

PANAMA

TRADE SUMMARY

The U.S. trade surplus with Panama was \$1.5 billion in 2003, an increase of \$443 million from \$1.1 billion in 2002. U.S. goods exports in 2003 were \$1.8 billion, an increase of 31 percent from the previous year. Corresponding U.S. imports from Panama were \$301 million, roughly unchanged from 2002. Panama is currently the United States' 42nd largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama in 2002 amounted to \$20.0 billion, down 20.5 percent from 2001.

IMPORT POLICIES

Tariffs

Following its accession to the World Trade Organization (WTO) in 1997, Panama's import policies opened considerably and its tariffs ranked among the lowest in Latin America. Panama's average tariff remains low, averaging just 8 percent. However, in September 1999, Panama did raise selected agricultural tariffs, some of which reached the maximum amount allowed under Panama's WTO commitments.

Non-tariff Measures

In addition to tariffs, all imports into Panama are subject to a 5% transfer (or ITBM) tax levied on the CIF value, and other handling charges. Pharmaceuticals, foods, and school supplies enjoy an exemption from the transfer tax. Currently, no import licenses are required in the country, provided the intending importing entity holds a commercial or industrial license to operate in Panama.

Free Trade Negotiations

In November 2003, the United States announced its intention to begin free trade negotiations with Panama starting in the second quarter of 2004. A free trade agreement (FTA) with Panama would extend the list of countries in the Americas with which the United States has completed free trade agreements to include all of North and Central America except Belize, which is a member of the Caribbean Community (CARICOM). In conjunction with these and a planned free trade agreement with the Andean countries Colombia, Peru, Ecuador, and Bolivia, the negotiation with Panama will complement the goal of completing a Free Trade Area of the Americas (FTAA). Negotiations with Panama will increase momentum toward lowering trade barriers and set a positive example for other small economies in the Western Hemisphere.

STANDARDS, TESTING, LABELING, AND CERTIFICATION

With certain exceptions, Panama's application of standards and certification requirements generally conforms to WTO standards. However, restrictions have been applied from time to time in response to pressure to protect local producers. Particularly of concern has been the lack of procedural transparency by relevant Panamanian authorities when deciding whether to issue or deny phytosanitary import permits.

Panama requires certification by Panamanian health and agriculture officials of individual U.S. processing plants as a condition for the import of poultry, pork, and beef products. U.S. exporters have assisted Panamanian officials in making inspection visits to U.S. plants. There have been no instances of a U.S. plant failing to be certified, but inspections have been delayed many times for various reasons, including lack of personnel and budgetary constraints in the responsible Panamanian ministries. The United States

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considers it a high priority to obtain Panama's system-wide recognition of the U.S. meat inspection system, in place of the current plant-by-plant approach. This effort will be a primary focus during the upcoming FTA negotiations.

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. There are no comprehensive labeling or testing requirements for imports, except for food and pharmaceutical products.

When the United States launches FTA negotiations in 2004, it will simultaneously initiate an active working group dialogue on SPS barriers to agricultural trade that will meet alongside the negotiations and will also continue to meet and work on resolution of SPS issues after the negotiations conclude.

GOVERNMENT PROCUREMENT

Panama's government procurement regime is governed by Law 56 and managed by the Ministry of Economy and Finance (MEF). The law provides for a transparent bidding process for government contracts, but allows for exceptions, such as procurements for national defense. The Panamanian Government has generally handled bids in a transparent manner, although occasionally U.S. companies have complained of mishandling of certain procedures. Some disaffected companies have withdrawn from consideration. However, formal complaints have not been pursued, usually because of interest in other business, fear of reprisals, and lack of confidence in the appeals process. While Panama made a commitment at the time of its WTO accession, to become a party to the WTO Government Procurement Agreement (GPA), its efforts to accede to the GPA have stalled. Although the Panama Canal Authority (PCA) has generally followed transparent and fair bidding processes, the United States has been particularly disappointed by the Government of Panama's failure to include the PCA in its accession offer. The U.S. government will seek to address the issue of the PCA within the context of bilateral free trade agreement negotiations.

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 processing, or duty free for export production, excluding sensitive agricultural products, such as rice, dairy, pork, and tomato products. 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, and a project to extend these benefits is now being promoted by the private sector.

Because of its WTO obligations, Panama revised its export subsidy policies in 1997-98. The government originally had stated its intention to phase out its Tax Credit Certificate (CAT), given to firms producing certain non-traditional exports, by the end of 2001. But during the WTO Ministerial Conference in November 2001, the Government of Panama asked for and received an extension for the use of CATs. The waiver to continue use of a CAT has been extended to 2005. The policy allows exporters to receive CATs equal to 15 percent of the export's national value added. The certificates are transferable and may be used to pay tax obligations to the government, or they can be sold in secondary markets at a discount. The government has become stricter in defining national value added, attempting to reduce the amount of credit claimed by exporters.

A number of industries that produce exclusively for export, such as shrimp farming and tourism, are exempted from paying certain types of taxes and import duties. The Government of Panama established

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this policy to attract foreign investment, especially in economically depressed regions, such as the city of Colon. Companies that profit from these exemptions are not eligible to receive CATs for their exports.

A new domestic subsidy called the Certificate to Foment Industry (CFI), which would replace the CATs when that program ends, is currently under consideration by Panama's Legislative Assembly. Panamanian authorities have stated that the CFI will be consistent with Panama's WTO obligations.

The Tourism Law of 1994 (Law 8) allows deduction from taxable income of 50 percent of any amount invested by Panamanian citizens in tourism development.

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, particularly in former U.S. military bases. Companies operating in these zones may import inputs duty-free if products assembled in the zones are to be re-exported. The government also provides other tax incentives to EPZ companies and EPZ provisions.

INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION

Protection of intellectual property rights (IPR) in Panama has improved significantly in recent years. Specialized courts have been created to hear intellectual property-related cases. The Government of Panama has also created a specialized IPR prosecutor's office. Intellectual property policy and practice in Panama is the responsibility of an Inter-Institutional Committee on IPR. This committee consists of representatives from six government agencies and operates under the leadership of the Vice-Minister of Foreign Trade. It coordinates enforcement actions and develops strategies to improve compliance with the law.

Copyrights

Panama's 1994 copyright law modernized copyright protection in Panama, providing for payment of royalties, facilitating the prosecution of copyright violators, protecting computer software, and making certain copyright infringements a felony. Although the lead prosecutor for IPR cases in the Attorney General's Office has taken a vigorous enforcement stance against piracy and counterfeiting, the Copyright Office remains small and ineffective, and Panama's judicial system has not provided speedy and effective remedies in civil and criminal piracy cases brought under the law. Given Panama's role as a transshipment point, Panama is susceptible to trading in pirated and counterfeit goods.

The government of Panama is signatory to the WIPO Copyright Treaty and the WIPO Performances and Phonographs Treaty, but the Copyright Office has been slow to draft and implement further improvements to the Copyright Law. Nevertheless, the office has proposed to establish new offenses, such as for Internet-based copyright violations, and to enhance border measures. It has already raised the penalties for infractions. Legislation drafted with technical assistance from SIECA (the Central American Economic Integration System) has not yet become law.

Patents

Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. However, pharmaceutical patents are granted for only 15 years and can be renewed for an additional ten years, if the patent owner licenses a national company (minimum of 30 percent Panamanian ownership) to exploit the patent. The Industrial Property Law provides specific protection for trade secrets.

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Trademarks

Law 35 provides trademark protection, simplifies the process of registering trademarks and allows for renewal of a trademark 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 Colon Free Zone (CFZ) officials in conducting investigations and confiscating merchandise. In 1997, the Customs Directorate created a special office for IPR enforcement, followed by a similar office created by the CFZ in 1998. The Trademark Registration Office has undertaken significant modernization with a searchable computerized database of registered trademarks that is open to the public.

SERVICES BARRIERS

In general, Panama maintains an open regulatory environment for services. For some professions, such as insurance brokers, customs brokerage, freight forwarding, architects, engineers, medical doctors, lawyers, and psychologists, Panama requires that individuals hold a Panamanian technical license.

INVESTMENT BARRIERS

Panama maintains an open investment regime that is receptive to foreign investment. Over the years the country has focused its efforts on bolstering its reputation as an international trading, banking, maritime, and services center. Until recently, the Panamanian government was unresponsive to some foreign investors. For example, a few firms that are closely regulated by, or hold concessions from the Government of Panama, encountered a lack of cooperation from certain officials and abrupt changes related to terms of various concessions or contracts. In 2003, the Government of Panama addressed these problems constructively by re-opening discussions with the U.S. Government under the rubric of the Ad Hoc Investment Commission, which had been used successfully in the past to resolve concerns of U.S. investors. The resolution of a number of these disputes during the past year helped make possible the November 2003 announcement that both countries plan to move forward with bilateral negotiations for a free trade agreement in 2004.

In accordance with the terms of the U.S.-Panama Bilateral Investment Treaty, Panama places no restrictions on the nationality of senior management. Panama does restrict foreign nationals to 10 percent of the blue-collar work force, and specialized or technical foreign workers may number no more than 15 percent of all employees in a business.

A 1998 investment law aimed to enhance new investment in Panama by guaranteeing that investors will have no restrictions on capital and dividend repatriation, foreign exchange use and disposal of production inside a limited number of sectors in the economy. The spirit of the law is that for ten years, investors will not suffer any deterioration of the conditions prevailing at the time the investment was made. The guarantees are related to new laws that may be enacted in the future affecting fiscal, customs, and labor regimes.

ELECTRONIC COMMERCE

In mid-2001, Panama became the first country in Central America to adopt a law specific to electronic commerce. The law was a collaborative effort of the public and private sectors, resulting from several months of detailed discussions and broad consultations. Panama's electronic commerce law has several important features: it gives legal force to any transaction or contract completed electronically; it creates the National Directorate of Electronic Commerce to oversee the enforcement of the law; and it defines

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certification organizations and establishes a voluntary registration regime. Although a regulatory framework to implement the law is still being worked out, the law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

OTHER BARRIERS

Corruption

The judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. In addition, allegations of corruption persist, not only in the judicial system, but also possibly in government procurement and at the municipal level.