

# PANAMA

## TRADE SUMMARY

The U.S. goods trade surplus with Panama was \$1.8 billion in 2005, an increase of \$322 million from \$1.5 billion in 2004. U.S. goods exports in 2005 were \$2.2 billion, up 18.2 percent from the previous year. Corresponding U.S. imports from Panama were \$327 million, up 3.5 percent. Panama is currently the 45<sup>th</sup> largest export market for U.S. goods.

The stock of U.S. foreign direct investment (FDI) in Panama in 2004 was \$5.9 billion, up from \$5.5 billion in 2003. U.S. FDI in Panama is concentrated largely in the finance and wholesale sectors.

## IMPORT POLICIES

### Free Trade Negotiations

In April 2004, the United States and Panama began negotiating a free trade agreement (FTA). Negotiations proceeded through nine rounds, the most recent of which concluded in January 2006. U.S. and Panamanian negotiators continue to discuss ways forward to successfully conclude an FTA. A bilateral FTA with Panama would be a natural extension of an already largely open trade and investment relationship. Panama is unique in Latin America in that it is predominantly a services-based economy, as services represent about 80 percent of Panama's GDP. Following passage of the U.S. FTA with Central America and the Dominican Republic (CAFTA-DR), a bilateral FTA with Panama could further boost momentum for lowering trade and investment barriers throughout the region.

### Tariffs

Following its accession to the World Trade Organization (WTO) in 1997, Panama opened its markets considerably and its applied tariffs ranked among the lowest in Latin America, averaging just 8 percent. In September 1999, however, Panama raised selected agricultural tariffs, some of which reached the maximum amount allowed under Panama's WTO commitments. For example, Panama retains tariffs of 273 percent for chicken, 63 percent to 159 percent for dairy products, 83 percent for tomatoes and over-quota potatoes, 74 percent for pork, 55 percent for rice, 20 percent on sparkling wine and other fermented beverages, and 40 percent on still wines. In addition, Panama charges a 10 percent tax on wine products. Panama also increased the tariff on frozen french fries from 15 percent to 20 percent. Through the ongoing FTA negotiations, the United States is seeking substantial new market access for U.S. exporters.

## FOREIGN TRADE BARRIERS

## **Non-Tariff Measures**

In addition to tariffs, all imports into Panama are subject to a 5 percent transfer (or ITBM) tax levied on the CIF value and other handling charges. Pharmaceuticals, foods, and school supplies are exempt from the transfer tax. Currently, Panama does not require import licenses on manufactured goods entering the country, provided the importing entity holds a commercial or industrial license to operate in Panama.

## **STANDARDS, TESTING, LABELING, AND CERTIFICATION**

With certain exceptions, Panama's application of standards and certification requirements generally conform to WTO standards. However, restrictions have been applied at times, apparently in order to protect local producers. Of particular concern has been the lack of procedural transparency by relevant Panamanian authorities in deciding whether to issue phytosanitary permits.

Panama requires that Panamanian health and agriculture officials certify individual U.S. processing plants as a precondition for the import of poultry, pork, dairy, and beef products. U.S. exporters have assisted Panamanian officials in inspecting U.S. plants and there have been no instances of a failed inspection by a U.S. plant. Inspections, however, are often delayed due to budgetary constraints and the lack of personnel in the responsible Panamanian ministries. As such, it is the United States' priority to obtain Panamanian recognition of the U.S. meat inspection system in place of the current plant-by-plant approach. This effort is a primary focus of the ongoing FTA negotiations.

In December 2003, following detection of the first case of bovine spongiform encephalopathy (BSE), or "Mad Cow" disease in the United States, the Panamanian Agriculture Ministry banned the importation of U.S. beef. The ban remained in place until March 2005, despite U.S. assurances that BSE-infected beef never entered the human food supply. Shortly after the United States discovered a second BSE case, the Agriculture Ministry reinstated the ban in May 2005. Following questionable reporting requirements imposed on the U.S. Department of Agriculture and problematic delays, the Agriculture Ministry lifted the ban in October 2005. The Agriculture Ministry acted slowly to resume issuance of import permits for U.S. beef. Before the ban, Panama imported an estimated 12,000 pounds (5,400 kilograms) of U.S. beef annually.

Panama's import licensing process is often arbitrary and non-transparent, constituting a major impediment for U.S. exporters. For example, Panamanian importers of U.S. processed potatoes have had difficulties obtaining import permits in 2003 and 2004. In one instance, arguing that U.S. processed potatoes compete directly with domestic fresh potatoes, the Panamanian government refused to issue import permits for frozen french fries, disrupting the extensive quick service restaurant industry within the country.

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 usually straightforward and evenly applied.

## **FOREIGN TRADE BARRIERS**

There is no comprehensive labeling or testing requirement for imports, except for food and pharmaceutical products. U.S. industry is seeking a commitment from the Panamanian government to provide explicit recognition of Bourbon and Tennessee Whiskey as a trademark.

When the United States launched FTA negotiations in 2004, it simultaneously initiated a working group on SPS barriers to agricultural trade to meet in parallel with the negotiations and to work on resolution of SPS issues even 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 for procurements relating to 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.

While Panama committed to become a party to the WTO Agreement on Government Procurement (GPA) at the time of its WTO accession, 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 was disappointed by the Government of Panama's exclusion of the PCA from its GPA accession offer. The U.S. government is currently addressing the issue of the coverage of the PCA in the bilateral FTA negotiations to help ensure a strong government procurement package that would give U.S. businesses fair opportunities to bid on Panama Canal procurements, including a planned expansion of the Panama Canal, assuming Panamanian voters ultimately approve the future referendum on Canal expansion and modernization.

## **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, except for sensitive agricultural products such as rice, dairy, pork, and tomato products. Companies not already receiving benefits under the Special Incentives Law of 1986 were allowed a tax deduction of up to 10 percent of their profits from export operations through 2005.

Due to 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), which was given to firms producing certain non-traditional exports, by the end of 2001. During the WTO Ministerial Conference in November 2001, however, the Government of Panama asked for and received an extension for the use of CATs. The WTO extended this waiver until December 2006, allowing exporters to receive CATs equal to 15 percent of the export's national value added.

## **FOREIGN TRADE BARRIERS**

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, however, become stricter in defining national value added, in an attempt to reduce the amount of credit claimed by exporters.

In addition, a number of export industries, such as shrimp farming and tourism, are exempt from paying certain types of taxes and import duties. The Government of Panama established 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), designed to replace the CATs when they end, was enacted by the former Moscoso administration in February 2004. Although the previous government had maintained that the CFI would be consistent with Panama's WTO obligations, the Torrijos administration repealed the measure after entering office in September 2004.

### **Other Export-Related Items**

The Tourism Law of 1994 (Law 8) allows a 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 relation to former U.S. military bases. 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.

### **INTELLECTUAL PROPERTY RIGHTS (IPR) PROTECTION**

Intellectual property policy and practice in Panama is the responsibility of an "Inter-institutional" Committee. 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. The creation of specialized prosecutors for intellectual property-related cases has strengthened the protection and enforcement of intellectual property rights (IPR) in Panama. Given Panama's role as a transshipment point, however, the industry is concerned Panama will become susceptible to trading in pirated and counterfeit goods.

Strengthening and improving Panama's overall regime for the protection and enforcement of intellectual property rights in a broad range of areas is an important objective of the ongoing FTA negotiations.

## **Patents**

Panama's 1996 Industrial Property Law provides a term of 20 years of patent protection from the date of filing. Pharmaceutical patents, however, 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 United States' position is that discrimination against pharmaceutical patents is inconsistent with Panama's TRIPS obligations, and the U.S. is working with Panama to remedy this.

## **Copyrights**

Though Panama's 1994 copyright law modernized copyright protection and its 2004 update created a special Copyright Office with anti-piracy enforcement powers, piracy remains a significant problem.

The government of Panama is a 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 enhance border measures and establish new punishable offenses, such as for Internet-based copyright violations.

Though U.S. industry welcomes both the effective police and legal action, which have significantly reduced the rate of VHS piracy, internet piracy is quickly emerging as a problem in Panama. Both hard goods sales and films in theatrical release are often downloaded, reproduced on optical discs, and then distributed by street vendors. U.S. industry is concerned that Panama has the potential to become a regional transshipment point for pirated optical discs in the region. Despite ongoing investigations to detect laboratory facilities, the legal framework guiding internet use in the country remains incomplete. The United States is working with Panama through the current FTA negotiations to establish a legal regime to combat piracy of audiovisual products over the Internet, including notice and take down provisions and clearly defined Internet Service Provider (ISP) liabilities and copy protection measures.

## **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 Decree 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.

## **INVESTMENT BARRIERS**

Panama maintains a largely open investment regime and is receptive to foreign investment. Over the years the country has bolstered its reputation as an international trading, banking, maritime, and services center.

Under the constitution, however, retail activity is reserved to Panamanians—an issue that the U.S. government seeks to address within the context of FTA negotiations. On a variety of investment issues, the Panamanian government has been, until recently, often unresponsive to concerns raised by U.S. investors. For example, a few firms that are closely regulated by, or hold concessions from the Government of Panama, in the past 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 discussion with the U.S. Government via the “Ad Hoc Investment Commission” (comprised of officials from the U.S. Embassy and Panama’s Ministry of Commerce), which had been used successfully in the past to resolve concerns of U.S. investors. This advanced the resolution of a number of investment disputes and helped open the way for the start of bilateral FTA negotiations.

The U.S.-Panama Bilateral Investment Treaty (BIT) entered into force in 1991 (with additional amendments in 2001). With some exceptions, the BIT ensures that U.S. investors receive fair, equitable and non-discriminatory treatment and that Parties abide by international law standards such as for expropriation and compensation and free transfers. Conclusion of a bilateral FTA would suspend the availability of both investor-state and state-state dispute settlement under the BIT and replace it with investor-state and state-state dispute settlement under the FTA.

A 1998 investment law aims 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. For a period of ten years, investors will not suffer any deterioration of the conditions prevailing at the time the investment was made.

## **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 between 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 certification organizations and establishes a voluntary registration regime. In addition, in August 2004, partial regulations to the 2001 law were issued to facilitate the registration of certification organizations. The law is expected to have a favorable impact on many sectors of Panama's services dominated economy, particularly the maritime sector.

## **FOREIGN TRADE BARRIERS**

## **OTHER BARRIERS**

Panama's judicial system can pose a problem for investors due to poorly trained personnel, huge case backlogs and a lack of independence from political influence. Amid persistent allegations of corruption in the government, particularly in the judiciary, the Torrijos Administration has committed itself to combating corruption as part of its overall agenda of institutional reform.