specifically to the areas around the canal zone. As part of its WTO accession protocol, Panama offered to join the WTO Agreement on Government Procurement, but several outstanding issues remain.

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.

Panama revised its export subsidy policies when it acceded to the WTO. The Tax Credit Certificate (CAT), given to firms producing non-traditional exports which meet minimum established levels of national content and value, will be gradually phased out. The policy has allowed exporters to receive CATs equal to 15 percent of the national value added through 2002, after which the program will be eliminated. The certificates are transferable and may be used to pay tax obligations or sold in the secondary market. The Government has become stricter in defining national value added.

A number of industries that produce exclusively for export, such as shrimp farming and tourism, are exempted from paying certain taxes and import duties. The Government of Panama uses this policy to attract foreign investment. Companies that profit from these exemptions are not eligible for CATs.

Law 25 of 1996 provides for the development of "export processing zones" (EPZs) as part of an effort to broaden the Panamanian manufacturing sector and promote investment in former U.S. military bases reverting to Panamanian control. Companies operating in the 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 firms. Most of the six EPZs remain in the early stages of development.

INTELLECTUAL PROPERTY RIGHTS PROTECTION

Panama became a member of the Geneva Convention in 1974 and the Berne Convention in 1996 and is a member of the World Intellectual Property Organization (WIPO). Recent legislation has strengthened Panama's intellectual property rights (IPR) regime and enforcement has improved, but piracy and counterfeiting remain problems, especially in the Colon Free Zone (CFZ). A recent survey by Price-Waterhouse stated that over 65 percent of

PANAMA

all software used in the business community is pirated.

Law 15 of 1994 (the Copyright Law) and Law 35 of 1996 (the Industrial Property Law) provide the framework for intellectual property protection in Panama. At the time of its accession to the WTO, Panama agreed to implement the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) with no transition period. In November 1998, the Panamanian legislature approved two laws ratifying the WIPO Intellectual Property Treaty and Treaty on Performances and Phonograms. USTR ended its GSP IPR review of Panama in October 1998 citing improvements in IPR protection over the last several years.

The Panamanian Government has made efforts to improve IPR enforcement in the Colon Free Zone. The CFZ's new IPR Department, established in March 1998, and the Customs Office in the CFZ has conducted over 20 raids and seizures since 1998. Several of the seizures were large and the operating permits of some CFZ companies have been suspended as a result.

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 1997 and have been adjudicating patent and trademark disputes. The Panamanian Government and private interests sponsored numerous seminars in 1997 and 1998 to train prosecutors, judges, and other officials in IPR laws and procedures.

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 operates under the leadership of the Vice Minister for Foreign Trade. It coordinates enforcement actions and develops strategies to improve compliance with the law. In early 2000, the Government of Panama is expected to

present draft legislation to consolidate the copyright office and the industrial property registry into an autonomous institute for intellectual property.

Copyrights

The Copyright Law (based on the WIPO model), which the National Assembly passed in 1994, 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 Prosecutors Office (Fiscalia) of Panama City has conducted an aggressive campaign of raids on video clubs, seizing thousands of videos. In September 1998, the Fiscalia raided warehouses at Tocumen International Airport, seizing over five million pirated compact discs. It has also broken up a number of major illicit video production operations. Several criminal and civil cases arising from investigations of stores and businesses accused of software piracy have been settled out of court.

Patents

Law 35 of 1998 (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 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

PANAMA

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. In February 1997, the Customs Directorate created a special Office for IPR Enforcement. A similar office was created in the CFZ in March 1998.

Trade secrets, up to now, enjoyed little formal protection in Panama. The 1996 Industrial Property Law provides specific protection for trade secrets.

INVESTMENT BARRIERS

Panamanian law prohibits foreign ownership of land, limiting OPIC (Overseas Private Investment Corporation) investments that require land as collateral, but places no other legal limitations on foreign private investment or ownership. There are no performance requirements or formal investment screening mechanisms.

Panama places no restrictions on the nationality of senior management for U.S. investments in Panama but does restrict foreign nationals to 10 percent of the blue-collar work force. Additionally, specialized or technical foreign workers may number no more than 15 percent of total employees in a business. A revision of the Labor Code to ease restrictions on companies for dismissing employees was passed in the General Assembly in 1995.

In July 1998, the Government of Panama passed Law No. 54 to protect new investment in Panama. This law guarantees that investors will have no restrictions on capital and dividend repatriation, foreign exchange use and disposal of production for certain sectors of the economy. The Law is intended to protect investors from any deterioration of conditions prevailing at the time the investment was made. In practice, however, investment disputes, some involving

U.S. firms, have arisen from conflicting contracts the Government of Panama has entered into with different firms. In such cases, the Government's willingness to indemnify injured parties has been lacking.

OTHER BARRIERS

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlog, lack of independence and vulnerability to outside influence. In addition, corruption persists, not only in the judicial system, but also in government procurement and at the municipal level.