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**Trade Policy Review Body**

**TRADE POLICY REVIEW**

REPORT BY THE SECRETARIAT

PANAMA

This report, prepared for the second Trade Policy Review of Panama, has been drawn up by the WTO Secretariat on its own responsibility. The Secretariat has, as required by the Agreement establishing the Trade Policy Review Mechanism (Annex 3 of the Marrakesh Agreement Establishing the World Trade Organization), sought clarification from Panama on its trade policies and practices.

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## SUMMARY

1. Since 2007, Panama's economic growth has been impressive, thanks mainly to its dynamic investment and a stable macroeconomic environment. Generally speaking, Panama's trade and investment regime is fairly open, and continued to open up during the period 2007-2013, chiefly through Panama's participation in preferential trade agreements which served as a catalyst for legislative reforms in areas such as customs, intellectual property, government procurement and other trade-related areas. As part of its development strategy, Panama also maintains incentive schemes to attract foreign direct investment (FDI), including a number of special economic zones, such as the Colon Free Zone (ZLC). Thanks to its comparative advantage in the tertiary sector and its geographical location, Panama has been able to consolidate its position as a major exporter of financial, port, transport, storage, distribution services and transit services through the Panama Canal. The large public investments in infrastructure in recent years were intended to convert the country into a regional logistical centre. On the other hand, in spite of the government support and protection they have received, the shares of the agricultural and manufacturing sectors in GDP have declined.

2. This rapid economic growth has brought with it a surge in the nominal GDP per capita (US\$ 11,075 in 2013) and a decrease in the poverty and unemployment rates. However, there remain considerable social and regional inequalities and a significant shortage of skilled labour. Judging from the significant increase in FDI flows over the past few years, the incentive schemes to attract investment appear to have borne fruit. However, the links between the special economic zones and the economy as a whole need to be strengthened, and the contribution of the former to employment and local value added needs to be improved. It would also be wise to reassess and, where appropriate, rationalize the incentive schemes in order to narrow the gap between the most vigorous economic zones and sectors and the rest of the economy, and to allocate more resources to social programmes, including improvements in the quality of education in order to meet the demand for skilled labour on which sustainable economic growth depends. The efficiency and competitiveness of the economy would also be improved by solving the recurrent problem of electricity shortages.

### Economic environment

3. Between 2007 and 2013, the Panamanian economy grew at an average annual rate of 8%, one of the highest in Latin America. This rapid growth was fuelled mainly by the expansion of private consumption and by public and private investment, chiefly in large-scale infrastructure projects. Services are at the heart of the country's economic structure, accounting for 70% of GDP and two thirds of employment.

4. Since 2009, public finances have recorded a deficit owing to rising levels of expenditure, mainly capital. Although the deficit has been moderate and has remained within the annual limits approved by the law, those limits have had to be eased on several occasions. The main fiscal policy challenge is to maintain discipline in order to consolidate public finances and boost confidence, an objective made all the more pressing by the lack of a monetary policy for dealing with economic cycles and possible external shocks (Panama uses the US dollar as legal tender). The public debt to GDP ratio decreased during the review period, reaching 36.8% in 2013. A credit boom, together with robust domestic demand and high international fuel and food prices, has put pressure on inflation, which stood at 4% in 2013, higher than that of the United States.

5. International trade in goods and services continues to play a key role in the Panamanian economy, representing 166% of GDP. During the 2007-2013 period, the current account of Panama's balance of payments recorded deficits, mainly owing to a negative balance in merchandise trade. The services balance, on the other hand, has been positive and growing thanks to the increased income from the Panama Canal, transport services, port services and tourism. Agricultural and food products have dominated Panama's merchandise exports (56% of the total, without counting re-exports from the ZLC), reflecting the relatively small size of the manufacturing sector in Panama. Manufactured goods and fuels account for 88% of imports. The United States remains Panama's main trading partner, absorbing more than 20% of its exports and imports, although its relative importance has declined. Other major partners are the European Union, Canada, the Central American countries, Mexico, Colombia and China. FDI flows into Panama continued to grow during the review period, reaching 7.6% of GDP in 2012.

The preferential trade agreements concluded by Panama over the past few years are expected to help diversify its foreign trade and attract more FDI.

### Trade and investment policy framework

6. The main focus and the objective of Panama's trade policy is to increase FDI and exports. For Panama, the opening up process goes hand in hand with these objectives, and it has concentrated both on concluding trade agreements and improving competitiveness, the business climate and infrastructure. It is seeking to attract high value-added investment that promotes training of human resources and the transfer of technology to key economic sectors, i.e. financial services, logistics, tourism and agriculture. To that end, it created the Investment and Export Promotion Agency (PROINVEX) which acts as a single window for investors. In order to increase the volume, quality and diversity of its exportable supply, Panama is concentrating on exports to markets that afford preferential access to its goods and services, and exports of high-value-added non-traditional products, for example non-traditional agricultural and marine products.

7. For Panama, strengthening the multilateral trading system is important in order to improve interaction among Members while they establish regional or bilateral trade relations that help foster growth in exports and investment. Thirteen regional trade agreements entered into force between 2007 and 2014. This includes Panama's accession to the Latin American Integration Association (LAIA) and the Central American Economic Integration Subsystem (SIECA), the Trade Promotion Agreement between Panama and the United States and the Association Agreement between the European Union and Central America. After signing agreements with Colombia (2013) and Mexico (2014), Panama hopes to join the Pacific Alliance, comprising Colombia, Chile, Peru and Mexico.

8. Panama has streamlined the procedure for setting up companies by introducing an electronically processed start-up notification. Panamanian law grants national treatment to foreign investors and the enterprises in which they participate. There are no foreign exchange controls. Foreign investors are guaranteed free repatriation of capital, dividends, interest and profits arising from their investment. Any investments worth B 2 million or more may benefit from the Law on Legal Stability of Investment. Investors do not require any prior authorization to invest unless they benefit from an incentive scheme or wish to conduct activities that require a concession, licence, permit or other type of authorization.

### Trade policies by measure

9. Panama continued to modernize its customs regime, adopting a new law, updating its computer system, and creating the National Customs Authority. Other trade facilitation measures include the introduction of advance rulings, the single window for exports, and the launching of an authorized economic operator programme. The tariff is the main trade policy instrument; practically all of them are *ad valorem*, and the number of tariff rates decreased from 37 to 29 during the review period. The average MFN tariff was reduced from 8.5% to 7.6%, but at 13.7%, the average tariff on agricultural products (WTO definition) remains more than double that on other products (6.4%). In the case of 59 products, the applied rates exceed the WTO bound rates. In 2013, when it joined SIECA, Panama adopted the Central American Import Tariff, with a few exceptions. Under its trade agreements, Panama applies preferential tariffs to imports from more than twenty trading partners.

10. There is an Administrative Charge for Customs Services on imports as well as a fee for using the computer system, both based on a specific amount. In addition, imports are subject to the Tax on the Transfer of Movable Property and the Provision of Services (ITBMS) and, where applicable, to the Selective Consumption Tax (ISC) and the Consumption Tax on Petroleum-Derived Fuels (ICCDP). In the case of certain products (electronics, motor vehicles), the elimination of tariffs has been offset by an increase in the ISC. Panama gives imports national treatment when applying domestic taxes, except in the case of fuel mixed with ethanol from abroad, to which a higher rate of ICCDP applies than for fuels mixed with domestic ethanol, and imported motor vehicles (new and used), which are subject to a minimum ISC rate that varies according to the age of the vehicle.



11. During the review period, Panama pursued its efforts to build up its institutional and technical capacity for the application of sanitary and phytosanitary (SPS) measures. Nevertheless, improvements are still needed in areas such as risk analysis, training of personnel, creation of a national SPS committee, accreditation, and notification procedures. Between 2007 and 2013, Panama notified eight SPS measures to the WTO, five of which were emergency measures. Panama has 88 technical regulations, mostly covering food products, of which only six have been notified to the WTO since 2007. By improving its SPS systems and technical regulations and increasing transparency, Panama would be in a better position to take advantage of the trade opportunities offered by the preferential agreements.

12. While Panama made little use of contingency measures during the review period, in 2009 it did adopt regulations containing procedural rules for conducting anti-dumping, subsidy and safeguard investigations.

13. Exports of some marine species, flammable products and weapons are subject to a permit or compliance with special formalities. For reasons of sustainability and to boost national value added, exports of wood in slabs and blocks or simply planed is prohibited. Panama does not apply any export taxes except on products manufactured from native woods. Domestic taxes are not imposed on exports.

14. Panama notified three export subsidy programmes to the WTO and was given an extension until 31 December 2015 for the elimination of those subsidies. In 2009, Panama eliminated the Tax Credit Certificate and in 2010 introduced the Industrial Promotion Certificate, which replaced the Official National Industry Register. In 2011, it also adopted Law No. 32 on free zones, eliminating the tax benefits that constituted export subsidies. In 2012, the free zones under Law No. 32 accounted for less than 2% of total exports (including re-exports). On the other hand, the Colón Free Zone (ZLC), which is governed by another law, is the second largest free zone in the world, and handles 66% of the country's foreign trade. Companies established in the ZLC are exempted from taxes on imports, re-exports and manufacturing of goods and repatriation of dividends, as well as from other internal taxes. In addition, there are many incentive programmes, for example, for the head offices of multinational companies, for micro and small enterprises and for specific sectors (agriculture and tourism). It would be worth conducting a cost-benefit analysis of the incentive schemes and rationalizing them where appropriate in order to improve their efficiency and transparency and make the incentive structure more uniform, to avoid possible distortions in the allocation of resources.

15. In 2007, a new competition and consumer protection law was adopted (Law No. 45) which, among other things, introduced an economic efficiency criterion, classified cornering the market as a relative monopolistic practice, introduced a payment for information scheme, and increased fines. Although Law No. 45 has led to a more forceful implementation of competition policy, there is still a high level of concentration in certain markets, particularly in the case of goods. As far as consumer protection policy is concerned, the authorities monitor the price of fuels, medicines and goods in the basic basket. Prices for land transport of passengers are regulated, as are rates for the distribution and sale of electricity. Panama has notified the WTO that it has no State trading enterprises.

16. Panama has adopted the number of laws reforming and clarifying its government procurement legislation. These mostly concern procedural matters, and tend to favour the bidders. However, recourse to special procedures continues to be common. In August 2013, after several years of negotiations, Panama announced its decision not to accede to the WTO Plurilateral Agreement on Government Procurement. Nevertheless, it has adopted government procurement commitments in its bilateral agreements, in some cases even with respect to procurement by the Panama Canal Authority. The authorities have announced their intention to continue negotiating access to government procurement markets on a bilateral basis.

17. In 2012, Panama overhauled its intellectual property legislation to bring it up to date and harmonize it with its international commitments. The amendments cover all intellectual property rights, extend terms of protection and amplify administrative provisions, provide stronger rules on enforcement and increase the penalties. The import or export of counterfeit, altered or imitated products is defined as a crime in the Penal Code, even if they are in transit through Panama.

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## Sectoral policies

18. The sectoral structure of the Panamanian economy continues to be distinctly dualistic, marked by the coexistence of a dynamic and competitive services sector, that has chiefly developed around the activities of the Panama Canal and the ZLC, alongside the less productive agricultural manufacturing sectors, whose share in the economy is much more modest and has been declining in spite of State support.

19. The relative share of agriculture in GDP continued to decline between 2007 and 2013, although it still employs 16.4% of the working population. In 2013, the average tariff in the agricultural sector (WTO definition) was 13.7%, above the overall average, and the products with the highest tariffs were agricultural products. The average tariff quota fill rates for agricultural products in Panama's schedule of commitments varied from 60% to 100%, in addition to which autonomous tariff quotas were opened because of a lack of supply. Panama granted domestic support in the green box category. Domestic support under the heading "development programmes" increased considerably between 2007 and 2012.

20. In 2013, the manufacturing industry accounted for 5.1% of GDP and employed 7.7% of the labour force. The sector is concentrated in a handful of activities, such as the manufacturing of food and beverages, publishing and printing, and non-metallic mineral products. There are various fiscal and financial incentives for manufacturing activities. The main imports include fuel, mineral oils and machinery, and the main exports precious metals and cast iron and steel.

21. The electricity market is decentralized and regulated. Generation is mainly private and operates under conditions of free competition, whereas transmission is in the hands of a State enterprise, with three semi-public companies responsible for distribution in exclusive concession areas. Panama is connected to the Central American power grid. The installed capacity margin relative to demand is narrow, and although it has improved, it is still insufficient to satisfy the demand in all seasons of the year. The State is allocating subsidies to mitigate the effect of the increase in end-user tariffs. Panama does not produce any hydrocarbons, but has substantial storage capacity and an extensive port infrastructure. In 2013, it took steps to promote exploration with a view to commercial exploitation of the confirmed deposits on its territory.

22. The services sector plays a fundamental role in Panama's economy, accounting for some 70% of GDP, two thirds of total employment and approximately 36% of total exports. Panama has consolidated its position as a major exporter of financial, port, logistical and tourism services. It has made specific market access and national treatment commitments in 11 sectors defined in the General Agreement on Trade in Services (GATS). While the commitments in the financial sector are broad, those in the telecommunications and transport sectors are limited, or indeed non-existent in the case of maritime transport. In practice, the scope of Panama's commitments under the GATS has been largely surpassed by the current openness up to foreign services suppliers.

23. In the telecommunications sector, competition was improved with the market entry of two mobile operators in 2009, a move which favoured a reduction in prices and improvements in the quality of services. There are no restrictions on foreign investment in private telecommunications firms. In 2008, Panama adopted the Law on Universal Service and Access, and in 2009, the Number Portability Regulations. Under the GATS, Panama has made specific commitments only with respect to value-added services, and has not adopted the Basic Telecommunications Reference Paper.

24. Panama has a diversified and competitive financial sector. The banking system is sound: capitalization and liquidity levels are reasonably high, and there has been a credit boom in recent years. Foreign banks can be set up through subsidiaries or branches. During the period under review, Panama amended its banking legislation to strengthen supervision and bring it into line with international standards, improve transparency, curb tax evasion, and protect consumers. Moreover, financial conglomerates were subjected to supervision, and the Financial Coordination Council was set up to improve cooperation among the various bodies responsible for overseeing the sector.

25. Foreign insurance companies can set up as public limited companies or as branches. Insurance policies on property and persons situated in Panama can only be taken out with insurers established in the country. In 2012, a new insurance law was adopted which, among other things, broadened the responsibilities of the sector's supervisory body, updated the rules on minimum capital, solvency and reserves, and authorized the sale of insurance through financial companies and trading companies. Foreign reinsurance companies can offer their services to companies domiciled in Panama provided they have enrolled in a register created for the purpose in 2012. In 2011, the Securities Market Supervisory Authority was created, with broad regulatory and supervisory responsibilities.

26. Tocumen International Airport is the busiest airport in Central America and a regional air transport hub. Between 2007 and 2013, the total number of passengers grew at an average annual rate of 12.8%, the number of passengers in transit by 21% and the volume of freight and mail by 5.2%. There are no restrictions on foreign investment in international traffic operators, but cabotage traffic is reserved, in principle, for companies with a minimum of 60% of the shares in Panamanian hands. By law, the Tocumen Airport management company is 100% State-owned. International passenger and freight air traffic operating certificates are granted to foreign companies under bilateral agreements.

27. Panama's National Maritime Strategy, approved in 2009, is designed to turn the country into an integrated centre of excellence for competitive maritime and logistical services. Panama has an extensive network of ports and offers a wide range of services for vessels. The State owns the ports but their management may be outsourced to private companies on concession and, in fact, the largest ports are under private management. There are limits on foreign capital participation in companies offering auxiliary maritime services, and 90% of the crew of vessels engaged in such services must be Panamanian nationals. In 2012, the maritime transport sector's contribution to GDP amounted to 2.3%. Panama has the world's largest merchant fleet, with 8,221 ships registered as of 30 June 2013. There are no nationality restrictions on registration. Panama is seeking to rejuvenate its fleet by granting various discounts on the registration of newly built vessels.

28. The Panama Canal's contribution to GDP was 3.2% in 2012. The Canal is a nerve centre of global maritime transport which generates a variety of economic activities, in addition to the contribution from tolls. During the review period, the Panama Canal Authority (ACP) altered its toll policy to bring tolls into line with the value offered by the route. In 2007, work began on expanding the canal by building a third set of locks to accommodate vessels with a greater draught. In February 2014, having resolved a few problems relating to the financing of cost overruns, the ACP and the construction companies reached a conceptual agreement which targets December 2015 for the completion of the works.

29. Tourism is one of the main generators of foreign exchange and accounted for 12% of GDP in 2012. Investment in tourism increased considerably during the 2007-2012 period, especially in Panama City. During the same period, Panama extended the coverage of the tax incentives granted to investment in tourism, lifted the restrictions on foreign participation in tour operator and travel agency businesses, which ceased to be regarded as retail trade, and strengthened the institutional support system for the sector.

30. The Panamanian Constitution reserves the right to engage in retail trade for Panamanians by birth and naturalized foreigners, three years after having received their final papers. Between 2007 and 2012, retail trade grew at a rate of 8.5%, and accounted for 3.8% of GDP in 2012. Under the Trade Promotion Agreement with the United States, Panama has opened up this subsector by establishing that multiple service businesses were not regarded as retail trade.

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## 1 ECONOMIC ENVIRONMENT

### 1.1 Overview

1.1. The Panamanian economy performed very strongly between 2007 and 2013, with real GDP increasing by an average of 8.0% per year (at 2007 prices)<sup>1</sup>, one of the fastest growth rates in Latin America. Growth was fuelled mainly by the expansion of private consumption and by public and private investment associated with large-scale infrastructure works, and it was underpinned by a stable macroeconomic environment. This, together with the soundness of its banking system, enabled Panama to cope with the global financial crisis of 2008-2009 without major consequences. The Panamanian economy is dominated by services, which contribute 70% of GDP and generate two thirds of all employment.<sup>2</sup> As a result of its rapid growth, per capita nominal GDP almost doubled between 2007 and 2013, to reach a level of US\$11,075. In addition, the unemployment rate dropped to 4.1%, and although poverty indices fell thanks to the implementation of a number of social programmes, they remain high, particularly in rural areas. Reducing the country's social and regional inequalities, improving the quality of education and strengthening institutions remain key pending objectives to underpin the country's development.

1.2. As Panama uses the US dollar as its currency of legal tender, it has no monetary policy instruments of its own. Nonetheless, this arrangement has enabled it to avoid the risks of exchange-rate fluctuations and speculative attacks against its currency, while also promoting its positioning as an international financial centre. Fiscal policy, in contrast, plays a key role as a macroeconomic instrument.

1.3. The country's public finances, which have traditionally been in balance, have recorded deficits since 2009, owing to a rising level of (mainly capital) expenditure. Although the deficits have been kept to moderate proportions and within the limits approved by the law (although the latter have been revised upwards on three occasions), the main fiscal policy challenge today continues to be to increase revenues and attain a more comfortable fiscal position. The public debt to GDP ratio fell sharply during the period under review, reaching a level of 36.8% in 2013. A credit boom, together with robust domestic demand and high international fuel and food prices, put upward pressure on prices from 2010 onwards, but inflation was kept under control, and the rate was brought down to 4% in 2013. With the recent creation of the Panama Savings Fund, which will be financed out of additional revenues obtained from the Panama Canal expansion, it is hoped to help strengthen the country's public finances and improve the economy's capacity to respond to potential external shocks.

1.4. The current account of Panama's balance of payments recorded deficits throughout the 2007-2013 period, mainly owing to a negative balance in merchandise trade. The deficit was financed by a surplus on the capital and financial accounts, resulting from burgeoning flows of foreign direct investment (FDI), largely destined for megaprojects in the infrastructure sector. International trade in goods and services is crucial to Panama's economy and represented 166% of GDP in 2012. Agricultural and food products continue to dominate Panama's merchandise exports (56% of the total, without counting re-exports), which reflects the relatively small size of its manufacturing sector. On the import side, manufactured goods and fuels account for 88% of the total. The characteristics of the Panamanian economy (dollarization, lack of controls on capital movements and macroeconomic stability), combined with its privileged geographic position, have helped the country consolidate its position as a major exporter of services such as financial, tourism, port, transport and storage services, along with transit through the Panama Canal. The latter makes a crucial contribution to the country's economy, and is an essential international trade link. The Colón Free Zone (ZLC) is the world's second largest duty-free area, and handles about 66% of Panama's external trade.

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<sup>1</sup> In March 2014, Panama introduced a new methodology for calculating real GDP, taking 2007 as the base year instead of 1996. This Trade Policy Review is based on the preliminary data series calculated with the new methodology, wherever available; otherwise, the 1996-based data are used. In some cases, the most recent data correspond to 2012.

<sup>2</sup> In the sectoral structure of Panama's GDP, the activities of construction and electricity, gas and water supply, are classified within the "primary and industrial sector", and not as services.

1.5. The United States remains Panama's leading trading partner (absorbing over 20% of its exports and imports) and its top FDI source, although its relative importance has continued to decline in recent years. Other major partners are the European Union, Canada, the countries of the Central American Common Market (CACM), Mexico, Colombia and China. FDI flows into Panama continued to grow during the review period, and represented 7.6% of GDP in 2012. The preferential trade agreements that Panama has entered into in the last few years are expected to help further diversify its external trade and attract larger FDI flows.

## 1.2 Recent economic trends

### 1.2.1 Growth and structure of the economy

1.6. The Panamanian economy grew vigorously in the period under review, despite a slowdown in 2009 in the wake of the economic crisis (Table 1.1). Real GDP expanded at an annual average rate of 8.0% between 2007 and 2013, one of the highest in Latin America. In 2013, the economy grew by 8.4%.<sup>3</sup> The main drivers have been private and public investment, particularly works associated with the Panama Canal expansion and other large-scale infrastructure projects, supported by robust growth of private consumption in 2010-2011. Net exports of goods and services in general contributed positively to GDP growth during the period under study, except in 2010-2011, when imports surged on the back of burgeoning private consumption (Table 1.2).

1.7. The sectoral structure of the Panamanian economy continues to be dominated by services, which contributed 71.9% of GDP on average during the years reviewed and 70.3% in 2013 (Table 1.1). Overall, services grew at an average real rate of 7.4% per year between 2007 and 2013. The most buoyant sectors were: transport, storage and communications, with annual average growth of 9.7% between 2007 and 2013; hotels and restaurants (8.8%); and wholesale and retail trade (8.0%). Within the "primary and industrial sector", construction and the mining and quarrying subsectors posted the highest growth rates of 19.0% and 19.4% per year, respectively. In contrast, the GDP share of the agriculture, fisheries and manufacturing sectors declined during the period reviewed, posting levels of 2.6%, 0.4% and 5.1%, respectively, in 2013.

1.8. In keeping with the dynamism of the economy, the unemployment rate, measured as a percentage of the economically active population, trended down during the period under review, to reach a level of 4.1% in 2013 (3.1% in the case of open unemployment). In that year, services generated 63.5% of employment, led by the business subsector which absorbed 17.6% of all people in work, followed by transport, storage and communications (8.5%). Construction accounted for 11.2% of all jobs; agriculture and fisheries employed 16.4% of the employed population, while manufacturing industry accounted for 7.7% (Table 1.1).

1.9. The country's vigorous economic growth enabled per capita nominal GDP to almost double in the review period, to reach a level of US\$11,075 in 2013. Although levels of poverty and social inequality declined, they remain high, particularly in rural communities. In March 2012, 25.8% of Panama's population were living in conditions of general poverty and 10.4% in extreme poverty.<sup>4</sup> The Gini coefficient stood at 0.51 in 2011, one of the highest in the region<sup>5</sup>, and major regional inequalities persist.

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<sup>3</sup> National Institute of Statistics and Censuses (INEC) in the Office of the Comptroller-General of the Republic of Panama. Viewed at: <http://www.contraloria.gob.pa>.

<sup>4</sup> Ministry of the Economy and Finance (2012).

<sup>5</sup> Zambrano O., "Crecimiento, pobreza y desigualdad en Panamá", press article viewed online at: <http://www.prensa.com/impreso/opinion/crecimiento-pobreza-y-desigualdad-en-panama-omar-zambrano/150331>, 13 January 2013.

Table 1.1 Basic economic indicators, 2007-2013

	2007	2008	2009	2010	2011	2012	2013 <sup>a</sup>
<b>Various</b>							
Nominal GDP (US\$ million)	21,122	24,884	25,925	28,814	33,271	37,956	42,648
Real GDP at 2007 consumer prices (US\$ million)	21,122	23,054	23,970	25,373	28,106	30,986	33,573
Nominal GDP per capita (US\$)	6,077	7,033	7,201	7,869	8,935	10,021	11,075
Population (million)	3.5	3.5	3.6	3.7	3.7	3.8	3.9
Open unemployment rate <sup>b</sup>	4.7	4.2	5.2	4.7	2.9	3.0	3.1
Unemployment rate <sup>b</sup>	6.4	5.6	6.6	6.5	4.5	4.1	4.1
<b>Sectoral structure of GDP (% of GDP at 2007 prices, preliminary figures)</b>							
Primary and industrial sector	23.4	24.3	24.3	22.6	22.8	23.3	25.2
Agriculture, livestock, hunting and forestry	3.9	3.7	3.1	3.0	2.9	2.7	2.6
Fisheries	1.2	1.2	1.1	0.6	0.4	0.4	0.4
Mining and quarrying	0.7	0.8	0.8	0.8	0.9	1.1	1.3
Manufacturing	7.2	6.8	6.5	6.3	5.9	5.3	5.1
Electricity, gas and water supply	2.9	3.0	3.9	3.0	3.2	2.7	2.6
Construction	7.5	8.8	8.8	8.9	9.5	11.1	13.3
Services	72.6	71.6	71.5	73.0	72.5	71.8	70.3 <sup>c</sup>
Wholesale and retail trade; repair of motor vehicles, motorcycles, personal effects and domestic appliances	17.8	18.1	17.7	18.4	18.8	18.5	17.7
Hotels and restaurants	2.9	2.9	2.9	3.1	3.2	3.1	3.0
Transport, storage and communications	17.0	16.6	17.4	18.6	18.8	19.0	18.6
Financial intermediation	8.6	8.6	8.2	7.9	7.7	7.6	7.6
Real estate, rental and business services	14.8	14.4	14.5	14.4	13.8	13.8	13.7
Public administration and defence; compulsory social security schemes	3.9	3.6	3.9	3.8	3.5	3.5	n.a.
Education	3.6	3.5	3.4	3.2	3.1	2.9	0.9 <sup>d</sup>
Social services and health activities	3.3	3.2	3.1	3.2	3.0	2.8	1.2 <sup>d</sup>
Other community, social and personal services	2.3	2.2	2.2	2.2	2.2	2.2	2.0 <sup>d</sup>
Private households with employed persons	0.9	0.8	0.8	0.7	0.7	0.7	0.6
Less: Financial intermediation services indirectly measured (FISIM), allocated to domestic consumption	2.6	2.5	2.5	2.5	2.4	2.3	2.3
Gross value added at basic prices	96.0	95.9	95.7	95.6	95.3	95.2	95.5
Plus: Product taxes	4.6	4.8	4.7	5.0	5.2	5.3	5.0
Less: Product subsidies	0.6	0.6	0.4	0.6	0.5	0.4	0.4
Gross domestic product at consumer prices	100.0	100.0	100.0	100.0	100.0	100.0	100.0
<b>Employment (% of the total working population)</b>							
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0
Agriculture, livestock, hunting, forestry, fisheries, and related service activities	18.9	17.9	18.0	17.4	17.0	16.7	16.4
Mining and quarrying	0.3	0.2	0.2	0.2	0.2	0.2	0.3
Manufacturing	8.9	8.6	8.7	8.3	6.9	6.9	7.7
Electricity, gas and water supply	0.6	0.5	0.6	0.5	1.0	0.8	1.0
Construction	9.2	9.7	9.7	9.7	10.4	10.4	11.2
Services	62.2	63.0	62.8	63.9	64.4	65.0	63.5
Wholesale and retail trade	17.9	18.4	17.3	17.4	17.9	18.2	17.6
Hotels and restaurants	5.1	5.0	5.4	5.1	5.0	4.9	5.1
Transport, storage and communications	6.8	7.1	7.5	7.8	8.1	8.3	8.5
Financial and insurance activities	2.1	2.0	1.9	1.9	2.5	2.4	2.5
Real estate activities	4.9	5.1	5.4	5.7	0.7	0.7	0.7
Professional, scientific and technical activities	0.0	0.0	0.0	0.0	2.4	2.3	2.3
Administrative activities and support services	0.0	0.0	0.0	0.0	3.5	3.7	3.7
Public administration and defence; compulsory social service schemes	6.0	5.6	5.7	6.0	6.8	6.5	6.4
Education	5.1	5.4	5.3	5.7	5.4	5.4	5.4
Other	14.3	14.4	14.2	14.3	12.1	12.6	11.9
<b>Nominal interest rates</b>							
Interest rate on deposits	4.8	3.5	3.5	3.0	2.3	2.1	2.1

	2007	2008	2009	2010	2011	2012	2013 <sup>a</sup>
(Panamanian banks) <sup>e</sup>							
Interest rate on deposits (foreign banks) <sup>e</sup>	4.3	2.7	2.5	2.2	1.6	1.6	1.5
Interest rate on loans (Panamanian banks) <sup>f</sup>	8.3	8.2	8.3	7.9	7.3	7.0	7.4
Interest rate on loans (foreign banks) <sup>f</sup>	7.6	6.3	6.9	7.2	6.5	7.4	7.0
<b>Inflation and exchange rate</b>							
Consumer price index	4.2	8.7	2.4	3.5	5.9	5.7	4.0
Wholesale price index	5.3	15.8	-6.7	3.9	11.9	4.7	0.1
Nominal exchange rate	1.0	1.0	1.0	1.0	1.0	1.0	1.0

n.a. Not available.

a. Preliminary figures for 2013.

b. The figures represent a weekly average in August; they exclude permanent residents in collective housing.

c. The percentages shown for the services subsectors in 2013 do not add up to the total percentage because disaggregated data are not available for some subsectors.

d. Only includes the private sector contribution.

e. Six-month deposits.

f. One-year loans for commercial activities.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama. *Reportes Estadísticos 2013*, Banking Supervisory Authority, Panama.

**Table 1.2 Structure of GDP measured by expenditure, 2007-2012**

	2007	2008	2009	2010	2011	2012
<b>Real annual growth rate (% , based on GDP at constant 1996 prices)<sup>a</sup></b>						
Total consumption	1.4	-1.4	-1.7	25.4	16.6	-2.3
Public consumption	4.1	2.6	4.1	15.3	1.6	5.9
Private consumption	0.9	-2.1	-2.8	27.4	19.3	-3.6
Gross capital formation	38.9	24.2	-5.7	11.2	19.6	16.0
Gross fixed capital formation	41.0	25.3	-6.2	11.6	19.9	16.1
Variation in stocks	4.9	-0.4	6.6	1.6	13.5	14.0
Exports of goods and services	22.0	17.8	-1.0	1.6	22.8	10.1
Imports of goods and services	18.1	12.2	-9.9	18.0	32.5	0.6
GDP	12.1	10.1	3.9	7.5	10.9	10.8
<b>As a percentage of current GDP</b>						
Total consumption	68.6	63.2	61.2	72.9	76.1	69.9
Public consumption	11.3	10.4	12.7	13.1	12.1	11.6
Private consumption	57.3	52.8	48.4	59.8	64.0	58.3
Gross capital formation	24.1	27.6	25.6	25.5	27.2	28.6
Gross fixed capital formation	23.0	26.5	24.6	24.5	26.1	27.5
Variation in stocks	1.1	1.1	1.0	1.0	1.1	1.1
Exports of goods and services	81.2	85.2	81.0	75.2	86.9	83.7
Imports of goods and services	73.9	76.0	67.8	73.6	90.2	82.3
GDP	100.0	100.0	100.0	100.0	100.0	100.0

a GDP figures measured by the expenditure method, at 2007 prices, are not available.

Source: National Institute of Statistics and Censuses(INEC), Office of the Comptroller-General of the Republic of Panama.

## 1.2.2 Fiscal policy

1.10. The Ministry of the Economy and Finance (MEF) is in charge of formulating and executing fiscal policy. Law No. 34 of 5 June 2008, the Fiscal Social Responsibility Law (LRSF) defines rules for consolidating fiscal discipline and imposes limits on the deficit of the non-financial public sector (NFPS) and for public borrowing.<sup>6</sup> In the case of the fiscal deficit, the limit set was 1% of GDP, which could be raised in situations of national emergency declared by the Cabinet Office, or whenever real GDP was growing by 2% or less. In such cases the limit could be raised to a maximum of 3% per year, provided it was reduced to 2% in the following year and to 1% in the third year. In addition, the LRSF set a target of reducing the net total public debt to 40% of GDP over a seven-year period running from fiscal 2008.<sup>7</sup> Although this target was achieved

<sup>6</sup> Law No. 34 of 5 June 2008 replaced the Fiscal Responsibility Law of 2002.

<sup>7</sup> Articles 11 and 12 of Law No. 34 of 5 June 2008.

from 2011 onwards, the fiscal deficit limits set in the LSRF were raised four times during the review period.

1.11. Law No. 38 of 5 June 2012<sup>8</sup> created the Panama Savings Fund (see paragraph 1.16 below), and also changed the annual NFPS deficit ceilings to 2.9% for 2012, 2.8% for 2013, 2.7% for 2014, 2.0% for 2015, 1.5% for 2016, 1.0% for 2017, and 0.5% from 2018 onwards. The ceiling can be raised in situations of national emergency, or when real GDP is growing by 2% or less; in the first case, by up to a maximum of 1.5% of GDP in the year of the emergency (depending on the real cost of the emergency); or, in the case of an economic slowdown, by up to 2% on a graduated basis (by up to 1% if real GDP grows between 1.1% and 2%; up to 1.5% if real GDP growth is between 0% and 1%, and up to 2% if it is negative). In the case of an economic slowdown, the corresponding deficit increase must be cut by one third in the immediately following year, by another third in the second year, and again in the third year, thereby restoring the limit defined in the LSRF. In April 2013, the National Assembly approved a waiver to allow the fiscal deficit ceiling to be raised to 3.1% of GDP by the end of fiscal 2013.

1.12. Having recorded a surplus in 2007 and 2008, the NFPS fiscal accounts (excluding the Panama Canal Authority) posted a deficit in the ensuing years of the review period (Table 1.3). The flexibilities provided for in the LSRF and in Law No. 38 were used to cushion the economic slowdown caused by the global crisis of 2009 and the expenditures generated by natural disasters on several occasions, thereby keeping the deficit under the approved ceiling.

**Table 1.3 Fiscal accounts of the non-financial public sector, 2007-2013**

(% of GDP)

	2007	2008	2009	2010	2011	2012	2013 <sup>a</sup>
<b>Total revenues</b>	26.1	24.2	24.2	23.9	23.3	23.7	23.2
Current revenues, general government	23.1	21.9	22.7	22.3	22.8	22.9	22.3
Central Government	17.3	16.0	16.1	16.1	16.2	16.7	15.6
Social Security Fund (CSS)	5.2	5.3	5.9	5.7	6.1	5.8	6.3
Consolidated agencies	0.6	0.5	0.7	0.6	0.4	0.4	0.4
Operating balance of public enterprises	0.8	1.1	0.9	0.7	0.4	0.4	0.3
Non-consolidated agencies and others	0.9	-0.1	0.3	0.2	0.0	0.4	0.2
Capital revenue	1.2	1.0	0.3	0.6	0.1	0.1	0.4
Grants	0.1	0.3	0.1	0.1	0.1	0.0	0.0
<b>Total expenditure</b>	22.8	23.8	25.2	25.6	25.4	25.2	26.1
Current expenditure, general government <sup>b</sup>	18.2	17.3	18.5	17.9	17.3	16.9	16.5
Current expenditure, general government (excl. interest payments)	15.0	14.4	15.7	15.4	15.1	15.0	14.6
Central Government	7.7	7.7	8.6	8.5	8.7	8.9	8.4
Social Security Fund (CSS)	6.5	6.0	6.5	6.3	5.9	5.5	5.7
Consolidated agencies	0.8	0.6	0.7	0.6	0.6	0.5	0.5
Interest	3.2	2.9	2.8	2.5	2.2	2.0	1.9
Domestic interest	0.4	0.4	0.4	0.2	0.2	0.3	0.4
External interest	2.8	2.5	2.4	2.3	2.0	1.7	1.6
Capital expenditure	4.6	6.5	6.7	7.8	8.1	8.3	9.6
Current saving, general government	4.9	4.6	4.2	4.5	5.5	6.0	5.8
Current saving, NFPS	6.5	5.6	5.3	5.4	5.8	6.7	6.3
Total saving (total revenues less current expenditure)	7.8	6.9	5.7	6.0	6.0	6.8	6.7
Primary balance	6.5	3.3	1.8	0.7	0.1	0.5	-0.9
Surplus or deficit	3.2	0.4	-1.0	-1.8	-2.1	-1.5	-2.9
<b>Total public debt<sup>c</sup></b>							
Total	49.6	41.9	42.3	40.4	38.5	37.6	36.8
External	39.2	34.1	39.2	36.2	32.8	28.4	28.7
Domestic	10.4	7.9	3.2	4.1	5.7	9.2	8.1

a Preliminary figures.

b Excludes the interest payments of public enterprises for the years 2011 to 2013.

c The debt figures report the situation at 31 December each year.

Source: Macroeconomic Department of the Ministry of the Economy and Finance; and Report of the Office of the Comptroller-General of the Republic for 2012 (March 2013) and 2013 (March 2014).

Online information viewed at: <http://www.contraloria.gob.pa>.

<sup>8</sup> Law No. 87 of 4 December 2012 amended Article 5 of Law No. 38 of 5 June 2012.



1.13. The NFPS fiscal deficit recorded in the latter years of the review period has mainly been fuelled by a constant increase in capital expenditure, which has only partially been matched by larger fiscal revenues. The growth of capital expenditure reflects the implementation of an ambitious public investment programme which includes infrastructure works such as the clean-up of Panama Bay, the expansion of the coastal belt, the construction of freeways and the Panama City metro. There has also been increased social spending on programmes such as the preferential housing credit, the universal scholarship for students and the metrobus fare subsidy. On the revenue side, the increase is mainly explained by the growth of tax revenues collected by the Central Government, which expanded at an annual average rate of 14.7% between 2007 and 2013 and represented 11.4% of GDP in the latter year. This mainly reflects the country's robust economic growth, supported by other factors such as improvements in tax collection, the creation of a specialized large-taxpayer unit, and stricter inspection.

1.14. Preliminary official figures show that the NFPS fiscal balance posted a deficit of 1,219 million balboas (B 1,219 million) in 2013, which was more than twice the amount recorded in 2012 and equivalent to 2.9% of GDP. Total NFPS revenues amounted to B 9,909 million in 2013, up by 9.9% on the 2012 figure and representing 23.2% of GDP. This increase reflected revenue growth in the Social Security Fund (CCS) and other government agencies, and, to a lesser extent, the increased tax revenues obtained by Central Government. Total expenditure amounted to B 11,128 million in 2013 (16.4% higher than in 2012) equivalent to 26.1% of GDP. This trend is largely explained by the performance of capital expenditure, which grew by 30.2% in relation to the 2012 figure, to represent 9.6% of GDP.

1.15. Although the total public debt rose in absolute terms between 2007 and 2013, reflecting the public sector's financing requirements, the debt to GDP ratio fell from 49.6% in 2007 to 36.8% in 2013, thanks to the economy's vigorous growth (Table 1.3). According to the debt sustainability analysis performed by the International Monetary Fund (IMF), the downward trend is expected to persist, and the amortization profile is under control.<sup>9</sup> In addition, since 2009, there has been no change in the composition of the total debt, with the domestic component increasing its GDP share from 3.2% to 8.1% by 2013. The auctions held as part of the market-makers programme implemented since mid-2011 have helped replace external financing sources with domestic ones; and in 2012, international risk rating agencies raised Panama's sovereign debt rating.<sup>10</sup>

1.16. Law No. 38 of 5 June 2012 created the Panama Savings Fund (FAP) to provide a long-term state saving facility, and serve as a stabilization mechanism in situations of emergency and economic slowdown. The FAP was funded originally from the Trust Fund for Development, but, as from 2015, contributions in excess of 3.5% of GDP made by the Panama Canal Authority to the National Treasury will be deposited in the Fund, pursuant to Law No. 38 of 2012.<sup>11</sup> The creation of the FAP is expected to improve the economy's future capacity to respond to potential external shocks. At the end of 2013, the total value of the Fund stood at B 1,231.2 million.<sup>12</sup>

1.17. Other important fiscal reforms introduced during the review period include a package of measures in 2009-2010 to improve revenue collection and tax compliance. These included compulsory installation of fiscal cash registers in businesses; an increase in the Tax on the Transfer of Movable Property and the Provision of Services (ITBMS); and lower personal income tax rates. These measures made it possible to increase fiscal revenues, improve ITBMS collection and increase its share in total revenue, while also expanding the tax base.<sup>13</sup> Law No. 52 of 28 August 2012 made further amendments to the Tax Code, which abolished the monthly income tax advance payment system and reinstated the estimated income declaration system with four-monthly payment; amended certain provisions relating to the ITBMS<sup>14</sup>; exempted persons

<sup>9</sup> IMF (2013).

<sup>10</sup> In October 2012, Moody's risk rating agency raised Panama's sovereign debt rating from Baa3 to Baa2. Online information from Moody's, viewed at: [https://www.moody.com/research/Moodys-upgrades-Panama-to-Baa2--PR\\_258683](https://www.moody.com/research/Moodys-upgrades-Panama-to-Baa2--PR_258683). Panama's debt was also awarded investment grade by the risk raters Fitch Ratings and Standard & Poors.

<sup>11</sup> Article 3 of Law No. 38 of 5 June 2012.

<sup>12</sup> Office of the Comptroller-General of the Republic (2014).

<sup>13</sup> IMF (2013).

<sup>14</sup> Persons engaged in the importation and manufacture of food or pharmaceutical and medicinal products for human consumption, as well as those involved in the agricultural or agribusiness sector, with incomes above B 300,000, may deduct from their estimated income declaration the total amount of ITBMS that they have paid exclusively on the purchase of packaging materials, services and inputs needed

involved in agricultural activity and earning less than B 300,000 (previously B 250,000) from the need to file an income tax return; and exempted dividends on registered preferred shares and set new rules on transfer pricing. In 2013, a new institution, known as the National Public Revenue Authority (ANIP), was created to assume responsibility for the administration of income, which is expected to help improve tax collection.

### 1.2.3 Monetary policy

1.18. As Panama uses the United States dollar as its currency of legal tender, it does not have its own monetary policy instruments. Nor does it have a central bank that fulfils functions such as currency issuance, the management of bank reserves, credit regulation or lender of last resort. The State-owned National Bank of Panama serves as depository of the State's financial resources. The regulation and supervision of the banking sector is the responsibility of the Banking Supervisory Authority of Panama (section 4.5.3.2).

1.19. Since the adoption of United States dollar as the country's currency of legal tender in 1904<sup>15</sup>, the nominal exchange rate between the dollar and the national currency, the balboa, has been held at 1:1. Market forces and the international interest rate determine local interest rates and the money supply. There are no mechanisms for controlling interest rates, and no legal reserve requirements on bank deposits, or restrictions on the flow of funds out of or into the banking system. Nor are there any restrictions on the establishment of foreign banks (section 4.5.3.2).

1.20. During the review period, interest rates in the Panamanian banking system trended down, mainly as a result of the additional liquidity provided by international capital flows (Table 1.1). The fall was steeper in the case of the deposit rate, for which the average dropped from 4.8% in 2007 to 2.1% in 2013. The interest rate on loans for commercial activities fell by less (from 8.3% to 7.4%) owing to the robust demand for credit. Consequently, the spread between deposit and lending rates tended to widen during the period. The interest rates offered by foreign banks established in Panama have traditionally been lower than those of Panamanian banks, reflecting the foreign entities' greater efficiency and easy access to international markets. Nonetheless, the differential between the interest rates practised by the two types of bank narrowed steadily in the period under review, and even became inverted in 2012.

1.21. The historically low level of interest rates fuelled a credit boom that has expanded at two-digit rates in recent years. From January to September 2013 alone, Panamanian banks disbursed a total of US\$20,091.7 million in new loans, representing a 15.7% increase compared to the same period in 2012.<sup>16</sup> Over half of those credits were extended to the business sector, while significant amounts were also lent for personal consumption, construction, industry, and mortgages.

1.22. The buoyancy of lending activity has helped underpin economic growth, supported by the fact that Panama's banking system is sound and has high liquidity, solvency and profitability indices (section 4.5.3.2). Nonetheless, the authorities have been advised to keep a close watch on credit growth, particularly in the real estate and tourism sectors and in the ZLC, and closely monitor the rising levels of corporate and household leverage.<sup>17</sup> This recommendation is all the more important in view of the tapering of monetary stimulus by the United States Federal Reserve, which began in January 2014 and could force up interest rates on the Panamanian market in the medium term.

1.23. Inflation, measured by the consumer price index (CPI), reached historically high levels by Panamanian standards in the review period (Table 1.1). The rise in the CPI peaked in 2008 at 8.7%, reflecting the high international prices of food and fuel products, and led the Government to implement a number of measures to shore up the population's purchasing power,

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for the manufacture of food or pharmaceutical and medicinal products for human consumption. Goods exporters and re-exporters can deduct from their estimated income tax the annual sum of monthly ITBMS credits calculated in their ITBMS returns for the immediately preceding fiscal year.

<sup>15</sup> Through the Monetary Convention of 1904.

<sup>16</sup> Online information from the Banking Supervisory Authority of Panama, viewed at: [http://www.superbancos.gob.pa/documentos/noticias\\_y\\_eventos/2013/12\\_dic/Prest\\_nuevos.pdf](http://www.superbancos.gob.pa/documentos/noticias_y_eventos/2013/12_dic/Prest_nuevos.pdf).

<sup>17</sup> IMF (2013).

including subsidies on electricity and liquefied gas, and reductions in income tax. After easing in 2009, CPI inflation resumed its upward trend in 2010-2011, once again owing to the sharp rise in international oil and food prices, but particularly in response to domestic demand pressures resulting from the credit boom and public expenditure growth.<sup>18</sup> In 2012, inflation stood at 5.7%, when further inflationary pressure came from the rise in minimum wages in the early part of the year. As food price pressures eased in 2013, inflation dropped back to 4%, but it remained above the rate in the United States. The combination of the foregoing factors suggest a tendency towards overheating in the economy.<sup>19</sup>

### 1.2.4 Balance of payments

1.24. The current account of the balance of payments recorded a widening deficit in the period 2007-2013, except in 2009 and 2012 (Table 1.4). The robust expansion of imports associated with Panama's high rates of economic growth put pressure on the current account deficit, which peaked at 15.0% of GDP in 2011. In 2012, the deficit narrowed somewhat, but remained relatively large (10.1% of GDP), before widening again in 2013 (11.3%). Over the period, the current account deficit was mostly financed by a surplus on the capital and financial accounts, and particularly by burgeoning FDI flows.

**Table 1.4 Balance of payments, 2007-2013**

(US\$ million)

	2007	2008	2009	2010	2011 <sup>a</sup>	2012 <sup>a</sup>	2013 <sup>b</sup>
<b>A. Current account<sup>c</sup></b>	-1,560	-2,513	-163	-3,076	-4,993	-3,816	-4,806
Balance of merchandise trade	-3,189	-4,049	-2,183	-4,543	-7,217	-6,541	-6,751
Goods (f.o.b.): exports	9,648	12,025	12,037	12,675	16,926	18,872	17,505
Colón Free Zone	7,696	8,599	9,883	10,245	13,782	14,588	13,577
Other sectors	1,952	3,426	2,154	2,430	3,145	4,284	3,928
Goods (f.o.b.): imports	-12,837	-16,074	-14,220	-17,218	-24,143	-25,413	-24,256
Colón Free Zone	-7,179	-8,538	-7,892	-9,710	-13,500	-14,029	-12,174
Other sectors	-5,658	-7,536	-6,328	-7,508	-10,643	-11,383	-12,082
Balance of trade in services	2,247	2,511	3,341	3,641	3,933	5,164	5,052
Services: credit	4,409	5,195	5,542	6,439	8,075	9,348	9,767
Colón Free Zone	71	22	39	27	19	47	22
Other sectors	4,338	5,174	5,503	6,412	8,056	9,302	9,744
Services: debit	-2,163	-2,684	-2,201	-2,798	-4,143	-4,184	-4,715
Colón Free Zone	-474	-460	-370	-497	-575	-569	-501
Other sectors	-1,689	-2,225	-1,831	-2,302	-3,568	-3,615	-4,214
Income account balance	-1,254	-1,507	-1,448	-2,311	-1,911	-2,534	-3,081
Colón Free Zone	-376	-239	-296	-531	-588	-527	-399
Other sectors	-878	-1,268	-1,152	-1,781	-1,324	-2,008	-2,682
Balance of goods, services and income	-2,196	-3,045	-289	-3,214	-5,196	-3,910	-4,781
Current transfers	636	532	126	138	202	94	-25
<b>B. Capital account<sup>c</sup></b>	44	57	30	43	9	0	23
<b>C. Financial account<sup>c</sup></b>	2,078	2,386	313	3,111	4,564	3,723	5,726
Direct investment	1,899	2,147	1,259	2,407	2,956	3,162	4,371
Portfolio investment	-556	-582	351	735	969	832	-52
Other investment	735	821	-1,298	-31	640	-271	1,408
<b>D. Net errors and omissions</b>	67	631	392	230	192	117	-321
<b>E. Financing</b>	-629	-562	-572	-307	228	-24	-622
Reserve assets	-619	-556	-572	-307	228	-24	-622
Other financing	-10	-5	0	0	0	0	0
<b>Memorandum item</b>							
Current account/GDP (%)	-7.4	-10.1	-0.6	-10.7	-15.0	-10.1	-11.3

a Preliminary figures.

b Estimated figures.

c Excludes components that have been classified as Group E.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

<sup>18</sup> Executive Decree No. 240 of 28 December 2011 raised minimum wages by between 15% and 18%, to take effect as from January 2012.

<sup>19</sup> IMF (2013).

1.25. The merchandise trade balance remained in deficit during the period 2007-2013, owing to rapid import growth (particularly capital goods), the impact of high international fuel and food prices on the import bill, and the depreciation of the US dollar against the currencies of Panama's main trading partners. After peaking in 2011, the merchandise trade deficit retreated in 2012, thanks to the growth in exports, particularly those originating in export processing zones, while imports grew more slowly. Nonetheless, the gap widened again in 2013, owing to a reduction in exports from the ZLC and other sectors. The balance of trade in services was increasingly positive during the review period, thanks mainly to the growth of services provided by the Panama Canal and the expansion of port services, transport (particularly by air) and tourism (section 1.3.2).

1.26. The balance on the income account also posted a deficit in 2007-2013, mainly owing to the repatriation of profits and dividends abroad, particularly by firms established in the ZLC, and interest payments on the external debt. Current transfers were positive during the period. The capital and financial accounts maintained a surplus in 2007-2013, as a result of growing FDI flows chiefly representing the entry of foreign capital destined for the Panama Canal expansion and other major infrastructure works.

1.27. The contribution made by the ZLC to the merchandise trade balance was positive in the period 2007-2012, but the same cannot be said of trade in services. In 2013, re-exports from the ZLC shrank by 7.2%, partly owing to problems arising in two of Panama's most important markets in the Latin American region.

### 1.3 Trade performance

1.28. The sum total of Panama's exports and imports of goods and services was equivalent to 166% of GDP (at 1996 prices) in 2012, which shows how important international trade is to the Panamanian economy, and the crucial role played by both the Panama Canal and the ZLC (Table 1.2). In 2012, Panama was the world's 54th largest exporter and its 50th largest importer; in global trade in services, it was ranked 39th as an exporter and 57th as an importer.<sup>20</sup>

#### 1.3.1 Trend of merchandise trade

1.29. When analysing the structure of Panama's merchandise trade, it is important to distinguish between Panamanian trade as such and trade that is channelled through the ZLC, given the preponderance of the free zone in the country's total trade figures. In fact, the ZLC accounts for about 70% of the value of the country's total merchandise trade, a proportion that has remained stable throughout the 2007-2012 period. Using the same approach as in the previous Secretariat Report (2007), the statistics (Tables A1.1 to A1.4) and the analysis presented in this section do not include imports from the rest of the world to the ZLC, or exports and re-exports from the ZLC to the rest of the world. Nonetheless, Table A1.3 includes sales (exports) from Panamanian customs territory to the ZLC and other Panamanian free zones, and Table A1.4 includes purchases (imports) from the ZLC and other Panamanian free zones entering Panamanian customs territory.

1.30. The value of merchandise imports grew steadily during the period under review (2009 excepted), attaining an average rate of 13% per year between 2007 and 2012. In contrast, the value of exports declined as from 2009, and proved unable to regain its earlier levels, resulting in a 6% average annual contraction between 2007 and 2012. According to the authorities, the contraction is partly explained by a reduction in the exportable supply of agricultural and fish products, compounded by changes in the methodology used to calculate exports.<sup>21</sup> In 2012, imports totalled US\$12,633 million, while exports came in at US\$822 million.<sup>22</sup>

<sup>20</sup> The figures exclude intra-European Union trade. *Trade Profiles 2013*. Online information from the WTO, viewed at: [http://www.wto.org/english/res\\_e/booksp\\_e/trade\\_profiles13\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/trade_profiles13_e.pdf).

<sup>21</sup> In the case of fisheries, supply was affected by the rise in fuel prices and adjustment of the regulations governing activities to eradicate illegal fishing.

<sup>22</sup> In 2012, total imports and exports (including those pertaining to the ZLC) amounted to US\$27,284 million and US\$16,964 million, respectively.

### 1.3.1.1 Composition of merchandise trade

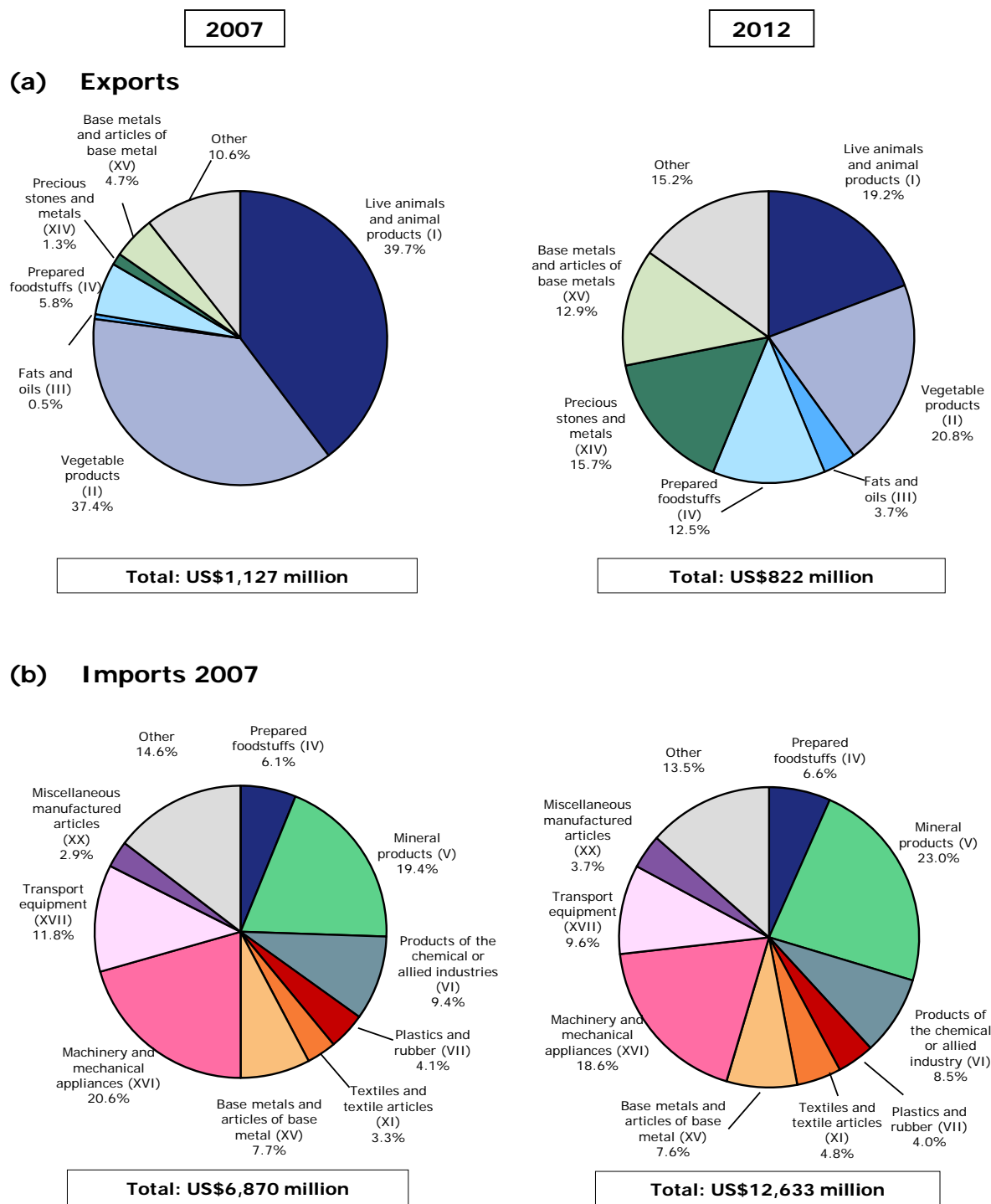
1.31. The composition of Panama's merchandise exports remains dominated by agricultural and food products, which jointly accounted for 56% of the total in 2012, despite having declined in absolute terms (Table A1.1, Merchandise exports by HS tariff section, 2007-2012 and Chart 1.1). These categories are led by fruit (bananas, pineapples, watermelon), which accounts for 18.1% of the total; fish and crustaceans, fresh or chilled (12.7%); sugar and confectionery products (4.3%); meat and edible offal (4%); and beverages, alcoholic liquids and vinegar (3.0%). The contribution of manufactured products (HS Chapters 25 to 97) grew strongly in the period 2007-2012, from 16.6% of total exports to 43.8%. Nonetheless, this was largely due to an increase in the shares of precious stones and metals (15.7% of the total in 2012) and metal waste and scrap (12.9%). The first of these categories includes exports of gold for non-monetary use<sup>23</sup>, which increased from 0.3% to 14.1% of the total between 2007 and 2012. The base metals category includes the smelting of iron and steel, which accounted for 7.2% of total exports in 2012 (2.0% in 2007).

1.32. There have been no significant changes in the composition of Panama's imports, which essentially consist of manufactured products (88% of total imports in the period 2007-2012; see Table A1.2 and Chart 1.2). The leading imports are mineral fuels, which accounted for 22.5% of total imports in 2012, followed by machinery and equipment (mechanical machinery) 11.2%, transport equipment (motor vehicles) 9.6%, and products of the chemical or allied industries (mainly pharmaceuticals) 8.5%. The share of agricultural products in total imports remained broadly stable during the 2007-2012 period, representing 11.2% of the total in 2012.

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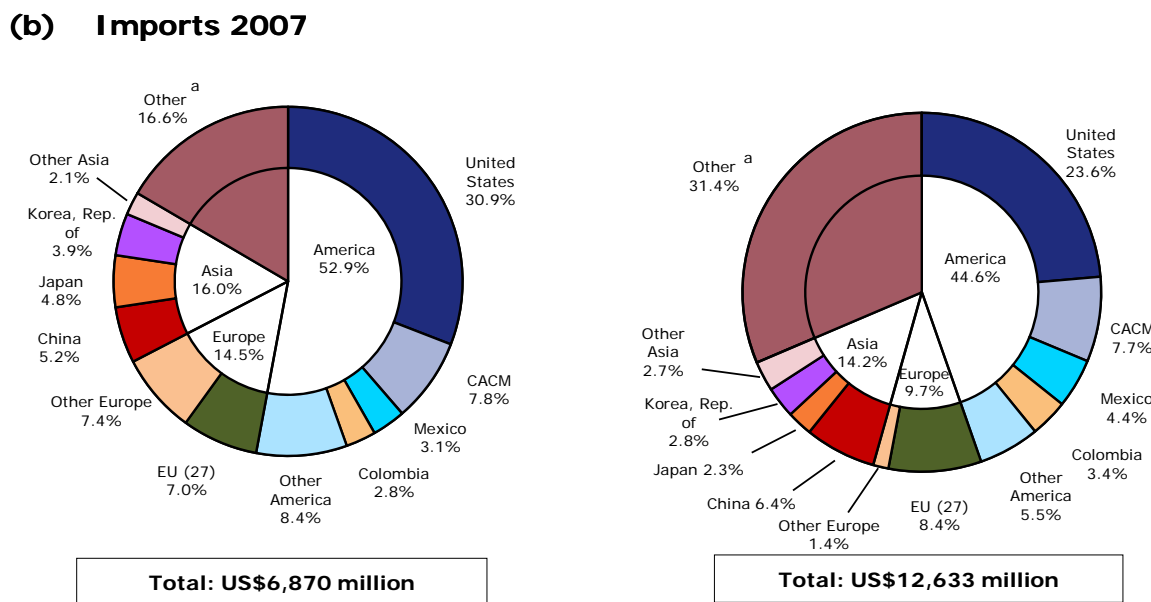
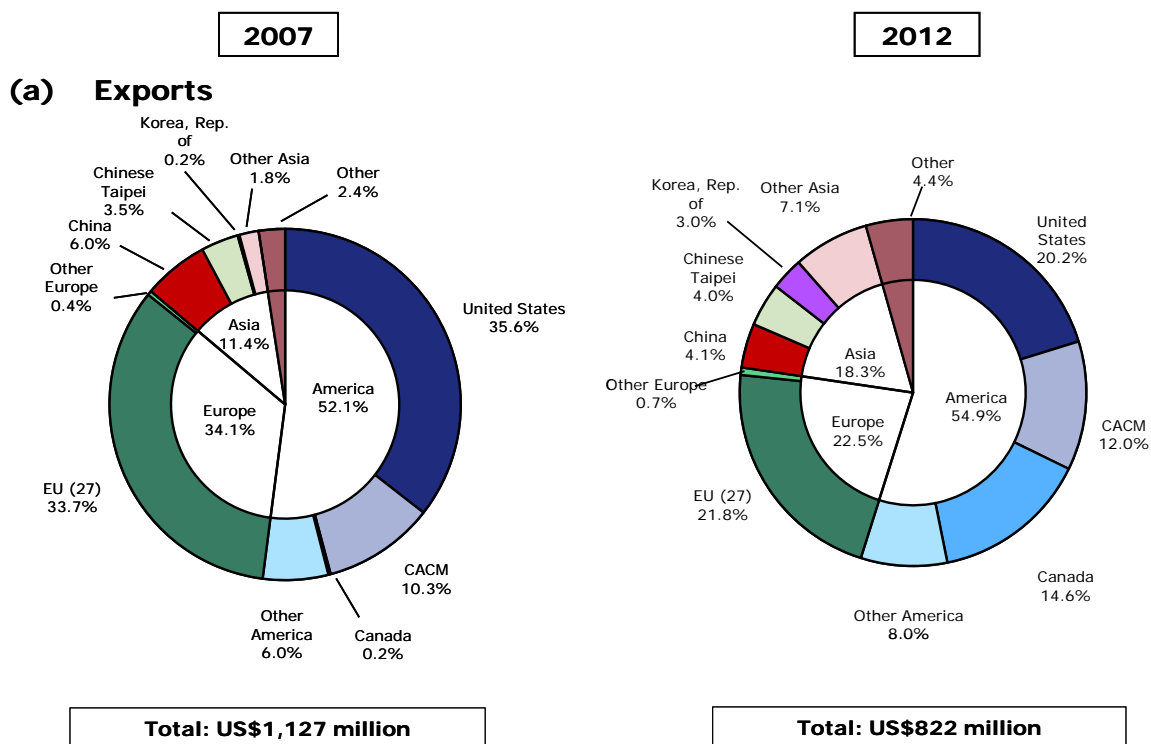
<sup>23</sup> Following the entry into operation of a mine in Colón province.

Chart 1.1 Merchandise trade by tariff section, 2007 and 2012



Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

Chart 1.2 Merchandise trade by trading partner, 2007 and 2012



CACM: Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

a "Other" mainly consists of free zones (15.8% in 2007 and 30.4% in 2012).

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

### 1.3.1.2 Direction of merchandise trade

1.33. Although the United States remains Panama's leading export market, its share dropped sharply during the review period, from 35.6% in 2007 to 20.2% in 2012 (Table A1.3 and Chart 1.2). In contrast, the share of other countries of the Americas grew considerably, particularly that of Canada, which absorbed 14.6% of Panama's total exports. Sales to CACM countries were also on the rise, representing 12% in 2012, while Colombia's share has declined in recent years. Although the share of exports absorbed by the European Union (EU 27) declined sharply, it remains substantial and stood at 21.8% in 2012. Within the EU, the main destination markets are the Netherlands, Sweden, Italy, United Kingdom, Spain and Germany. The share of Asia as a whole grew to 18.3% in 2012, the leading markets being the People's Republic of China, Chinese Taipei, the Republic of Korea, and India, whose share increased during the review period.

1.34. On the import side, the United States remains the leading source (providing 23.6% of the total in 2012) although its relative share declined in the period under review. Imports from CACM countries remained stable, maintaining an 8% average share during the period, led by Costa Rica. Other countries that increased their share of Panamanian imports were Mexico and Colombia, while Brazil's share fell back slightly. Imports from the EU (27) grew moderately, to account 8.4% of the total in 2012. Within this group, the main source countries are Spain, Germany and the Netherlands. The relative share of Asia decreased slightly (to 14%), owing to a reduction in the shares of Japan and the Republic of Korea, while the People's Republic of China managed to increase its share (6.4%).

### 1.3.2 Trade in services

1.35. Panama's trade in services has traditionally been in surplus, and so it remained during the 2007-2013 period (Table 1.5). In 2013, services generated 36% of the country's total exports and 22.9% of its GDP, with a value of US\$9,767 million, representing a 122% increase on the 2007 level. Exports from practically all services sectors grew during the review period. Transport and storage services (including those provided by the Panama Canal Authority and firms in the ZLC, as well as air services) remain the country's largest foreign exchange earners, having generated 49% of services exports in 2013. This category was followed by travel services (tourism) which accounted for 34% and financial services with 5.8%. On the import side, transport services generated 46.4% of total services imports in 2013, supported by travel (17.6%), other business services (13.5%) and financial services (12.9%).

**Table 1.5 Trade in services, 2007-2013**

	2007	2008	2009	2010	2011 <sup>a</sup>	2012 <sup>a</sup>	2013 <sup>b</sup>
Services (net)	2,247	2,511	3,341	3,641	3,933	5,164	5,052
Services (credit)	4,409	5,195	5,542	6,439	8,075	9,348	9,767
Transport	2,263	2,758	3,136	3,431	3,973	4,723	4,802
Travel	1,185	1,408	1,484	1,745	2,605	3,067	3,316
Communication services	216	223	251	306	319	326	327
Construction services	1	3	2	2	2	4	4
Insurance services	95	102	95	123	140	136	276
Financial services	338	434	312	463	638	676	566
Information technology and information services	22	30	26	25	25	34	39
Royalties and licence duties	0	0	0	8	8	12	13
Other business services	253	197	200	264	268	253	235
Personal, cultural and recreational services	0	0	0	10	11	18	46
Government services, n.e.s.	37	40	38	63	86	99	143
Services (debit)	2,163	2,684	2,201	2,798	4,143	4,184	4,715
Transport	1,211	1,543	1,208	1,541	2,235	2,275	2,188
Travel	307	366	338	398	462	505	830
Communication services	61	76	45	56	58	70	62
Construction services	0	0	0	0	0	0	0
Insurance services	105	131	146	161	209	212	192



	2007	2008	2009	2010	2011 <sup>a</sup>	2012 <sup>a</sup>	2013 <sup>b</sup>
Financial services	227	321	170	369	556	637	608
Information technology and information services	2	2	3	3	5	8	9
Royalties and licence duties	57	59	63	46	69	42	81
Other business services	136	115	157	145	469	351	639
Personal, cultural and recreational services	0	0	0	0	2	5	22
Government services, n.e.s	56	71	73	79	79	79	84
Exports of services/GDP (%)	20.9	20.9	21.4	22.3	24.3	24.6	22.9

a Preliminary figures.

b Estimated figures.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

#### 1.4 Foreign direct investment

1.36. Net FDI flows into Panama grew between 2007 and 2012 to reach a level of US\$2,887 million in the latter year, and represented 8.1% of GDP on average during the period, albeit with yearly fluctuations (Table 1.6). In 2013, a sharp upturn took FDI flows past the US\$4 billion level.<sup>24</sup> The free trade agreements signed recently by Panama, along with others currently being negotiated, are expected to help maintain the high level of FDI inflows recorded to date, particularly when public-sector investments in infrastructure projects start to decline.<sup>25</sup>

**Table 1.6 Net foreign direct investment flows by sector, 2007-2012**

(US\$ million)

	2007	2008	2009	2010	2011 <sup>a</sup>	2012 <sup>a</sup>
Total	1,899	2,147	1,259	2,723	3,132	2,887
Banks	389	777	2	373	635	-112
Firms in the Colón Free Zone	373	288	222	390	390	535
Other firms	1,136	1,082	1,036	1,960	2,108	2,464
FDI flows/GDP (%)	9.0	8.6	4.9	9.5	9.4	7.6

a Preliminary figures.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

1.37. The comparable-data series spanning 2007 to 2012 shows that ZLC firms continued to capture significant FDI flows throughout the period, particularly from 2010 to 2012, whereas flows into the banking sector (general licence and international banks) fluctuated sharply and declined significantly in 2012. In contrast, investments in "Other firms" grew rapidly as from 2010, apparently in line with the revival of economic growth.

1.38. Data on FDI by economic activity, which are available for 2010 onwards (Table 1.7), show that trade activities have absorbed the largest proportion of inflows in recent years, accounting for 45.6% in 2012. The Table also reports a significant increase in FDI channelled into manufacturing industries, which absorbed 24% of the total in 2012, and to a lesser extent information and communication services (9.1%). In contrast, transport, storage and postal services, another of the leading FDI target areas, saw their share in total FDI flows shrink by more than half between 2010 and 2012. The shares of financial and real estate services and agricultural activities also fell back.

<sup>24</sup> *El Economista*, "Panamá recibió más de \$4.000 millones de inversión directa foránea", 30 January 2014. Viewed at: <http://www.economista.net/2014/01/30/panamá-recibio-mas-de-4000-millones-de-inversion-directa-foranea>.

<sup>25</sup> IMF (2013).

**Table 1.7 Net FDI flows by category of economic activity, 2010-2012**

Category of economic activity	Foreign direct investment (US\$ million)			% of total		
	2010	2011 <sup>a</sup>	2012 <sup>a</sup>	2010	2011 <sup>a</sup>	2012 <sup>a</sup>
TOTAL	2,723	3,132	2,887	100	100	100
Agriculture, livestock, hunting and forestry	79	55	14	2.9	1.7	0.5
Mining and quarrying	-2	39	-1	-0.1	1.3	0.0
Manufacturing	-114	142	694	-4.2	4.5	24.0
Electricity, gas and water supply	-34	279	-220	-1.2	8.9	-7.6
Construction	-212	155	146	-7.8	5.0	5.0
Wholesale and retail trade	1,572	1,103	1,317	57.7	35.2	45.6
Transport, storage and postal services	783	350	408	28.8	11.2	14.1
Hotels and restaurants	-12	157	50	-0.4	5.0	1.7
Information and communication	38	37	263	1.4	1.2	9.1
Financial and insurance services	360	592	61	13.2	18.9	2.1
Real estate services	112	80	29	4.1	2.6	1.0
Professional, scientific and technical services	-13	83	43	-0.5	2.6	1.5
Administrative and support services	165	34	34	6.1	1.1	1.2
Education	-2	5	3	-0.1	0.2	0.1
Social and health-related services	13	7	26	0.5	0.2	0.9
Arts, entertainment and creativity	-18	14	15	-0.6	0.4	0.5
Other services	6	0	5	0.2	0.0	0.2

a Preliminary figures.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

1.39. In terms of the origin of net FDI flows, Table 1.8 shows that the United States remains the leading source, although the value of investment flows from that country into Panama has varied sharply over the period 2009-2012. Other major FDI sources are Colombia, Switzerland, the Bolivarian Republic of Venezuela, Chinese Taipei and Mexico. Net FDI flows from the European Union as a whole have also fluctuated widely and dropped sharply in 2012, with Spain and the Netherlands being the leading EU source countries.

**Table 1.8 Net FDI flows by main countries of origin, 2009-2012**

(US\$ million)

	2009	2010	2011 <sup>a</sup>	2012 <sup>a</sup>
TOTAL	1,259	2,723	3,132	2,887
United States	-19	1,120	392	552
Colombia	135	82	412	278
Switzerland	301	444	210	204
Venezuela, Bolivarian Republic of	68	76	10	145
Chinese Taipei	15	130	54	140
Mexico	154	-9	15	133
Brazil	33	-2	20	123
Japan	4	26	5	71
Puerto Rico	-2	-63	8	58
Costa Rica	20	13	104	52
Jamaica	-33	-209	-11	51
European Union	404	155	822	48
of which: Germany	13	15	131	57
Spain	327	-50	177	263
Netherlands	-0.1	126	36	170
United Kingdom	68	79	378	-280
Bahamas	n.a.	5	1	36
Chile	2	37	9	35
Canada	16	9	39	32
Dominican Republic	n.a.	35	30	31
Other	-245	705	290	689

n. a. Not available.

a Preliminary figures.

Source: Information provided by the Panamanian authorities.

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## 2 TRADE AND INVESTMENT REGIME

### 2.1 General Framework

2.1. The most recent constitutional reform in Panama took place in 2004. Panama is a republic and its political system is based on the separation of executive, legislative and judicial powers. Article 4 of the Constitution states that Panama abides by the rules of international law. The National Assembly also performs the judicial function of hearing complaints and accusations against the President of the Republic and the judges of the Supreme Court of Justice. While in recess, the National Assembly may vest closely defined extraordinary powers in the Executive at the latter's request where circumstances so dictate. The powers in question exclude the approval of international treaties or the budget; the setting of national taxes and contributions; the development of fundamental guarantees, suffrage, or the party system; and the classification of offences and penalties. Any Decree Law issued by the Executive must be presented to the Legislature for a vote during the parliament following promulgation of the Decree Law. Treaties and international agreements concluded by the Executive must be presented to the Legislative Assembly for approval and ratification.<sup>1</sup>

2.2. The National Assembly vested extraordinary powers in the Executive in 2008 that the Executive employed to establish the National Customs Authority, issue provisions on the customs regime, amend the Banking Law, establish the Tourism Authority and issue provisions on the tourism regime.

### 2.2 Trade policy objectives

2.3. The Ministry of Trade and Industry (MICI) formulates, coordinates and implements Panama's trade and industrial policies. It has two Vice-Ministries – the Vice-Ministry of Domestic Trade and Industry and the Vice-Ministry of Foreign Trade, as well as a Trade Negotiations Office. The Vice-Ministry of Foreign Trade is responsible for the promotion of investment and exports. Through its two divisions, namely the Directorate for International Trade Negotiations and the National Directorate for the Administration of International Trade Agreements and Trade Protection, the Trade Negotiations Office is responsible for all trade negotiations and the implementation of trade agreements.<sup>2</sup> The private sector participates in the trade integration process through the National Commission for International Trade Negotiations whose members are drawn from the most representative private-sector associations.<sup>3</sup>

2.4. The Head of the Office of International Trade Negotiations takes part in all negotiation meetings that require ministerial or vice-ministerial participation and accordingly receives the same treatment as a vice-minister. The Office of the Permanent Mission of Panama to the WTO is at the Office of the Head of International Trade Negotiations.

2.5. During the period under review, the priority for Panamanian trade policy was to increase foreign direct investment (FDI) and exports. The objectives of the National Trade Strategy 2004-2009 were to conclude international trade agreements, promote exports, promote domestic trade to improve national output, incorporate active private-sector participation into strategies to improve the business climate, and form clusters in priority sectors.<sup>4</sup> The National Foreign Trade Strategy 2009-2014 has the additional purpose of providing assistance to investors to facilitate investment procedures and foster projects to boost Panamanian exports to new markets through the Investment and Export Promotion Agency (PROINVEX).<sup>5</sup>

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<sup>1</sup> The hierarchy of laws in Panama, in descending order, is as follows: Political Constitution; international treaties; Laws of the Republic; Decree Laws; Cabinet Decrees; Legislative Decrees; Regulatory Decrees; Simple Decrees; Resolutions; Ministerial Decisions, and individual orders and legal acts; Local Government Agreements.

<sup>2</sup> Decree Law No. 6 of 15 February 2006 and Executive Decree No. 46 of 14 June 2008.

<sup>3</sup> Law No. 33 of 1999 and online information from the MICI, viewed at:  
<http://www.mici.gob.pa/detalle.php?cid=15&sid=60&id=1343>.

<sup>4</sup> Ministry of Trade and Industry (2007) and Ministry of the Economy and Finance (2005).

<sup>5</sup> Ministry of Trade and Industry (2009b) and National Government (2009).

2.6. Both strategies propose work programmes to attract investment, for example "INVIERTE" and "PANAMA INVEST" on the one hand, and programmes to support businesses venturing abroad, such as "EXPORTA" and "PANAMA-EXPORT" on the other. Specifically, the National Foreign Trade Strategy 2009-2014 provides for the establishment of a single window for investors and automated export procedures. Other work programmes seek to improve businesses' competitiveness as exporters, for example "Prepárate para Competir", "Desarrollo Industrial Competitivo", "Compite Panamá" and "Impulso Panamá". Some programmes, such as "Mano a la Obra" were designed specifically to promote agricultural exports or to encourage exports and competitiveness among micro, small and medium-sized businesses (MSMEs), such as the MSME Competitiveness Support Programme.<sup>6</sup>

2.7. Panama wants to attract high value-added FDI that promotes training of human resources and technology transfer. For example, the Government is promoting FDI in financial services, logistics, tourism and agriculture, sectors whose current or future competitive advantages have led to their inclusion in the Government's Strategic Plan for 2010-2014 as drivers of Panamanian economic growth.<sup>7</sup> Panama is seeking to become one of the chief destinations in Latin America for FDI and "the best place for doing business".

2.8. To increase not only the volume but the quality and diversity of its exportable supply, Panama is promoting exports to markets that afford preferential access to Panamanian goods and services, and exports of high-value-added non-traditional products that ensure a more competitive presence in foreign markets. The objective pursued by the National Trade Strategy 2004-2009 was to achieve considerable growth in exports (32%) and in exports of non-traditional products (20%). It also sought to achieve a significant increase in the number of exporting businesses. The authorities indicated that although they did not meet these targets, exports of non-traditional products and agricultural products improved considerably in 2007 and 2008 but fell in 2009. Since 2010 and 2011 the search has been on for markets that are less affected by the recession, for example Canada, and efforts to increase exports of non-traditional agricultural and marine products have proved successful.

2.9. Panama is of the view that the process of opening up is closely linked to the increase in FDI and exports. To that end it is pressing home the need to open negotiations with countries where it considers there are markets for Panamanian exports and to ensure that domestic conditions help Panamanian economic operators to take fuller advantage of the opportunities made available under bilateral trade agreements. Indeed, in 2006 Panama embarked on the Complementary Agenda and Competitiveness Programme that seeks to improve governance, infrastructure, productivity and access to financing to engender a more favourable business climate. One of the programme's achievements is the option to perform procedures online.<sup>8</sup>

## 2.3 Trade agreements and arrangements

### 2.3.1 World Trade Organization

2.10. Panama has been a Member of the WTO since 1997. As a minimum, it grants MFN treatment to all its trading partners. It is an observer on the Committee on Government Procurement but decided not to pursue its application to accede to the Agreement on Government Procurement by a communication circulated on 9 August 2013.<sup>9</sup> Panama had submitted two offers, the latest in 1999, and these were withdrawn. Panama is a participant in the Information Technology Agreement.<sup>10</sup> Panama is not party to the Agreement on Trade in Civil Aircraft and because of its date of accession to the WTO did not participate in the sectoral negotiations on financial services and telecommunications for the General Agreement on Trade in Services (GATS).

2.11. Panama is of the view that strengthening the rules of the multilateral system is important in order to improve interaction between Members while they establish regional or bilateral trade relations that help foster growth in exports and investment. Within the framework

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<sup>6</sup> For further information, see Ministry of Trade and Industry (2007), Ministry of Trade and Industry (2009b) and OECD/WTO (2009).

<sup>7</sup> National Government (2009).

<sup>8</sup> For further information, see Ministry of Trade and Industry (2007).

<sup>9</sup> WTO document GPA/ACC/PAN/1 of 9 August 2013.

<sup>10</sup> WTO document G/IT/1/Rev.49 of 4 October 2013.

of the negotiations on agriculture under the Doha Development Agenda, Panama supports the elimination of export subsidies, the reduction of tariff protection and domestic support. Panama supports greater openness in trade in services because this is the most dynamic sector of its economy (Chapters 1 and 4).<sup>11</sup>

2.12. As part of its obligations, Panama has regularly submitted notifications to the WTO during the period under review (Table A2.1). However, there are notifications pending in the fields of intellectual property, agriculture, trade protection and countervailing measures, for example.

2.13. Since 2007, Panama has been involved as a complainant in four dispute settlement procedures and has participated as a third party in others (Table 2.1). It should be noted that Panama was party to the dispute on bananas, regarded as one of the most complex, difficult and long-standing disputes in the multilateral trading system. There have been no complaints against Panama within the framework of the WTO since 2007.

**Table 2.1 Dispute settlement procedures, 2007 to April 2014**

Subject	Complainant/respondent	Situation	WTO document series
Regime for the importation of bananas	Panama/ EU	Mutually agreed solution (DA/364/3, G/L/822/Add.1 of 12 November 2012)	DS364
Indicative prices and restrictions on ports of entry	Panama/ Colombia	Implementation notified by the respondent (WT/DS366/15 of 9 April 2010)	DS366
Measures relating to trade in goods and services	Panama/ Argentina	Panel established and constituted (WT/DS453/5 of 12 November 2013)	DS453
Measures relating to the importation of textiles, apparel and footwear	Panama/ Colombia	Panel established and constituted (WT/DS461/4 of 16 January 2014)	DS461
<b>Panama as a third party</b>			
Safeguard measures on imports of polypropylene bags and tubular fabric	Costa Rica/Dominican Republic Guatemala/Dominican Republic Honduras/Dominican Republic El Salvador/Dominican Republic	Implementation notified by the respondent (WT/DS/415/13, WT/DS/416/13, WT/DS/417/13, WT/DS/418/13 of 9 May 2012)	DS415 DS416 DS417 DS418
Certain measures concerning trademarks, geographical indications and other plain packaging requirements applicable to tobacco products and packaging	Honduras/Australia	On 25 September 2013 the Dispute Settlement Body decided to establish a panel but it has not yet been constituted.	DS435

Source: WTO Secretariat.

### 2.3.2 Preferential trade agreements

2.14. Panama has signed trade agreements with 13 partners, nine of which have entered into force since 2007. Between January and November 2013, trade covered by the agreements accounted for almost 9.7% of the value of Panamanian exports and 10.4% of imports.<sup>12</sup> Despite the provisions on notification<sup>13</sup>, several agreements have not been notified to the WTO (Table 2.2). The authorities indicated that they were working with the relevant institutions with a view to notification.

<sup>11</sup> WTO documents WT/MIN(09)/ST/114 of 2 December 2009, WT/MIN(11)/ST/20 of 16 December 2011 and WT/MIN/(13)/ST/43 of 5 December 2013, and Ministry of Trade and Industry (2011a).

<sup>12</sup> INEC and Directorate-General for the Administration of International Trade Agreements.

<sup>13</sup> Article XXIV:7 of the GATT 1994, Article 5 of the GATS, paragraph 4(a) of the Decision on differential and more favourable treatment, reciprocity and fuller participation of developing countries of 28 November 1979 (L/4903) and paragraph 3 of the Transparency Mechanism.

**Table 2.2 Participation of Panama in regional trade agreements (whether notified or not, in force) April 2014**

Trading partner or Agreement	Date of entry into force	Type of Agreement	GATT/WTO Notification	
			Year	WTO provision
EU – Central America	1 August 2013 <sup>a</sup>	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
Canada	1 April 2013	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
United States	31 October 2012	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
Peru	1 May 2012	Goods & Services	2012	GATT Art. XXIV & GATS Art. V
Nicaragua (Central America)	21 November 2009	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
Guatemala (Central America)	20 June 2009	Goods & Services	2013	GATT Art. XXIV & GATS Art. V
Honduras (Central America)	9 January 2009	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Costa Rica (Central America)	23 November 2008	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Chile	7 March 2008	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Singapore	24 July 2006	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
Chinese Taipei	1 January 2004	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
El Salvador (Central America)	11 April 2003	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
SIECA - Accession of Panama	6 May 2013	Goods		Not notified
LAIA – Accession of Panama	3 May 2012	Goods		Not notified
Cuba LAIA, AAP.CE No. 71	20 August 2009	Goods		Not notified
Colombia LAIA, AAP.A25TM No. 29	1 January 1995	Goods		Not notified
Dominican Republic	8 June 1987	Goods		Not notified
Mexico LAIA, AAP.A25 No. 14	1 May 1983	Goods		Not notified

a EU – Central America: the notifications made in February 2013 (see WT/REG332/N/1 and S/C/N/680) state that: "Provisional application of the Agreement by all signatory parties is expected in the course of the second quarter 2013"; further notifications are anticipated, confirming the specific dates of entry into force between the EU and the Central American countries.

Note: LAIA: Latin American Integration Association.  
SIECA: Central American Economic Integration Subsystem.

Source: WTO Secretariat.

### 2.3.2.1 Regional integration agreements

#### 2.3.2.1.1 Latin American Integration Association (LAIA)

2.15. Panama has been a member of LAIA since February 2012 and has acceded to seven regional agreements, including the Regional Agreement on Regional Tariff Preference (AR.PAR No. 4) and the agreements on open markets with the Plurinational State of Bolivia, Ecuador and Paraguay.<sup>14</sup>

2.16. AR.PAR No. 4 is an agreement providing for reciprocal tariff preferences that apply to imports of goods originating in the parties other than products in the lists of exceptions. The Regional Tariff Preference (RTP) is a percentage reduction in the national import tariff or MFN tariff that varies in line with the level of development of the granting country and the recipient country. LAIA classifies Panama as a country of intermediate development (CID). In February 2014, AR.PAR No. 4 had entered into force in respect of trade between Panama and Argentina, the Plurinational State of Bolivia, Cuba, Ecuador, Mexico and Paraguay, and in April 2014 in respect of trade between Panama and Uruguay. The RTPs granted by Panama are as follows: 34% to the Plurinational State of Bolivia and Paraguay (relatively less developed, landlocked countries); 28% to Ecuador (a relatively less developed country); 20% to Cuba, Colombia, Chile, Peru, Uruguay and the Bolivarian Republic of Venezuela (CIDs); and 12% to Argentina, Brazil and Mexico. In the framework of the regional agreements on open markets,

<sup>14</sup> The other three regional agreements are the Regional Agreement on scientific and technological cooperation (Framework Agreement) between the LAIA member countries, the Regional Agreement on cooperation and trade in cultural, educational and scientific goods and the Framework Agreement on promoting trade by eliminating technical barriers to trade.

Panama at once fully eliminated customs levies and other restrictions on imports of certain products originating in the Plurinational State of Bolivia, Ecuador and Paraguay, lists of which are annexed to those agreements.<sup>15</sup>

2.17. Under Article 25 of the Montevideo Treaty<sup>16</sup>, Colombia, Cuba and Mexico signed partial scope agreements with Panama before it became a member of LAIA. The agreement with Cuba was signed and entered into force in 2009. The agreements with Colombia and Mexico have been in force since 1995 and 1986 respectively. The agreements with Colombia and Cuba provide for reciprocal tariff preferences whereas the agreement with Mexico grants unilateral tariff preferences to around 100 Panamanian products. According to information from the Panamanian authorities, Panama's accession to LAIA does not affect these agreements: they remain in force because they have not been rescinded; however, in the event of a conflict, the obligations entered into in the more recent agreement prevail.

### **2.3.2.1.2 Central American Economic Integration Subsystem (SIECA) and Free Trade Agreement between Panama and Central America<sup>17</sup>**

2.18. Together with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, Panama signed the Tegucigalpa Protocol of 1991 to the Charter of the Organization of Central American States (ODECA), establishing the Central American Integration System (SICA). Panama approved the Protocol under Law No. 10 of 3 January 1996. On 29 October 1993, Panama signed the Protocol to the General Treaty on Central American Economic Integration (TGIEC) (Guatemala Protocol) establishing the Central American Economic Integration Subsystem (SIECA), which was ratified only on 17 April 2013. Panama approved the Protocol of Incorporation of the Republic of Panama into SIECA and the amendment to the Guatemala Protocol of 27 February 2002 under Law No. 26 of 17 April 2013.

2.19. The SICA is a multidisciplinary integration scheme comprising five subsystems: environmental, economic, educational and cultural, political and social.<sup>18</sup> SIECA established under the Guatemala Protocol provides for the establishment of a free-trade zone, the adoption of a common external tariff, the establishment of a customs union, the free movement of factors of production, and monetary and financial integration. The Secretariat for Central American Economic Integration, based in Guatemala, is the technical and administrative arm of the integration process.<sup>19</sup>

2.20. The Free Trade Agreement (FTA) between Panama and Central America (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) was signed on 6 March 2002 and entered into force between Panama and the various countries between 2003 and 2009 upon the entry into force of the respective bilateral protocols that are an integral part of the Treaty. The aims of the FTA are to develop the free trade zone between the Parties; promote, expand and diversify trade in goods and services; promote conditions for fair competition; eliminate barriers to trade; facilitate the movement of goods and services; and promote, protect and substantially increase investments in each Party. Although the agreement does not provide for a precise date for full implementation, the various bilateral Protocols between Panama and its partners extend the Tariff Elimination Schedule (PDA) until 2013 with El Salvador, 2026 with Costa Rica, 2026 with Honduras, 2024 with Nicaragua and 2029 with Guatemala.

2.21. The FTA contains provisions on trade in goods relating to national treatment and market access, rules of origin, customs procedures, safeguard measures, unfair trade practices, technical barriers to trade, sanitary and phytosanitary measures, standardization and metrology measures, and authorization procedures. It also contains provisions on investment, cross-border trade in services, financial services, telecommunications, temporary admission of business people,

<sup>15</sup> Second Protocol to AP.AR No. 4, Article 2. Online information viewed at: <http://www.aladi.org/nsfaladi/textacdos.nsf/vpaises/panama?OpenDocument&Start=1&Count=310&Collapse=5>.

<sup>16</sup> This Article states that "member countries may draw up partial scope agreements with other Latin American countries and areas of economic integration".

<sup>17</sup> In 2012, 12% of exports of goods from Panama were to Central America and 7.7% of its imports were from that region.

<sup>18</sup> Secretariat for Central American Integration (2010).

<sup>19</sup> Online information from the Secretariat for Central American Integration viewed at: <http://www.sieca.int/Portal/Pagina.aspx?PaginaId=1015>.

competition policy, monopolies and State-owned enterprises, government procurement, intellectual property, transparency, and dispute settlement. Until the entry into force of the Protocol incorporating Panama into SIECA, trade relations between Panama and Central America were governed by the FTA between Panama and Central America and the bilateral protocols establishing tariff reduction programmes, rules of origin and annexes to the chapters on investment, services and government procurement.<sup>20</sup>

2.22. The Protocol incorporating Panama into SIECA entered into force on 6 May 2013. It began to govern trade relations between Panama and Central America and partially superseded the FTA between Panama and Central America. Only the provisions of the FTA that govern matters not covered by the Protocol of Incorporation into SIECA continue to apply.

2.23. With the entry into force of the Protocol of Incorporation into SIECA, Panama adopted the following instruments:

- i. the General Treaty on Central American Economic Integration (TGIEC) of 13 December 1960;
- ii. the Agreement on the Central American Tariff and Customs Regime of 14 and 27 December 1984 and the three Protocols thereto. For the Central American Import Tariff, whose application is immediate but contains exceptions, Panama must negotiate the schedule for harmonization of the nomenclature within one year and the schedule to harmonize import duties within two years;
- iii. the Central American Uniform Customs Code (CAUCA), including its amendments<sup>21</sup> and its implementing regulations (RECAUCA)<sup>22</sup>, under which certain Articles will enter into force after five years (customs brokers and special agents) or ten years (non-commercial consignments for household use and objections and appeals); and
- iv. the Framework Agreement Establishing the Central American Customs Union.

2.24. The following provisions entered into force at the same time: institutional provisions; the Central American Regulations on the Origin of Goods (other than the exceptions in Annex 6(a)); trade protection; settlement of disputes; sanitary and phytosanitary measures; technical barriers to trade (other than the exceptions in Annex 7.1); customs transit and non-tariff barriers. These provisions will gradually supersede their counterparts in the FTA but the tariff quotas provided for in the bilateral protocols to the FTA will remain in place until free trade is achieved in line with a schedule that must be drawn up within two years.

2.25. It also provides that within a period of six months, Panama will take the steps necessary to negotiate its incorporation into the Agreement on Investment and Trade in Services (TICS) and the Protocols thereto, subject to the condition that the commitments assumed by Panama and members of the TICS on investment, cross-border trade in services and financial services do not entail a greater degree of non-conformity or a level of commitment lower than those stipulated in the FTA.

### **2.3.2.2 Other trade agreements**

2.26. Panama has negotiated various tariff reduction programmes in its preferential trade agreements, as illustrated in Table 2.3.

<sup>20</sup> For further information see Ministry of Trade and Industry (2009a).

<sup>21</sup> COMIECO Resolution No. 223-2008.

<sup>22</sup> COMIECO Resolution No. 224-2008.



**Table 2.3 Panama: Liberalization programmes agreed as part of preferential trade agreements**

Partner	Reduction programme	% of lines		
		Duty free		Dutiable
		2013	Final	
Central America				
Costa Rica	2008-2026	88.70	97.50	2.50
El Salvador	2003-2013	82.44	82.44	18.46
Guatemala	2009-2028	84.89	97.39	2.5
Honduras	2009-2026	8.10	87.20	12.80
Nicaragua	2009-2024	86.50	90.50	9.40
Canada	2013-2031	75.70	98.80	1.30
Chile	2008-2022	74.30	97.30	2.70
United States	2012-2031	75.32	99.97	0.03
Peru	2012-2029	58.05	96.50	3.50
European Union	2013-2027	50.89	94.62	5.38

Source: WTO Secretariat, on the basis of information provided by the countries in question.

### 2.3.2.2.1 Association Agreement between the European Union and Central America

2.27. Together with the other Central American countries, in September 2012 Panama signed the Association Agreement with the European Union and ratified it by Law No. 27 of 17 April 2013. The Agreement entered into force on 1 August 2013. Panama was an observer at the negotiations between 2006 and 2010 and began to participate as a full member in 2010.<sup>23</sup> The Agreement consolidates and broadens the preferences granted by the EU under the GSP/GSP Plus. It also establishes a tariff reduction programme for Panama that differs from that of the other Central American countries, under which the base rate tariff adopted by Panama can be either the Central American tariff or a lower tariff. Note the special treatment for bananas that allows the EU to suspend preferential tariffs for a maximum annual period of three months when imports reach a given amount (431,000 tonnes in 2013 for Panama). There are two other pillars in the Association Agreement that encourage political dialogue and cooperation. In 2012, 21.8% of exports of Panamanian goods were to the European Union and 8.4% of its imports came from the EU.

### 2.3.2.2.2 Panama - Canada

2.28. The Agreement between Panama and Canada, which entered into force on 1 April 2013, contains provisions on goods (rules of origin, customs procedures, sanitary and phytosanitary measures, technical barriers to trade, emergency measures) and on services (investment, cross-border trade in services, telecommunications, financial services, temporary entry of business people), and on competition policy, monopolies and State-owned enterprises, and government procurement. It also contains provisions on e-commerce, trade-related cooperation, dispute settlement and trade facilitation, and two parallel agreements on the environment and labour. The services commitments are based on negative lists, and generally speaking, are broader than the commitments entered into under the GATS.

2.29. In 2012, goods exports from Panama to Canada and goods imported from Canada accounted for 14.6% and 0.5% of total goods exports and imports respectively. The entry into force of the Agreement meant that 75.7% of Panama's tariff was duty free for imports from Canada, corresponding to 89.4% of those imports. At the end of the transition period (2031), 98.7% of the tariff will be duty free, corresponding to 97.7% of imports from Canada. A total of 112 tariff lines (corresponding to 1.3% of Panama's tariff) will remain dutiable, representing 2.3% of its imports from Canada.<sup>24</sup> Panama's chief exports to Canada are gold, salmonids, unwrought silver and coffee, and its imports include lentils, newsprint in rolls, and machines for working rubber or plastics and minting coins.<sup>25</sup>

<sup>23</sup> Ministry of Trade and Industry (2011a).

<sup>24</sup> WTO document WT/REG334/1 of 16 January 2014.

<sup>25</sup> Online information viewed at:

[http://www.mici.gob.pa/imagenes/pdf/doc\\_explicativo\\_pma\\_canada.pdf](http://www.mici.gob.pa/imagenes/pdf/doc_explicativo_pma_canada.pdf).

### 2.3.2.2.3 Trade Promotion Agreement between Panama and the United States

2.30. Until 2012, Panama benefited from the unilateral tariff preferences granted by the United States (GSP and Caribbean Basin Initiative (CBI)), which were bound under the Trade Promotion Agreement (TPA) upon its entry into force on 31 October 2012. This is one of the most important agreements signed by Panama during the period under review, not only because of the importance of its trade and investment relations with the US but also because the TPA has driven forward major reforms to the Panamanian regulatory framework for trade to bring it into line with the commitments entered into the 22 chapters of the TPA, for example in intellectual property, retail trade, government procurement, banking, information technology, rules of origin and clearance of urgent correspondence. The United States is the chief source of FDI in Panama, the number one destination for Panama's exports of goods (20.2%) and Panama's largest source of imports (23.6%).<sup>26</sup>

2.31. The TPA provides for a linear tariff reduction programme except for products regarded as sensitive, for example agriculture, for which longer grace or phasing-out periods were agreed, or the industrial sector, where minor reductions were agreed for the first few years with increases in later years. Panama grants increasing quotas for certain agricultural products (pork, chicken, dairy products, potatoes, onions, beans and rice), and imports of these will be unrestricted after a period of between five and 18 years, depending on the product. The TPA also includes disciplines on investment, intellectual property, trade protection, trade facilitation, government procurement and dispute settlement. Commitments relating to investment and services are based on negative lists.<sup>27</sup>

### 2.3.2.2.4 Panama - Peru

2.32. The agreement between Panama and Peru entered into force on 1 May 2012. The tariff reduction programme is to be implemented between 2013 and 2029. At the end of the transition period, 300 lines of Panama's schedule will remain dutiable. The majority of these lines (270) refer to agricultural products (HS sections I to IV), in particular live animals, animal products and prepared foods. For the corresponding HS sections, the average preferential tariffs will range between 12.2% and 44.4%. Other HS sections where tariffs will continue to apply are: chemicals (VI), plastics and rubber (VII), wood pulp and paper (X) and articles of stone (XIII). The average preferential tariff for these HS sections will vary between 11.3% and 15%. Panama applies tariff quotas, most of which are fixed. The importation of three products (pasta, sweet biscuits and fish flour) may be unrestricted by the end of the transition period (2029). The commitments relating to investment and services are based on negative lists and are generally more extensive than those set out in the GATS schedules.<sup>28</sup> In 2012, 0.8% of Panama's exports of goods went to Peru and 0.5% of its imports originated in that country.

### 2.3.2.2.5 Panama - Chile

2.33. The agreement with Chile entered into force in March 2008. Prior to that date, 18.8% and 33.6% of agricultural and industrial lines, respectively, were already duty free under the MFN regime. The entry into force of the agreement brought greater tariff liberalization for agricultural products than for industrial products (44.3% and 38.1% of lines respectively were duty free). In 2017, liberalization of industrial products will be 97%, including full liberalization of textiles and footwear, and by 2022 all tariffs on industrial products will have been eliminated. The situation will be different for agricultural products: 16.4% of tariff lines will continue to be subject to duty until the end of the transition period. The highest average final tariff (82.5%) will apply to vegetable products, although only 1.4% of tariff lines under that heading will continue to be dutiable. Commitments on investment and services are based on negative lists. Panama substantially extended its commitments in services compared to those entered into under the GATS, especially in relation to the number of sectors subject to liberalization commitments. All sectors are bound at the current level of openness (i.e. non-discrimination), except for financial and key air transport services.<sup>29</sup> The Agreement also contains provisions on government

<sup>26</sup> Online information viewed at: [http://webservices.wto.org/resources/profiles/TP/ZZ/2012/PA\\_s.pdf](http://webservices.wto.org/resources/profiles/TP/ZZ/2012/PA_s.pdf).

<sup>27</sup> Ministry of Trade and Industry (2011b).

<sup>28</sup> WTO document WT/REG313/1/Rev.1 of 26 September 2013.

<sup>29</sup> WTO document WT/REG239/1/Rev.1 of 27 January 2010.

procurement. In 2012, goods exports from Panama to Chile and goods imported from Chile accounted for 0.9% and 0.6% of Panama's total goods exports and imports respectively.

### 2.3.2.3 Other trade agreements

2.34. During the period under review, Panama also signed trade agreements with the countries of the European Free Trade Association (EFTA), Colombia, and Trinidad and Tobago.

2.35. In 2010, EFTA and Panama signed a Joint Declaration on Cooperation, and opened negotiating rounds in November 2011 that ended in December 2012. Costa Rica, Guatemala and Honduras joined the negotiations. Panama and Costa Rica signed the FTA in 2013. The agreement provides that other SIECA member countries may accede to it.<sup>30</sup>

2.36. Panama and Colombia signed an FTA in 2013 following a period of over two years when talks were suspended owing to differences over protection for sensitive products and the regime applicable to the Colón Free Zone (ZLC).<sup>31</sup> Pursuant to the agreement, Colombia will withdraw the mixed tariffs on imports of textiles, clothing and footwear originating in the ZLC that led Panama to request the WTO Dispute Settlement Body to hold consultations (Table 2.1). By signing the FTA, Panama took another step towards joining the Pacific Alliance comprising Colombia, Chile, Peru and Mexico. To be eligible to join the Alliance, a country must have signed an FTA with each of its members and Panama's signature of the FTA with Mexico on 4 April 2014 means that the eligibility requirement has now been met.

2.37. The agreement with Trinidad and Tobago, signed in October 2013, is a partial scope agreement that includes modalities on goods, services and investment. For Panama it represents progress in closer trade relations with the countries of the Caribbean. Panama already has partial scope agreements with Cuba and the Dominican Republic.<sup>32</sup>

### 2.3.2.4 Trade agreements currently being negotiated

2.38. Panama is negotiating free trade agreements with the Caribbean Community (CARICOM) and has held talks in this regard with Aruba, Barbados, Curacao and the Republic of Korea.<sup>33</sup> Panama also participates with 20 other countries in the negotiation of a plurilateral agreement on trade in services in Geneva, outside the framework of the WTO.

### 2.3.3 Other agreements and arrangements

2.39. During the period under review Panama has continued to benefit under the Generalized System of Preferences (GSP) of Austria, the Russian Federation, Japan and Turkey.<sup>34</sup>

## 2.4 Investment regime

### 2.4.1 General framework

2.40. A number of legislative texts define the Panamanian investment regime, including the Constitution, Law No. 54 of 22 July 1998 on Legal Stability of Investment as amended, and Law No. 41 of 24 August 2007 on the special regime for the establishment and operation of multinational business headquarters, as amended by Law No. 45 of 10 August 2012 (section 3.4.1.3). The amendments made to Law No. 54 since 2007 broaden its scope, extending it for example to the supply and transmission of electricity and multinational business headquarters. The amendments also introduce further conditions to extend the scope of the Law,

<sup>30</sup> Online information from EFTA, viewed at: <http://www.efta.int/free-trade/free-trade-news/2013-06-24-central-america.aspx>, and online information from the MICI viewed at: <http://mici.gob.pa/subcategoria.php?cid=15&sid=58>.

<sup>31</sup> Ministry of Trade and Industry (2011a).

<sup>32</sup> Online information from the MICI, viewed at: <http://www.mici.gob.pa/clase.php?cid=15&sid=58&clid=81>.

<sup>33</sup> Online information from the Office of the President of the Republic, viewed at: <http://www.presidencia.gob.pa/4095-Panama-se-reposiciona-en-el-Comercio-mundial>, and online information from the MICI viewed at: <http://www.mici.gob.pa/subcategoria.php?cid=15&sid=58>.

<sup>34</sup> UNCTAD (2011).

such as a requirement to incorporate technical progress, generate productive employment, contribute to geographical decentralization, increase and diversify exports, and employ local labour.

2.41. The Vice-Ministry of Foreign Trade at the MICI is responsible for formulating and implementing investment policy.<sup>35</sup> The Vice-Ministry comprises the National Investment Promotion Directorate, which has responsibility for formulating the annual investment promotion strategy<sup>36</sup> and the Investment and Export Promotion Agency (PROINVEX PANAMÁ).

2.42. PROINVEX PANAMÁ was established in 2010 to promote investment in those sectors that the Government's Strategic Plan for 2010-2014 identified as drivers of economic growth, namely financial services, logistics, tourism and agriculture.<sup>37</sup> The aim of PROINVEX PANAMÁ is to improve interaction with the international business community.<sup>38</sup> PROINVEX PANAMÁ acts as a single window to identify government incentives for investment; it provides information to investors who are in the process of performing due diligence and holds the Master Register of Investments.<sup>39</sup>

2.43. Panamanian law grants national treatment to foreign investors and the enterprises in which they participate.<sup>40</sup> Foreign investors and the enterprises in which they participate have the same rights and obligations as national investors and enterprises, without any restrictions other than those established in the Constitution and the law. Those rights include freedom to trade, engage in industry, import and export. In order to be eligible under the Law on Legal Stability of Investment, an investor must make an investment in conformity with the provisions of an investment plan that includes the requirement to invest at least B 2 million within the period provided for in the law governing the activity in question or in other cases within a minimum period of two years. The plan must be registered with the National Industry and Business Development Directorate (DINADE), which certifies that the investment exists and forwards a copy to the MICI. The MICI then has 60 days to make a decision by reasoned opinion on entering the investment on the register. Law No. 54 ensures legal stability for the purposes of taxation<sup>41</sup>, the customs regime and labour matters for ten years (five years at municipal level), as from the entry of the investment plan on DINADE's Register of Legal Stability of Investment. At July 2013 around 360 enterprises had been entered on the Register.<sup>42</sup>

2.44. Foreign investors do not require prior authorization to invest in Panama unless they benefit from an incentive regime (Chapter 3) or wish to conduct activities that require a concession, licence, permit or other type of authorization. There continue to be prohibitions on private investment in certain sectors (Table 2.4). Nonetheless, although the Constitution reserves gambling operations to the State, the private sector has been able to run gambling halls since 1998 under concession contracts.<sup>43</sup> Similarly, although the Constitution provides that the purchase of mines and other deposits is prohibited, it allows the private sector to operate them through semi-public enterprises or under a concession. In relation to restrictions on foreign investment, the retail trade continues to be reserved to Panamanians, but foreigners who satisfy certain conditions may engage in retail (Table 2.5). Activities as a tour operator or travel agency ceased to be regarded as retail trade activities during the period under review, meaning that foreigners may engage in them.

<sup>35</sup> Decree Law No. 6 of 15 February 2006 and Article 7 of Executive Decree No. 46 of June 2008.

<sup>36</sup> Articles 79-86 of Executive Decree No. 46 of 14 June 2008.

<sup>37</sup> Executive Decree No. 134 of 14 July 2010.

<sup>38</sup> National Government (2009), p. 41.

<sup>39</sup> Executive Decree No. 134 of 14 July 2010 and PROINVEX online information. Online information viewed at:

[http://proinvex.mici.gob.pa/index.php?option=com\\_content&view=article&id=93&Itemid=55&lang=es](http://proinvex.mici.gob.pa/index.php?option=com_content&view=article&id=93&Itemid=55&lang=es).

<sup>40</sup> Article 2 of Law No. 54 of 22 July 1998.

<sup>41</sup> Exempt from indirect taxes.

<sup>42</sup> Law No. 54 of 22 July 1998 and online information from the MICI. Online information viewed at: <http://www.mici.gob.pa/detalle.php?cid=16&id=323>.

<sup>43</sup> Title III of Decree Law No. 2 of 10 February 1998.

**Table 2.4 Prohibitions on investment**

Activity	Foreign	National	Legal framework
Purchase of salt pans, mines, underground and thermal waters, hydrocarbon deposits, quarries and other mineral deposits	x	x	Article 257 of the Constitution
Purchase of land less than 10 km from the border	x		Article 291 of the Constitution
Gambling and betting	x	x	Article 297 of the Constitution
Fishing in Panamanian territorial waters when the product of fishing is sold for immediate consumption on the Panamanian market	x		Article 285 of the Tax Code
Mail and telegraphy services on the national territory	x	x	Article 301 of the Tax Code
Supply of electricity	x	x	Article 46 of Law No. 6 of 3 February 1997

Source: WTO Secretariat.

**Table 2.5 Restrictions on foreign investment**

Activity	Description	Legal framework
Retail trade	Foreigners are allowed to hold equity in enterprises that sell their own output	Article 293 of the Constitution
Public utilities	Limited equity participation	Article 285 of the Constitution
Public radio and television broadcasting service	Limited equity participation	Article 14 of Law No. 24 of 30 June 1999

Source: WTO Secretariat.

2.45. There are no foreign exchange controls in Panama. Foreign investors are guaranteed free repatriation of capital, dividends, interest and the profits arising from their investment. In accordance with anti-money-laundering rules, Panamanian financial entities must inform the authorities of any transaction in excess of B 10,000.

2.46. Dividends paid abroad are subject to dividend tax<sup>44</sup>, and payments of interest, commission and other charges to foreign creditors are subject to income tax.<sup>45</sup> Remittances abroad are subject to income tax.<sup>46</sup> Foreign nationals resident abroad who receive payments for a service performed in Panama, excluding dividends and shareholdings, pay taxes on 100% of the amount remitted<sup>47</sup> and natural or legal persons resident in Panama, whether Panamanian or foreign, who receive payments for a service performed abroad, pay taxes on 50% of the amount remitted. "Payments" includes the payment of royalties, goodwill, fees and income by way of intellectual property rights, etc.<sup>48</sup> Enterprises in the ZLC are not subject to income tax on these payments.<sup>49</sup>

2.47. The Constitution covers the possibility of expropriation by eminent domain or on the ground of social interest, subject to payment of compensation.<sup>50</sup> The compensation is based on the market valuation of the property in question.<sup>51</sup> There were no expropriations by eminent domain during the period 2007-2013.

2.48. Since 2007, Panama has signed six new bilateral investment protection and promotion agreements, bringing the total of such agreements to 24.<sup>52</sup> Additionally, the preferential trade agreements that Panama signed with Canada, Central America, Chile, Chinese Taipei, Peru,

<sup>44</sup> Article 733 of the Tax Code (Law No. 8 of 27 January 1956) as amended.

<sup>45</sup> Article 701(h) of the Tax Code (Law No. 8 of 27 January 1956) as amended.

<sup>46</sup> Articles 694 and 733 of the Tax Code (Law No. 8 of 27 January 1956) as amended.

<sup>47</sup> Article 733 of the Tax Code (Law No. 8 of 27 January 1956) as amended and Note No. 201-01-228 of the Ministry of the Economy and Finance of 15 February 2006. Online information viewed at: [http://www.momentofiscal.com/consultas/Consultas\\_sobre\\_Remesas/Remesas\\_-\\_articulos\\_694\\_y\\_733\\_del\\_CF.pdf](http://www.momentofiscal.com/consultas/Consultas_sobre_Remesas/Remesas_-_articulos_694_y_733_del_CF.pdf).

<sup>48</sup> Article 694 of the Tax Code (Law No. 8 of 27 January 1956) as amended and Note No. 201-01-228 of the Ministry of the Economy and Finance of 15 February 2006. Online information viewed at: [http://www.momentofiscal.com/consultas/Consultas\\_sobre\\_Remesas/Remesas\\_-\\_articulos\\_694\\_y\\_733\\_del\\_CF.pdf](http://www.momentofiscal.com/consultas/Consultas_sobre_Remesas/Remesas_-_articulos_694_y_733_del_CF.pdf).

<sup>49</sup> Article 708(n) of the Tax Code (Law No. 8 of 27 January 1956) as amended.

<sup>50</sup> Article 48 of the Constitution and Articles 21-22 of Law No. 54 of 22 July 1998.

<sup>51</sup> Articles 18 and 21-22 of Law No. 54 of 22 July 1998.

<sup>52</sup> Online Information from the MICI, viewed at: <http://mici.gob.pa/detalle.php?cid=15&sid=105&id=2598>.

Singapore and the United States include a chapter on investment. Panama participates in the Multilateral Investment Guarantee Agency (MIGA) and the International Centre for Settlement of Investment Disputes (ICSID).

2.49. Panama has signed agreements on double taxation and tax information exchange agreements in line with the principles of the OECD on transparency and effective exchange of information in tax matters.<sup>53</sup> At April 2014, Panama had concluded 16 conventions on the avoidance of double taxation and nine agreements on the exchange of information in tax matters.<sup>54</sup>

#### 2.4.2 Establishing a business

2.50. Pursuant to Law No. 5 of 11 January 2007 and Executive Decree No. 26 of 12 July 2007 regulating it, Panama streamlined the procedure for opening a business. In conformity with this Law, natural or legal persons who wish to carry on a commercial or industrial activity need only inform the Panamanian authorities in a start-up notification of the activity they seek to pursue. The notification consists in registration of the following information in the computerized system "PanamáEmprende", administered by the MICI: name or company name, nationality, the applicant's identity or passport number, legal domicile, activity to be carried on, the estimated amount of the investment, the date of commencement of business, email address and sworn declarations or any other requirement laid down by the MICI. Once the procedure has been completed, the declarant prints the start-up notification and the accompanying sworn declaration, signs them and keeps them at his place of business.

2.51. The sworn declaration is a compulsory stage confirming the truthfulness of the information, the facts as declared and compliance with the prerequisites laid down in Law No. 5 or other special laws, such as permits, authorizations, licences or concessions for certain activities. Some activities do not require a start-up notification, for example agricultural activities or handicrafts and self-employed professions.<sup>55</sup>

2.52. The procedure for obtaining a start-up notification generates a one-time fee, a number on the Single Register of Taxpayers (RUC) and a number on the Business Register at the Municipal Treasury. The holder of a start-up notification must keep the notification up to date. An additional start-up notification is required to open a branch, but not administrative offices at a location other than at the principal place of business.

2.53. Foreign businesses can open branches in Panama, hold equity in State or private-capital businesses, and set up new businesses. In conformity with Panamanian trade law, there are various types of company of which the most common is the public limited company.<sup>56</sup> Foreign businesses can also be formed as civil-law partnerships, private foundations, trusts or franchises. During the period under review, Law No. 4 of 2009 repealed Law No. 24 of 1 February 1966 and established a new regulatory framework for the establishment of private limited companies in which limits were no longer imposed in respect of minimum and maximum capital or the maximum number of partners, for example. Additionally, there are no limits on the interest that partners can earn on their contributions, and the requirement to register changes in directors and the establishment and closure of branches has been withdrawn. A commercial company must be entered on the Public Register, a procedure that generates

<sup>53</sup> Online information from the OECD, viewed at:

<http://www.oecd.org/ctp/harmful/jurisdictionscommittedtoimprovingtransparencyandestablishingeffectivexchangeofinformationintaxmatters.htm> and from the Directorate-General of Revenue, viewed at: <https://www.anip.gob.pa/defaultsecure.asp>.

<sup>54</sup> Double taxation: Barbados, Czech Republic, France, Ireland, Israel, Italy, Republic of Korea, Luxembourg, Mexico, Netherlands, Portugal, Qatar, Singapore, Spain, United Arab Emirates and United Kingdom. Exchange of information in tax matters: Canada, Denmark, Faroe Islands, Finland, Greenland, Iceland, Norway, Sweden and United States.

<sup>55</sup> Law No. 5 of 11 January 2007 and Executive Decree No. 26 of 12 July 2007 contain the list of regulated activities subject to prescribed formalities and of activities exempt from the requirement to submit a start-up notification.

<sup>56</sup> Other types of commercial company are: general partnerships, cooperatives, limited liability companies, limited partnerships and temporary partnerships or joint venture partnerships.

payment of an annual fee and other duties; the requirement to pay an annual registration fee does not apply to cooperatives.<sup>57</sup>

2.54. The Labour Code provides that employers must employ Panamanian nationals. The concept of "Panamanian nationals" includes the foreign spouses of Panamanian nationals who have been resident in Panama for ten years. The Code limits recruitment of foreigners to 10% of staff or 15% in the case of specialist staff. Recruitment of foreign staff requires authorization from the Ministry of Labour. When the authorization expires (maximum five years) the business must replace the foreign worker with a Panamanian worker.<sup>58</sup> Businesses with fewer than ten workers are authorized to employ a foreign worker on a temporary basis. Additionally, the Panama Canal Authority (PCA) only authorizes the recruitment of foreigners once all means of recruiting Panamanian nationals have been exhausted; if only foreign candidates are available, preference goes to those who are married to Panamanian nationals or can prove ten years' continuous residence in Panama. The director of the PCA must be a Panamanian national.<sup>59</sup>

2.55. The restrictions on the recruitment of foreign staff are set out in Panama's WTO Schedule of Specific Commitments.<sup>60</sup>

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<sup>57</sup> Law No. 17 of 1 May 1997 and Article 318-A of the Tax Code as amended by Article 1 of Law No. 28 of 8 May 2012.

<sup>58</sup> Labour Code, Articles 17-18.

<sup>59</sup> Article 14 of Law No. 19 of 11 June 1997.

<sup>60</sup> WTO document S/DCS/W/PAN of 24 January 2003.

### 3 TRADE POLICIES AND PRACTICES, BY MEASURE

#### 3.1 Overview

3.1. Panama continued to modernize its customs system throughout the period under review, adopting a new law, creating the National Customs Authority (ANA) and updating its computer system. Other trade facilitation measures taken by Panama included the introduction of advance rulings and post-clearance controls, the entry into effect of the single window for exports, the creation of an authorized economic operator programme and the adoption of a regional transit scheme. Pursuant to the new customs law, the value of some imports, as determined by ANA, are subject to prior determination if there is a justified risk, and they must be accompanied by a sworn declaration of value signed by the importer.

3.2. In 2013, Panama adopted the Central American Import Tariff, based on the Central American Tariff System (SAC), when it joined the Central American Economic Integration Subsystem (SIECA). In October 2013, the simple average of Panama's MFN tariffs was 7.6%. The average tariff on agricultural products (WTO definition) remained over double (13.7%) that on other products (6.4%). Virtually all import duties are *ad valorem*. Panama bound all its tariffs at an average rate of 23.7% when it became a Member of the WTO, although for a large number of products the applied rates are higher than the bound rates. Panama has several tariff quotas for agricultural products.

3.3. Under the free trade and other trade or integration agreements signed by Panama and in force in late 2013, it applied preferential tariffs to imports from over 20 trading partners in America, Europe and Asia.

3.4. There is an Administrative Charge for Customs Services on imports, as well as a fee for using the Customs computer system. Imports are also subject to the Tax on the Transfer of Movable Property and the Provision of Services (ITBMS), the Selective Consumption Tax (ISC), and the Consumption Tax on Petroleum-Derived Fuels (ICCDP). Panama gives imports national treatment when applying domestic taxes, except for fuel mixed with ethanol from abroad, to which a higher rate of ICCDP applies, and imported motor vehicles, which are subject to a minimum rate of ISC that varies according to the age of the vehicle.

3.5. Some imports are banned or restricted for sanitary, phytosanitary, health or safety reasons. During the review period, Panama pursued its efforts to build up its institutional and technical capacity for the application of sanitary and phytosanitary (SPS) measures. Nevertheless, improvements are still needed in areas such as risk analysis, training of personnel and the establishment of a national SPS committee, *inter alia*. Panama notified eight SPS measures to the WTO between 2007 and 2013, five of them being emergency measures. There have been no fundamental changes as regards technical regulations. Panama has 88 of these, mostly covering food products, but only six have been notified to the WTO since 2007. Panama has no mutual recognition agreements, but does recognize the conformity assessment certificates issued by foreign agencies duly accredited by bodies recognized by international organizations.

3.6. Panama has not made frequent use of contingency measures. During the period under review, it only conducted one anti-dumping investigation, which concluded without any definitive duties being applied, and another investigation which led to the adoption of safeguard measures for a period of one year. In 2009, Panama adopted regulations containing procedural rules for conducting anti-dumping, subsidy and safeguards investigations.

3.7. Exports of some marine species, flammable products and weapons are subject to a permit or compliance with special formalities. The export of wood in slabs or blocks or simply planed is prohibited for environmental reasons and in order to boost national value added. There are no export taxes, except on products manufactured from native woods. Domestic taxes are not imposed on exports.

3.8. Panama notified the WTO of three export subsidy programmes: the Export Processing Zones (ZPE), Official National Industry Register (ROIN), and Tax Credit Certificate (CAT) programmes. In 2007, Panama was given an extension until 31 December 2015 to eliminate export subsidies granted under the ZPE and ROIN programmes (it did not request an extension for



the CAT programme). In order to comply with its WTO commitments, Panama eliminated the CAT at the end of 2009; in January 2010, it introduced the Industrial Promotion Certificate to replace the ROIN; and in April 2011 approved Law No. 32 on free zones, which repealed the ZPE law, broadened the categories of eligible enterprises and modified the tax regime applicable to them, withdrawing the exemption from income tax and the tax on dividends, *inter alia*. Free zones only contribute a limited share of exports, which amounted to 3% of total exports (including re-exports) in 2013.

3.9. Moreover, the Colón Free Zone (ZLC) is an important centre for logistics and distribution of goods, ranking as the world's second largest free zone with a volume of trade (imports and re-exports) exceeding US\$27 billion in 2013, i.e. 66% of Panama's total foreign trade. The ZLC's activities slowed down over the past year, however, owing to a number of factors. Companies established in the ZLC are given exemption from payment of taxes on: imports, re-exports and goods manufacturing, re-export earnings and repatriation of dividends, as well as exemption from other national and provincial taxes.

3.10. Panama has other tax and financial incentive programmes to promote the development of micro and small enterprises and the establishment of head offices of multinational companies, and to support specific sectors such as agriculture and tourism.

3.11. In 2007, a new competition and consumer protection law was adopted (Law No. 45), in which the major changes included the introduction of an economic efficiency criterion, the concept of cornering the market as a relative monopolistic practice, a limitation on the time given to collect evidence for judicial hearings, a payment for information scheme and higher fines. Although competition policy has been applied more forcefully since the adoption of Law No. 45, a high level of concentration remains in certain markets, particularly in the case of goods. In some markets, only a few businesses are active while in others tariff protection is high (agricultural products). In addition, as far as consumer protection policy is concerned, the authorities monitor the price of fuels, medicines and goods in the basic basket. The price of public services and utilities such as land transport of passengers and rates for the distribution and sale of electricity are also regulated.

3.12. Panama has notified the WTO that it has no State trading enterprises within the meaning of Article XVII of the GATT. Government enterprises and semi-public companies operate in public service sectors such as airports, ports, generation and distribution of electricity, and telecommunications. There have been no major privatizations since 2007.

3.13. Panama adopted several laws reforming and clarifying government procurement legislation during the review period. These mostly concern procedural matters, for example, the extension of time-limits for submitting bids and speeding up the work of the evaluation commission, all of which tend to favour bidders. There still appears to be frequent recourse to special procedures, however. In August 2013, Panama announced its decision not to accede to the WTO Plurilateral Agreement on Government Procurement. In some of the bilateral agreements it has signed with trading partners, it has adopted government procurement commitments, covering also procurement by the Panama Canal Authority (ACP). The authorities have announced their intention of continuing to negotiate access to government procurement markets on a bilateral basis.

3.14. In 2012, Panama amended its intellectual property legislation in order to bring it up to date and harmonize it with its international commitments in that regard. The amendments cover all intellectual property rights (IPRs), extend terms of protection and amplify administrative provisions, provide stronger rules on enforcement and increase the penalties. The import or export of counterfeit, altered or imitated products is defined as a crime in the Penal Code, even if they are in transit through Panama.

## 3.2 Measures directly affecting imports

### 3.2.1 Customs procedures

3.15. ANA, which is part of the Ministry of the Economy and Finance (MEF), was set up by Decree Law No. 1 of 13 February 2008 as the highest authority in the national customs service.<sup>1</sup> It is responsible for controlling, monitoring, and overseeing the entry, exit and movement of goods, persons and means of transport at Panama's borders, ports and airports, for the purposes of collecting taxes and exercising appropriate controls, as well as for preventing, investigating and punishing customs violations, drawing up foreign trade statistics and intervening in international goods traffic.

3.16. Customs activities are governed by the Political Constitution, the international treaties ratified by Panama, the Tax Code, various laws, decree laws and Cabinet decrees. A new customs law was adopted during the period under review, Decree Law No. 1 of 2008, which, in addition to creating ANA, regulates customs activities, the various customs regimes applicable to goods and relations between ANA and natural or legal persons involved in the entry, stay and exit of goods in Panamanian territory.<sup>2</sup> The scope of this Decree Law covers the whole of Panama's territory, including free zones and other special economic zones. The procedures for the various customs regimes (import, export, tax exemptions and special regimes) are laid down in Cabinet Decree No. 41 of 11 December 2002. The authorities are planning to update these rules in order to bring them into line with Central American customs rules. Panama belongs to the World Customs Organization, but has not formally adopted the revised Kyoto Convention (1999).

3.17. In 2012, Panama signed the Protocol of Incorporation into SIECA, which came into force on 6 May 2013.<sup>3</sup> Since then, Panama has adopted the Central American Import Tariff (based on the SAC) with a few exceptions; the Central American Uniform Customs Code (CAUCA) and its implementing Regulations (RECAUCA), subject to certain time-limits and conditions (concerning, *inter alia*, customs brokers and appeal of decisions by the Customs); as well as other Central American regulations. Panama will adopt further SIECA instruments by January 2017 at the latest (section 2.3.2.1.2).

3.18. The services of a customs broker must be used when importing goods, except in those cases covered by the law or international treaties signed by Panama. This requirement does not apply to imports of goods whose c.i.f. value does not exceed B 500 (US\$500); imports by the State; imports shipped to diplomats accredited to Panama; travellers' luggage not exceeding B 2,000 (twice a year); transactions covered by the transshipment or storage regimes; and goods entering free zones.<sup>4</sup> Customs brokers have to obtain a licence issued by ANA's Director; they must be Panamanian citizens and have a degree in customs public administration, in addition to other requirements.

3.19. Panama does not require preshipment inspection or any similar procedure.

3.20. All goods entering Panamanian territory require a customs declaration, in which the consignee freely states the customs destination or regime to which the goods will be subject. The declaration must be made electronically. A pre-declaration (preliminary declaration) must be drawn up for customs destinations which require prior authorization or licensing by an authority. This is also required when registering the final declaration in the Customs' computer system.

3.21. On 1 October 2011, the Integrated Customs Management System (SIGA)<sup>5</sup> came into effect to replace the Integrated Foreign Trade System (SICE), with the purpose of streamlining and speeding up procedures and the Customs' immediate response capacity. SIGA is an electronic platform for exchanging information among trade operators, governmental control bodies and ANA and must be used for all customs regimes. International cargo manifests and declarations are submitted through SIGA. It can also be used to obtain the authorizations required by various

<sup>1</sup> The National Customs Authority replaced the Directorate-General of Customs.

<sup>2</sup> Decree Law No. 1 of 2008 repealed Law No. 16 of 29 August 1979, Law No. 41 of 1 July 1996, and Articles 58-64 of Law No. 30 of 8 November 1984 (Customs Penal Regime).

<sup>3</sup> The Protocol was incorporated into domestic legislation by Law No. 26 of 17 April 2013.

<sup>4</sup> Articles 42 and 43 of Decree Law No. 1 of 2008.

<sup>5</sup> Cabinet Decree No. 27 of 27 September 2011 and ANA Resolution No. 230 of 29 September 2011.

control bodies such as the Ministry of Health (MINSa), the Panamanian Food Safety Authority (AUPSA) and the Ministry of Agricultural Development (MIDA). Work is proceeding on linking other competent bodies to SIGA. Tariffs and taxes are paid at two State banks or at the National Public Revenue Authority (ANIP) (formerly the Directorate-General of Revenue). Customs brokers have to be registered and in possession of a key for access to SIGA.<sup>6</sup>

3.22. Panama has a single window based on SIGA, but for the time being it is only operative for exports. An Interinstitutional Commission<sup>7</sup> is currently working on introducing a Single Window for Foreign Trade (VUCE) to be operated by the Ministry of Trade and Industry (MICI), which will also be used for imports and transit traffic.

3.23. Before goods arrive at a Panamanian port or when they are being unloaded, the carrier must submit the international cargo manifest, through SIGA, giving details of the bills of lading covering the cargo being shipped. In order to complete the importation, the customs broker (or any customs intermediary) must prepare a pre-declaration (preliminary declaration) and furnish the following documents: the original commercial invoice, bill of lading (air or maritime waybill or transport document), the certificate of origin where applicable, and the permit in the case of restricted imports (section 3.2). SIGA processes this information automatically and only accepts registration of the definitive declaration when all these requirements have been met. Pursuant to the legislation, clearance can be completed (including payment of duty) before the goods arrive.<sup>8</sup>

3.24. Goods imported by post must be accompanied by the commercial invoice and, if their value is B 100 to B 500, clearance is simplified using a "Postal Package" form; if they are worth more than B 500, they are subject to general customs procedures. There is an accelerated customs clearance system for express consignments, which allows courier operators to use a simplified import procedure. By submitting the express consignment manifest pre-registered with SIGA, a person legally authorized as a "courier" may obtain the immediate release of certain goods of a value not exceeding B 100 without further processing, and for example, documents, correspondence and business papers.<sup>9</sup>

3.25. There is also a system for clearance by posting a bond, which is available for temporary imports, urgent imports or perishable goods, disputed imports or imports lacking certain documents, as well as those covered by a special partial or total exemption regime. The bond guarantees payment of the tariffs and taxes owing and may cover several import transactions or a single transaction/customs destination.<sup>10</sup>

3.26. The legislation provides that the Customs is to use risk analysis to identify persons or goods that are to be made subject to control (inspection) and to determine the scope of the latter.<sup>11</sup> ANA has an Interinstitutional Risk Analysis Office responsible for preparing risk profiles and conducting pre-clearance, in-clearance and post-clearance controls. For in-clearance controls, a software tool is used to determine the level of inspection to be applied to the goods, taking into account safety criteria, the existence of non-economic prohibitions, trade treaties and tariff classification. When Panama assessed the country's needs in the context of the multilateral negotiations on trade facilitation, the authorities recognized that more experience was necessary in developing and detecting risk profiles, as well as technology and equipment to improve their management. According to another evaluation, compliance with risk management procedures by the regional Customs needed to be reinforced.<sup>12</sup>

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<sup>6</sup> The forms for registering with SIGA are available on the SIGA website at: [http://www.ana.gob.pa/index.php?option=com\\_content&view=article&id=456&Itemid=140](http://www.ana.gob.pa/index.php?option=com_content&view=article&id=456&Itemid=140).

<sup>7</sup> The Commission was set up by Executive Decree No. 130 of 14 August 2012 and is composed of the Ministry of Trade and Industry, ANA, the ZLC and the Government Innovation Authority.

<sup>8</sup> Cabinet Decree No. 3 of 7 February 2001 and Decree Law No. 1 of 2008 (Article 91).

<sup>9</sup> Articles 224-248 of Cabinet Decree No. 41 of 2002 and Article 36 of Decree Law No. 1 of 2008.

For further information on this method, view online information from ANA at:

[http://www.ana.gob.pa/index.php?option=com\\_k2&view=item&id=121%3AAdespacho-aduanero-inmediato-de-envios-de-expresos&Itemid=197](http://www.ana.gob.pa/index.php?option=com_k2&view=item&id=121%3AAdespacho-aduanero-inmediato-de-envios-de-expresos&Itemid=197) [July 2013].

<sup>10</sup> Articles 129-132 of Decree Law No. 1 of 2008 and Articles 266-284 of Cabinet Decree No. 41 of 2002.

<sup>11</sup> Article 27 of Cabinet Decree No. 27 of 27 September 2011.

<sup>12</sup> USAID (2009).

3.27. The authorities have indicated that the average time needed to clear goods is two hours within SIGA and 48 hours up to the release of the goods from the Customs, provided that all the necessary formalities and authorizations have been complied with. Regarding the application of the various forms of control, the authorities have said that, in September 2013, 87.98% of declarations went through the green channel (with no inspection); 1.66% through the orange channel (inspection of documents) and 10.36% through the red channel (physical and documentary inspection). Close to 60% of the latter were determined on the basis of risk profiles and the remainder were chosen at random.

3.28. Goods in international transit through the Republic of Panama are not inspected, except in special cases in which the Customs exercises its powers or in order to comply with an order from a judicial authority other than the Customs.<sup>13</sup> Under the Panama Canal Neutrality Treaty, the transit of goods through the Panama Canal has become a sort of international right of way, involving national security controls but no controls for customs purposes. Transit does not generate any customs formalities.

3.29. ANA has the power to inspect and/or detain goods in transit (even through the Panama Canal) under any customs regime if there is any suspicion that the goods infringe intellectual property rights.<sup>14</sup> More specifically, Law No. 1 of 2008 (Article 100) provides that ANA may suspend or prevent customs clearance, and withhold goods presumed to infringe intellectual property rights granted in Panama or under international agreements signed by Panama.

3.30. Entry of goods into free zones, including the ZLC, is not regarded as being importation into Panamanian customs territory and is subject to a special customs regime (section 3.3.4). In order to enter goods into the ZLC that have not undergone customs clearance, a Commercial Activity Form authorized by the ZLC's Trade Department has to be furnished, for which a copy of the bill of lading and a duly attested copy of the commercial invoice are required.<sup>15</sup>

3.31. The legislation provides for an administrative procedure for settling disputes relating to technical disagreements regarding valuation (examination of the goods), the content of shipments, the origin, the weight, the quantity, the tariff classification or the value of the goods.<sup>16</sup> Complaints are made in the first instance to the Regional Administrator, who may confirm the valuation or modify it. The decisions of the Regional Administrator may be contested before the MEF's Tariff Commission<sup>17</sup>, whose ruling is final and exhausts government channels. Decisions on tariff classification have general effect and must be made available to the public, whereas decisions on any other matters only have effect on the actual subject of the decisions. ANA may authorize the release of goods that are the subject of a dispute, provided that a bond is posted to cover any duties, taxes or charges applicable.

3.32. Taking as a basis ANA's Strategic Plan for 2011-2015, Panama has adopted measures to update its customs legislation and system with a view to facilitating international trade and ensuring the security of the logistics chain. In addition to applying SIGA, these measures include implementation of advance decisions and post-clearance controls, partial application of the VUCE, an authorized economic operator programme that is currently being developed, the use of non-intrusive inspection equipment for cargo, improvements to the infrastructure and training of customs personnel, together with use of a traceability system for cargo in regional transit.

3.33. Decree Law No. 1 of 2008 (Article 89) provides that any person with a direct or legitimate interest may pose a question in advance in writing or electronically to ANA with regard to the application of technical regulations, the tariffs in force and valuation issues. ANA's opinion is binding, although an interested party has a specific period in which to contest a decision on valuation. ANA's decisions and the outcome of the complaint concerning valuation must be made

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<sup>13</sup> Article 152 of Cabinet Decree No. 41 of 11 December 2002.

<sup>14</sup> Article 4 of Executive Decree No. 123 of 26 November 1996.

<sup>15</sup> Cabinet Decree No. 6 of 15 March 2002 on control of goods that have not undergone customs clearance.

<sup>16</sup> Title XII of Decree Law No. 1 of 2008.

<sup>17</sup> This is composed of: a customs official, the Minister of Trade and Industry, the Director of the Price Control Office, a member of the Office of the Comptroller-General of the Republic, a representative of the business sector and one from the industrial sector, and a member of the second-instance court for valuation attached to the MEF.

available to the public. Work is currently proceeding on a plan to publish decisions and enable parties to interact on a website.

3.34. Legislation allows ANA to verify the accuracy of the declaration and compliance with customs and foreign trade formalities after clearance. It has five years after acceptance of the declaration in which to conduct the verification. The Authority may require payment of the duties and taxes not paid, including interest, and may also initiate relevant judicial proceedings.<sup>18</sup> The customs authorities have indicated that 466 post-clearance inspections were conducted between 2007 and 31 October 2013.

3.35. Panama has drawn up a regulatory framework for the application of an Authorized Economic Operator (AEO) system, based on the World Customs Organization's model. Operators who obtain their AEO certificate will be given advantages such as: less stringent physical and documentary inspections; priority for controls; opportunity to conduct inspections on their own premises; prior notification of inspections; a guarantee stamp accrediting them; reduction in time and cost; and recognition in other countries that have the same programme. Pursuant to Executive Decree No. 998 of 2 October 2013, the pilot phase of the AEO programme has been introduced and six operators have been accredited; the authorities have indicated that regulations on security status still have to be worked out. The concept and the requirements of the AEO programme are set out in the CAUCA and the RECAUCA.

3.36. Pursuant to Cabinet Decree No. 12 of 1 May 2012, the digitalized Mesoamerican International Transit (TIM) system came into effect, enabling international transit cargo to be traced throughout Central America so as to lessen waiting time at border crossings. Consideration is being given to modifying the TIM so as to improve customs controls in the region.

3.37. During the review period, Panama's Customs pursued its efforts to combat piracy and counterfeit goods at the country's borders, for which it received recognition from the WCO in August 2012. According to data provided by ANA, between 2009 and 2013, the c.i.f. value of goods withheld because of alleged trademark counterfeiting amounted to B 198.1 million; and from November 2009 to December 2013, 1,803 containers were detained.

### 3.2.2 Customs valuation

3.38. The WTO Customs Valuation Agreement is an integral part of Law No. 23 of 15 July 1997 by which Panama approved the Marrakesh Agreement Establishing the World Trade Organization. Panama started to implement the Customs Valuation Agreement (CVA) in full in January 1997 pursuant to Cabinet Decree No. 26 of 1 August 1996 and the resolutions implementing it.<sup>19</sup> Moreover, Decree Law No. 1 of 2008 (Article 109) provides that the determination of customs value is to be governed by the CVA and its annexes.

3.39. Pursuant to the CVA, in Panama customs valuation of imported goods is first and foremost based on the transaction value. If it is necessary to use alternative methods of valuation, Panama also follows the provisions in the CVA. The authorities have indicated that the transaction value applies to 99% of declarations.

3.40. Decree Law No. 1 of 2008 empowers ANA to determine that some imports are subject to mandatory consultation with the Valuation Department prior to clearance if there is a justified risk because of their source, origin, value, nature or condition. Such goods must be valued according to objective and quantifiable criteria following general accounting practices and in conformity with the CVA, Cabinet Decree No. 26 of 1 August 1996 and the general regulations issued by the customs authority.<sup>20</sup> Under Resolution No. 230 of 29 September 2011, ANA introduced a "Sworn Declaration of Value" form for goods subject to mandatory prior consultation.<sup>21</sup> This declaration is an instrument signed by the importer or his legal representative in which he declares, on oath, the existence and terms of a commercial transaction so that controls may be conducted prior to clearance, when there is a justified risk. The following are some of the goods determined by ANA to be subject to mandatory prior consultation regarding their value: new and used automobiles;

<sup>18</sup> Articles 117 and 133-136 of Decree Law No. 1 of 2008.

<sup>19</sup> Resolutions No. 704-04-017 of 10 January 1997 and No. 704-04-532 of 17 September 1997.

<sup>20</sup> Articles 90 and 110 of Decree Law No. 1 of 2008.

<sup>21</sup> The form appears in Annex 2 to Resolution No. 230 of 29 September 2011.

new and used boats and planes; new and used heavy-duty equipment; machinery for the mining industry and new and used self-propelled machinery; tiles and clay roof tiles; used tyres; used clothing; toilet paper, paper towels, serviettes, exercise books, notebooks and folders; edible oil and onions.<sup>22</sup>

3.41. Panama notified its customs legislation to the WTO and replied to the checklist of issues on enforcement and administration of the CVA in 1998.<sup>23</sup> It also notified that, since October 1997, it had applied the CVA's decisions on the treatment of interest charges in the customs value of imported goods and the valuation of carrier media bearing software for data-processing equipment.<sup>24</sup>

3.42. The legislation includes provisions on disagreement regarding the customs value of goods.<sup>25</sup> Where ANA has reason to doubt the declared value before accepting the declaration, it may request further information from the declarant. If ANA continues to entertain reasonable doubts after it has received this information, it may decide that the customs value of the goods cannot be determined using the transaction value and informs the declarant in writing of the reasons for its decision, which is binding. The importer has the right to lodge an appeal, without any penalty, within a period of three working days of the notification of the decision and before the customs declaration is accepted. If a first-instance appeal has been made to the Regional Administrator, a second-instance appeal may be made to the Tariff Commission within eight working days following notification of the ruling given in the first instance. The decision by the Tariff Commission exhausts government channels and so the next recourse would be through administrative litigation channels.

3.43. If an import declaration has already been submitted and during clearance of the goods the customs official has reasonable doubts concerning the declared value, the documents are forwarded to the Regional Administrator, who has to take a decision within a period not exceeding 30 days, indicating whether or not there is a discrepancy. Once the decision has been notified, the interested party may appeal to the Tariff Commission within eight days. In any event, if the importer manages to dispel the reasonable doubt, ANA notifies the interested party of acceptance of the declared value. If, on the other hand, it is determined that the importer has falsified the information, ANA may order the initiation of an investigation into a customs offence. According to data from ANA, between January 2009 and October 2013 there were 33 complaints against decisions by the Customs with regard to the value of goods, of which three went forward to the Tariff Commission. Five of these cases concerned the value of used vehicles.

3.44. By Resolution No. 072 of 10 September 2009, ANA provisionally suspended the application of Resolutions No. 704-04-528 of 1 October 1997 and No. 704-04-019 of 10 January 1997, which set out the provisions for determining the customs value of used goods in general and of used vehicles, respectively. Consequently, Cabinet Decree No. 26 of 1 August 1996 currently applies to both new and used goods. The authorities have indicated that, in 2012, 100% of new vehicles and 99.7% of used vehicles were valued according to the transaction value. They stated, however, that some cases of alleged under-invoicing of used vehicles were being investigated.

### 3.2.3 Rules of origin

3.45. Panama has no non-preferential rules of origin.

3.46. Panama applies preferential rules of origin in the context of the trade agreements it has signed (section 2.3.2). Below are described some general aspects of the rules of origin in the agreements which came into force from 2007 onwards, namely: the agreement with Chile; the bilateral protocols with Costa Rica, Honduras, Guatemala and Nicaragua under the Central America-Panama Free Trade Agreement<sup>26</sup>; the agreements with Peru, the United States of America and Canada, and the Association Agreement between the European Union and Central America,

<sup>22</sup> Resolution No. 230 of 2011, amending Resolution No. 704-04-017 of 10 January 1997.

<sup>23</sup> WTO documents G/VAL/N/1/PAN/1 and G/VAL/N/2/PAN/1, both of 8 October 1998.

<sup>24</sup> WTO document G/VAL/N/3/PAN/1 of 8 October 1998.

<sup>25</sup> Articles 145-147 of Decree Law No. 1 of 2008.

<sup>26</sup> There are provisions on rules of origin in the Central America-Panama FTA, both in the Agreement itself, which applies to all Central American countries belonging to the CACM and Panama, and in the bilateral protocols, which only apply to the countries which have signed each protocol.

whose trade chapter came into effect for Honduras, Nicaragua and Panama on 1 August 2013.<sup>27</sup> Panama has notified the WTO of the bilateral rules of origin applying to Nicaragua and Guatemala under the Central America-Panama FTA<sup>28</sup> and the rules of origin in the Association Agreement with the EU.<sup>29</sup> Furthermore, when its Protocol of Incorporation into SIECA came into force (May 2013), Panama adopted the Central American Regulations on the Origin of Goods and their Annex, with some exceptions<sup>30</sup> and undertook to negotiate with the other countries belonging to SIECA, within a period not exceeding six months as of the entry into force of the Protocol, the harmonization of the specific rules of origin whose application had been temporarily suspended.

3.47. In general, the trade agreements that have entered into force for Panama since 2007 have similar rules of origin.<sup>31</sup> Specific rules of origin vary, however, in each agreement or bilateral protocol, and for different products, in order to take into account the special features of the countries party to each agreement. Textiles and clothing are usually the subject of special rules of origin.

3.48. In the majority of agreements signed by Panama, a good is deemed to be originating if it meets one of the following criteria: (i) it has been wholly obtained or produced in the territory of one or more of the parties; (ii) it has been produced in one or more parties from non-originating materials, with a change in tariff classification or a regional content value, or a combination of the two; or (iii) it has been produced in one or more parties exclusively from originating materials. In the Agreement between Central America and the EU, the following are the general criteria conferring origin: the product must have been wholly obtained in one of the parties; the product has been obtained in one of the parties incorporating materials not wholly obtained in one of the parties provided that these materials have been sufficiently worked or processed in one of the parties.

3.49. In almost all the agreements (except that with the EU), the change in tariff classification criterion, which usually requires a change in tariff heading, applies. In some cases, however, a change in tariff chapter is required (for agricultural, mineral and other products) or a change in tariff subheading (coffee, tea, base metals).

3.50. Some products have to comply with a minimum value of regional content (RCV), usually 30% to 45%, although in the bilateral protocols between Panama and some Central American countries, the RCV is higher and may reach as much as 85%. It is either applied as a single criterion or combined with a change in tariff classification. Generally, two formulas are used to calculate the RCV: the build-down method (the value of non-originating materials is deducted from the adjusted value of the product) or the build-up method (obtained by adding the value of originating materials). A third is the net cost method, used to calculate the RCV of automobile parts and components (for example, in the agreement between Panama and the United States).

3.51. All the agreements mentioned contain a *de minimis* rule which allows a non-originating good to be deemed as originating if the value of all the non-originating materials of which it is composed do not exceed 10% of the value of the good. For textiles and clothing, the weight of non-originating yarns and fibres must not exceed 10% of the material's weight.

3.52. The agreements allow for cumulation of origin between the parties and, in some cases, also in respect of third countries with which each party has a trade agreement. The agreement between Panama and Peru, for example, not only allows bilateral cumulation but also cumulation in respect of materials from Central American countries, provided that both Panama and Peru have an agreement in force with those countries, respectively, and that specific rules of origin are observed.

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<sup>27</sup> For the agreements which came into force prior to 2007, see WTO (2007).

<sup>28</sup> WTO documents G/RO/N/92 of 9 April 2013 and G/RO/N/95 of 16 May 2013.

<sup>29</sup> WTO document G/RO/N/93 of 9 April 2013.

<sup>30</sup> The exceptions are set out in Annex 6(a) to the Protocol. For these, the bilateral rules of origin under the FTA between Central America and Panama and its bilateral protocols will continue to apply,

<sup>31</sup> The chapters and annexes on rules of origin in these agreements and protocols can be viewed on the website of Panama's MICI at: <http://www.mici.gob.pa/subcategoria.php?cid=15&sid=57>.

3.53. The provisions on administering rules of origin (verification, certification, etc.) are usually included in the chapters on rules of origin and customs procedures. In Panama's agreements with Chile, Central America, Canada, the United States and Singapore, certificates of origin are completed and signed by the exporter and submitted at the time of the import declaration, without any need for endorsement by an official body. The agreement with the United States allows the importer to issue the certificate of origin for a product which he himself is going to import and provides for the adoption of electronic certificates of origin. In the agreements with Peru and the EU (as well as in those with Colombia, the Dominican Republic and Chinese Taipei, in force before 2007), the certificate of origin must be issued by an office authorized by the respective government. In Panama, this task falls to the Vice-Ministry of Foreign Trade (VICOMEX), which bases itself on a determination of origin from the MICI's Directorate-General of Industry.

3.54. It is ANA's responsibility to conduct investigations into the control and verification of origin, in coordination with the MICI's National Directorate for the Administration of International Trade Agreements and Trade Protection. ANA's tasks in relation to verification of origin include monitoring free zones so as to ensure that goods in transit there do not undergo further processing or operations other than unloading, reloading or any other operation needed for their conservation or transport to other countries.

### 3.2.4 Tariffs

#### 3.2.4.1 Structure and levels

3.55. Panama gives at least most-favoured-nation (MFN) treatment to all its trading partners, and does not apply seasonal, temporary or variable tariffs.

3.56. Since its integration into SIECA in May 2013, Panama has adopted the Central American Import Tariff, with some exceptions. This follows the SAC for the classification of goods, which in turn is based on the Harmonized Commodity Description and Coding System (HS). The Fifth Amendment to the HS was incorporated into the SAC on 1 January 2012.<sup>32</sup>

3.57. At the end of 2013, Panama's tariff was composed of 8,881 eight-digit tariff lines, of which 99.7% were *ad valorem*<sup>33</sup>, and applied to the c.i.f. value of the goods (Table 3.1). The arithmetic average of the applied MFN tariffs was 7.6%, lower than the 8.5% applied in 2007. This situation can be explained by the lowering of tariffs on certain products such as food, clothing, vehicles and products covered by the WTO Information Technology Agreement. The percentage of duty-free lines rose to 34.5% in 2013 and the percentage of tariff lines subject to rates exceeding 15% (international tariff peaks) fell to 1.5%.

**Table 3.1 Structure of MFN tariffs, 2007 and 2013**

(%)

	2007 (HS02)	2013 (HS12)
Total number of lines	8,918	8,881
Non- <i>ad valorem</i> tariffs (% of tariff lines)	0.0	0.3
Non- <i>ad valorem</i> tariffs with no AVEs (% of tariff lines)	0.0	0.3
Tariff quotas (% of tariff lines)	0.8	0.7
Duty-free tariff lines (% of tariff lines)	29.8	34.5
Average tariff for dutiable lines (%)	12.1	11.6
Arithmetic average	8.5	7.6
Agricultural products	15.1	13.7
Non-agricultural products (including petroleum)	7.3	6.4
Domestic tariff "peaks" (% of tariff lines) <sup>a</sup>	1.5	1.4
International tariff "peaks" (% of tariff lines) <sup>b</sup>	2.3	1.5
Overall standard deviation of applied rates	10.2	10.9

<sup>32</sup> Resolution No. 263-2011 of 27 July 2011 of SIECA's Council of Ministers for Economic Integration (COMIECO).

<sup>33</sup> Of the tariff lines, 0.3% corresponding to boats (heading 89.03) are subject to specific tariffs pursuant to Cabinet Decree No. 34 of 11 September 2012.



	2007 (HS02)	2013 (HS12)
"Nuisance" applied rates (% of tariff lines) <sup>c</sup>	0.1	0.1
Bound tariff lines (% of tariff lines)	100.0	100.0

- a Domestic tariff peaks are defined as those exceeding three times the overall simple average applied rate.
- b International tariff peaks are defined as those exceeding 15%.
- c "Nuisance" rates are those greater than zero but less than or equal to 2%.

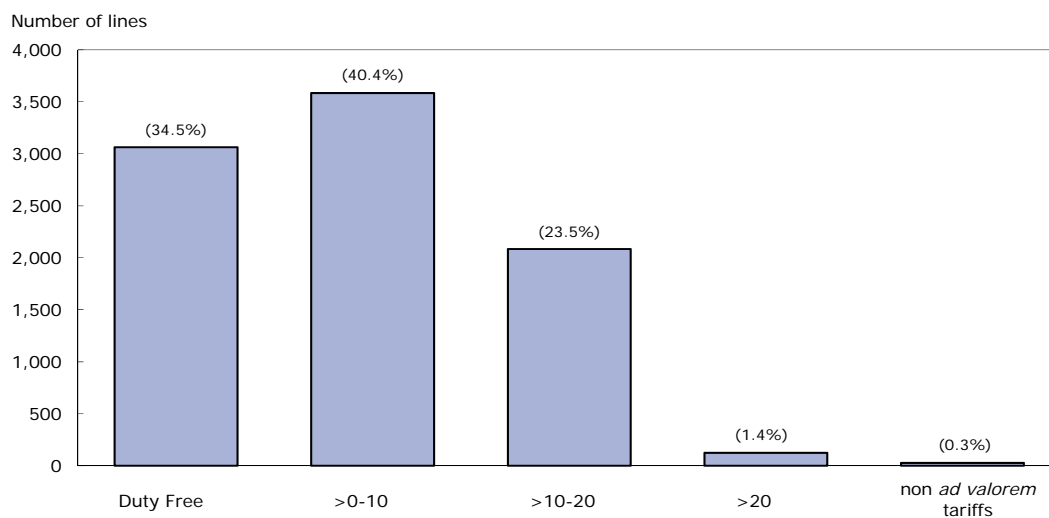
Source: WTO Secretariat calculations, based on data provided by the authorities.

3.58. Since the previous review, Panama has brought the number of tariff rates down from 37 to 29, ranging from 0 to 260%. Most of the tariff headings are to be found in the 1% to 10% range, followed by duty-free lines and lines subject to tariffs that range from over 10% to 20% (Chart 3.1).

3.59. The products that receive the highest tariff protection are: fresh, chilled and frozen poultry cuts (260%), milk and cream products (155%), cane sugar (144%) and whey (120%). In all, 18 tariff lines exceed 100%.

3.60. Although the average tariff on agricultural products (WTO definition) has decreased, it is still two times higher (13.7%) than for other products (6.4%). The groups of agricultural products with the highest average tariffs are: dairy produce (36.4%), animals and animal products (24.4%), sugar and confectionery (23.5%), and coffee and tea (15.9%). The average tariff on cereals fell during the period under review from 23.7% to 10%. The non-agricultural products with the highest average tariff include fish and fish products (12.5%) and clothing (10.7%) (Table 3.2).

**Chart 3.1 Frequency distribution of MFN tariff rates, 2013**



Source: WTO Secretariat calculations, based on data provided by the authorities.

**Table 3.2 Summary of the MFN tariff, 2013**

Product description	MFN					Average bound tariff (%)
	Number of lines	Average (%)	Range (%)	Duty-free tariff lines (% of tariff lines)	Coefficient of variation (CV)	
<b>Total</b>	<b>8,881</b>	<b>7.6</b>	<b>0-260</b>	<b>34.5</b>	<b>1.4</b>	<b>22.9</b>
<b>By WTO category</b>						
Agricultural products	1,419	13.7	0-260	23.5	1.6	30.3
Animals and animal products	205	24.4	0-260	12.2	1.8	42.8
Dairy produce	74	36.4	0-155	2.7	1.0	47.7

Product description	Number of lines	MFN				Average bound tariff (%)
		Average (%)	Range (%)	Duty-free tariff lines (% of tariff lines)	Coefficient of variation (CV)	
Fruit, vegetables and garden produce	399	10.6	0-81	22.6	0.8	27.3
Coffee and tea	35	15.9	0-54	11.4	0.9	28.7
Cereals and cereal preparations	200	10.0	0-90	30.0	1.4	24.8
Oilseeds, fats and oils and their products	122	8.1	0-30	32.0	0.8	24.1
Sugar and confectionery	39	23.5	0-144	17.9	1.5	38.1
Beverages, alcoholic beverages and tobacco	131	11.1	0-30	14.5	0.5	29.7
Cotton	5	0.0	0	100.0	0.0	10.0
Other agricultural products n.e.s.	209	7.6	0-15	39.2	0.9	25.9
Non-agricultural products (including petroleum)	7,462	6.4	0-81	36.6	0.9	21.5
Non-agricultural products (excluding petroleum)	7,431	6.4	0-81	36.5	0.9	21.5
Fish and fish products	311	12.5	0-15	6.1	0.3	18.7
Mineral and metal products	1,422	7.6	0-81	33.5	0.9	26.3
Chemicals and photographic products		2.5	0-15	65.0	1.5	6.8
Wood, wood pulp, paper and furniture	606	8.1	0-15	33.2	0.8	26.7
Textiles	814	5.0	0-15	57.1	1.2	28.3
Clothing	441	10.7	0-15	0.9	0.2	29.6
Leather, rubber, footwear and travel articles	329	8.7	0-15	20.1	0.7	25.6
Non-electrical machinery	667	4.2	0-15	23.2	1.0	23.5
Electrical machinery	376	5.9	0-15	29.5	0.9	18.6
Transport equipment	323	5.6	0-15	49.2	1.2	21.1
Non-agricultural products n.e.s.	640	9.5	0-15	12.0	0.6	24.9
Petroleum	31	4.2	0-30	64.5	1.8	27.7
<b>By HS:</b>						
HS 01-24	1,635	13.9	0-260	19.0	1.5	28.4
HS 25-97	7,246	6.2	0-81	38.0	1.0	21.6
<b>By HS section</b>						
01 Live animals and animal products	540	20.0	0-260	7.0	1.5	31.0
02 Vegetable products	463	9.9	0-90	34.6	1.2	27.2
03 Fats and oils	72	8.6	0-30	27.8	0.7	26.7
04 Prepared foodstuffs, etc.	560	12.0	0-144	16.4	1.1	27.1
05 Mineral products	200	6.8	0-81	43.5	1.4	28.5
06 Products of the chemical and related industries	1,333	2.4	0-15	66.3	1.6	7.0
07 Plastics and rubber	413	4.2	0-15	52.8	1.3	15.3
08 Hides and skins	113	11.8	0-15	3.5	0.3	30.0
09 Wood and articles of wood	179	7.3	0-15	35.2	0.8	28.8
10 Wood pulp, paper, etc.	378	7.9	0-15	36.8	0.8	25.8
11 Textiles and textile articles	1,211	6.9	0-15	38.2	0.8	28.8
12 Footwear, hats and other headgear	154	9.8	0-15	6.5	0.5	21.9
13 Articles of stone	285	9.1	0-15	15.4	0.5	26.3
14 Precious stones, etc.	66	7.2	0-15	36.4	0.8	28.1
15 Base metals and articles of base metal	898	7.4	0-15	35.7	0.8	26.7
16 Machinery and mechanical appliances	1,086	4.8	0-15	27.0	1.0	21.1
17 Transport equipment	338	5.9	0-15	47.0	1.1	21.3
18 Precision instruments	287	9.0	0-15	12.5	0.6	24.2

Product description	MFN					Average bound tariff (%)
	Number of lines	Average (%)	Range (%)	Duty-free tariff lines (% of tariff lines)	Coefficient of variation (CV)	
19 Arms and ammunition	24	14.6	10-15	0.0	0.1	30.0
20 Miscellaneous manufactured articles	273	10.9	0-15	1.1	0.4	27.9
21 Works of art, etc.	8	6.9	0-15	50.0	1.0	29.4
<b>By stage of processing</b>						
First stage of processing	948	10.0	0-90	28.6	1.0	25.6
Semi-processed products	2,536	3.9	0-144	65.0	1.9	18.7
Fully processed products	5,397	8.9	0-260	21.2	1.3	24.4

Source: WTO Secretariat estimates, based on data provided by the authorities.

3.61. Panama's legislation prescribes that the Tariff Commission is responsible for technical analysis of proposed changes to import tariffs and, where applicable, for recommending the necessary amendments to the tariff. The MEF's Directorate of Government Policy, for its part, undertakes a financial examination of any proposed tariff reform in order to determine what fiscal sacrifice it entails. The proposal is then submitted to the President's Cabinet Council, which takes a decision. Since Panama joined SIECA in May 2013 it has been the responsibility of the Council of Ministers for Economic Integration (COMIECO) to decide on amendments to the Central American Import Tariff.

3.62. Panama applies tariff quotas to several agricultural products in line with its WTO commitments. The duties applied within these quotas are 3% or 15%, while out-of-quota rates range from 15% to 260% (section 4.1).

#### 3.2.4.2 Tariff bindings

3.63. Panama bound all its tariffs when it became a Member of the WTO. There are 46 levels ranging from 0% to 260% in the bound tariffs. The average final bound rates are: 23.7% for all products, 28.3% for agricultural products (WTO definition) and 22.9% for non-agricultural products. Between 2007 and 2011, Panama continued with its programme of linear reductions in the bound rates, covering 179 tariff lines for products not produced in Panama and in general use.

3.64. For those headings that are strictly comparable, in other words, identical in the HS 2007 version used in the Revised Tariff Schedule containing Panama's bound tariffs and the HS 2012 version of applied tariffs, the WTO Secretariat found 59 products where it would seem that the applied rate exceeds the bound rate (Table A3.1). The Panamanian authorities acknowledge this situation and have indicated that they will take the necessary steps to resolve this issue promptly.

3.65. In May 2012, Panama launched procedures under Article XVIII:5 of the GATT 1994 in order to make certain changes to its Schedule of Tariff Concessions CXLI in relation to maize and tomatoes. The renegotiation procedure concluded at the end of December 2012 and, as WTO Members did not put forward any objections, the amendments were approved with effect from 29 July 2013. These consisted of eliminating the tariff quota for maize and, for tomatoes, a reduction in the applicable in-quota rate from 15% to 0%.<sup>34</sup>

#### 3.2.4.3 Tariff concessions

3.66. Customs duty may be waived only if this is covered by a legal provision in force, an international agreement or a contract entered into by the State. Furthermore, the Cabinet Council, in exercise of its constitutional powers, has the power to decide on general or specific, total or partial, reductions in such duty.

3.67. Pursuant to Decree Law No. 1 of 2008, the following are exempt from payment of import duty: imports by the State, donations to the non-profit-making private sector intended to cover relief, welfare and education services; imports covered by international treaties or economic

<sup>34</sup> WTO document WTO/Let/891 of 18 September 2013.

integration agreements; imports by diplomats accredited to Panama; educational material for teaching; medical equipment and instruments for hospitals; articles to be used to conduct religious activities; equipment for use by the police; and imports of social interest as determined by the Cabinet Council. Imports intended for fairs or exhibitions are also exempt from payment of import duty.

3.68. Customs duty is also waived on imports of goods that have been exported or re-exported temporarily, provided that they have not undergone any transformation, processing or repair abroad.<sup>35</sup> Imports intended for special customs regimes such as free zones (section 3.3.4) or duty-free shops are also exempt from payment of customs duty.

#### 3.2.4.4 Preferential tariffs

3.69. Under its free trade agreements and other trade agreements in force, at the end of 2013 Panama applied preferential tariffs on imports from countries belonging to SIECA (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua), Canada, Chile, Chinese Taipei, the Dominican Republic (under a partial scope agreement), the European Union, Peru, Singapore, and the United States of America (Table 3.3 and Table A3.2). In addition, within the Latin American Integration Association (LAIA), of which it has been a member since 2012, Panama granted preferential tariffs to Argentina, the Plurinational State of Bolivia, Cuba, Ecuador, Mexico, Paraguay and Uruguay (section 2.3.2.1.1).<sup>36</sup>

**Table 3.3 Summary of Panama's preferential tariffs under certain agreements, 2013<sup>a</sup>**

(Arithmetic average, %)

	Total	WTO		HS (Chapter)	
		Agricultural products	Non-agricultural products (including petroleum)	01-24	24-25
MFN	7.6	13.7	6.4	13.9	6.2
SIECA					
Costa Rica	1.1	4.2	0.6	3.7	0.6
El Salvador	1.9	6.3	1.0	5.5	1.1
Guatemala	1.5	5.6	0.7	4.9	0.7
Honduras	2.2	6.2	1.4	5.2	1.5
Nicaragua	1.4	4.7	0.8	4.1	0.8
Canada	3.2	9.7	2.0	8.2	2.1
United States	2.7	6.5	1.9	5.6	2.0
Peru	3.9	9.2	2.8	8.1	2.9
Chinese Taipei	1.1	6.3	0.1	5.6	0.1
European Union	4.8	10.4	3.8	10.6	3.5
Chile <sup>b</sup>	2.2	6.7	1.4	6.4	1.4
Singapore <sup>b</sup>	1.7	7.2	0.6	6.9	0.6

a In order to compare the tariff rates, the applied MFN rate for 2013 was used as a basis, except for Chile and Singapore.

b Given that the tariff schedules of Singapore and Chile are based on the HS 2002 and MFN and the other agreements are based on HS 2012, the figures for Singapore and Chile are not strictly comparable.

Note: The preferences granted by Panama under LAIA and those granted to the Dominican Republic are not included.

Source: WTO Secretariat estimates, based on data provided by the authorities.

#### 3.2.5 Other import charges and taxes affecting imports

3.70. Imports are subject to an Administrative Charge for Customs Services (TASA) amounting to B 100 (increased from B 70 by Cabinet Decree No. 5 of 2014) for each customs declaration covering goods imports with a total c.i.f. value of B 2,000 or more. The TASA is collected by ANA. There is also a charge of B 3.00 per declaration for use of the customs computer system.

<sup>35</sup> Article 246 of Cabinet Decree No. 41 of 11 December 2002.

<sup>36</sup> The preferential tariffs for a further five countries within the LAIA framework had not yet come into force at the time of writing (April 2014).

3.71. In the same way as domestic products, the following indirect taxes are imposed on imports: the ITBMS and the ISC. The ICCDP applies at a different rate to fuel mixed with ethanol imported from abroad (see paragraph 3.79 below).

3.72. The ITBMS is a value added sales tax and applies to imported goods, products sold and services provided in Panama. For products, the tax base is the price on the invoice, including all costs charged to the buyer, while for services it is the price agreed for providing the service. The tax base for imports is the c.i.f. price, plus the tariff and other customs taxes and charges imposed on imports. The ITBMS on imports is paid at the time the declaration is submitted and the duty paid. The general rate for the ITBMS is 7% (it rose by 5% on 1 July 2010).<sup>37</sup> Higher rates apply to alcoholic beverages (10%), cigarettes and other tobacco products (15%) and hotel and accommodation services (10%). Moreover, since 1 September 2013, a 15% ITBMS % has applied to pure ethyl alcohol and absolute alcohol to be used to produce fuel.<sup>38</sup> The tax on fuel consumption for petrol and diesel fuel containing bioethanol has also been increased.

3.73. Some goods and services are exempt from the ITBMS, for example, agricultural and food products, crude oil and its byproducts, pharmaceuticals, the transfer of goods and services within free and customs zones, health and education services, the generation, transmission and distribution of electricity, freight, transport of freight, air, maritime and land transport of passengers, loading, unloading and transfer and auxiliary loading services in ports, together with repair, maintenance and auxiliary services supplied to ships in transit through Panama's territorial waters. In October 2013, imports of aircraft and vessels of tariff headings 88.02 and 89.03 also became exempt from payment of the ITBMS.

3.74. The ISC applies to the sale of certain Panamanian and imported products and services for consumption, including aerated beverages, syrups, alcoholic beverages (spirits, wines and beers), tobacco products, automobiles, motor cycles, boats, aircraft, jewellery, cable, microwave and satellite television services and mobile telephony. The tax base is the price upon first sale from the manufacturer (including all costs charged to the buyer) or the cost of providing the service. For imports, the tax base is the c.i.f. value plus the tariff and other taxes and charges levied by the Customs on imports. ANIP is responsible for collecting the ISC at a basic rate of 5%, although higher rates apply to products such as tobacco (32.5%) and alcoholic beverages, to which a fixed amount is applied depending on the price and alcohol content per litre.

3.75. Law No. 8 of 15 March 2010 (Article 143) increased the ISC to 10% for: motor cycles (over 125 cc), outboard engines (over 75 cc), yachts, sailboats or recreational craft, jet skis, ships, aircraft and helicopters for non-commercial use, syrups for manufacturing beverages, jewellery and firearms. The Law also modified the ISC rates for self-propelled land vehicles (which now range from 5% to 25%) and made imported vehicles subject to a minimum rate of B 500; for used vehicles, the law provides for a minimum tax ranging from B 750 to B 1,500 depending on the vehicle's age. The authorities have indicated that the purpose of imposing new ISC rates on motor vehicles is to compensate for the removal of the tariffs on them. Law No. 8 also imposed the tax on cable, microwave and satellite television services and mobile telephony services at a rate of 5%. Law No. 52 of 28 August 2012 extended application of the ISC (at a rate of 5%) to a series of products of chapters HS 84, 85 and 90 such as calculators, telephones, office machines, data-processing equipment and various electronic appliances. The authorities have indicated that, in this case as well, the aim is to use the ISC to offset the removal of the tariffs on these products as a result of the WTO Agreement on Information Technology.

3.76. Law No. 15 of 12 March 2013 imposed a sizeable increase in ISC rates on alcoholic beverages depending on their value and the degree of alcohol, applicable in particular to those with the highest prices, usually imported beverages. Pursuant to Law No. 76 of 21 October 2013, the ISC was abolished for boats or craft for pleasure or sports (HS 89.03). During the period under review, the provision allowing a reduced ISC by year of ageing for domestically produced spirits was eliminated.

3.77. Goods going abroad and sold directly to passengers and crew of ships and aircraft engaged in international transport and sales for export, as well as sales to companies established in Panama's free zones, are not subject to payment of the ISC.

<sup>37</sup> Law No. 8 of 15 March 2010.

<sup>38</sup> Tariff headings 2207.10.11 and 2207.10.91, pursuant to Law No. 76 of 21 October 2013.

3.78. The ICCDP applies to the sale of such products in Panama. As Panama is not an oil producer, the ICCDP applies to the import of fuels and other petroleum products from abroad or from a free zone. The tax base is the gallon and the rate varies depending on the product and, for petroleum since September 2013, on the source of the bioethanol or biodiesel with which it is mixed (Table 3.4).

**Table 3.4 Consumption tax on fuels and petroleum products**

Product	Rate (B per gallon)
Petrol, 87 octane	0.60
Petrol, 87 octane, unleaded	0.60
Petrol, 91 octane	0.60
Petrol, 91 octane, unleaded	0.60
Petrol, 91 and 95 octane, unleaded	
- with 5% of anhydrous bioethanol of foreign origin	3.78
- with 5% of anhydrous bioethanol of domestic origin	0.57
- with 7% of anhydrous bioethanol of domestic origin	0.56
- with 10% of anhydrous bioethanol of domestic origin	0.54
Petrol mixed with biodiesel of foreign origin	1.58
Kerosene	0.13
Low sulphur diesel	0.25
Fuel oil	0.15
Low viscosity	0.15
Asphalt, penetration grade	0.08
Asphalt, cutback	0.09
White spirit	0.08

Source: WTO Secretariat, on the basis of Law No. 6 of 20 January 1998, Law No. 46 of 10 May 2011 and Law No. 76 of 21 October 2013.

3.79. In fact, Law No. 76 of 21 October 2013 set the ICCDP at a rate of B 3.78 per gallon for petrol (HS 2710.12.19) mixed with anhydrous bioethanol of foreign origin and B 1.58 per gallon for petrol mixed with biodiesel of foreign origin. At the same time, a B 0.57 lower rate per gallon was set for petrol mixed with 5% of anhydrous bioethanol produced using domestic raw materials, the rate being reduced in line with the increase in bioethanol content. Payment of this tax was made retroactive to 1 September 2013, the date on which it became mandatory to use 5% of bioethanol in 91 and 95 octane petrol in Panama.<sup>39</sup> According to statements by the authorities, this variable rate is intended to protect domestic production of sugar cane used to produce bioethanol.<sup>40</sup> Likewise, in October 2013, the structure of the National Import Tariff was modified in order to differentiate imports of pure ethyl alcohol and absolute alcohol to be used to produce biofuels from those used to prepare other products, and the tariff was raised from 15% to 30%.<sup>41</sup>

### 3.2.6 Import prohibitions, restrictions and licensing

3.80. Panama imposes import prohibitions and restrictions for health, safety, environmental, sanitary and phytosanitary reasons. The Cabinet Council is responsible for determining which imports are to be prohibited or restricted.<sup>42</sup> Import of the following is prohibited: false coins and implements for minting coins; falsely labelled alcoholic beverages and medicines and any preparation harmful to health; arms or instruments of war; foreign lottery or raffle tickets; smoking opium and opium resin; indecent or morally offensive printed publications; plants, seeds and animals designated by MIDA; and non-original products that imitate the workmanship of traditional products of the indigenous peoples. Restricted imports are medicinal opium, morphine, heroin, and all alkaloids of opium and cocaine and other so-called opiates for medicinal use; firearms that are not weapons of war and those used for self-defence, ammunition, dynamite and other explosive materials.<sup>43</sup>

<sup>39</sup> This same Law No. 76 of 21 October 2013 increased the ITBMS to 15% on pure ethyl alcohol and absolute alcohol to be used to produce biofuels (see above).

<sup>40</sup> *La Prensa*, "Fijarán impuesto a gasolina con etanol" of 1 October 2013. Viewed online at: <http://www.prensa.com/impreso/panorama/fijaran-impuesto-gasolina-etanol/209486> [2 October 2013].

<sup>41</sup> Cabinet Decree No. 28 of 8 October 2013.

<sup>42</sup> Cabinet Decree No. 41 of 16 December 2002 (Articles 99 and 126).

<sup>43</sup> Cabinet Decree No. 19 of 30 June 2004.

3.81. Pursuant to Executive Decree No. 41 of 11 December 2002, procedures for ensuring compliance with sanitary, phytosanitary, animal health and other control measures on the part of the institutions authorized to intervene in customs clearance must be limited to what is strictly reasonable and necessary in accordance with each institution's regulations. Table 3.5 shows the products whose import requires a licence, permit or other type of approval from the competent body.

**Table 3.5 Imports subject to import licences or approval by the competent bodies**

<b>Competent body</b>	<b>Product</b>
<b>Ministry of Health</b>	
Food Safety Department	Fresh, processed, packaged, prepackaged and wrapped food products for human consumption. Meat, fish, dairy and farinaceous products. Oils, fruit, vegetables, sugar and related products. Alcoholic and non-alcoholic beverages, salts and their byproducts, spices and condiments. In some cases, approval from the Agricultural Quarantine Department is required in addition to that given by the Ministry of Health.
National Pharmacy and Drugs Directorate	Medicinal opium, morphine, heroin, cocaine and all opium alkaloids and other so-called opiates when imported for medicinal use, and acetic acid.
Waste Department	Precursors and essential chemical substances subject to international control. Self-propelled land vehicles driven by internal combustion engines using petrol. Paints, inks, varnishes, lacquers, enamels and glues containing lead. Raw materials used to manufacture ceramics, glazed ceramics and pottery. Air-conditioning equipment in motor vehicles and trucks (whether or not incorporated into the vehicle). Refrigeration and air-conditioning equipment/domestic and commercial heat pumps.
<b>Ministry of Agricultural Development</b>	
Directorate-General of Agricultural Quarantine	Animals, plants and their products and byproducts, agricultural chemicals, biological or biotechnological products for veterinary use or made from or manufactured using raw materials of animal origin, or for agricultural use, including packaging, containers and/or recipients, luggage and belongings of passengers and postal packages.
National Seeds Commission	Seeds
<b>Ministry of the Economy and Finance</b>	
Gaming Control Board	Slot machines and electronic games
<b>National Public Revenue Authority</b>	Spirits, aerated beverages and cigarettes
<b>Ministry of Public Security</b>	
Institutional Directorate of Public Security Affairs	Arms in general, sidearms, rifles, ammunition, components, detonators, powder, bullets or projectiles, pellets, equipment for loading ammunition and explosives.
<b>Ministry of the Interior</b>	
Fire Brigade Safety Office	Explosive materials (dynamite, nitroglycerine), accessories using explosives (detonators), pyrotechnical articles, compressed gases whether or not inflammable, accessories and devices used in installations that use gases (valves for cylinders, etc.), petroleum and hydrocarbons byproducts (inflammable), combustible materials (sodium, lithium, potassium and similar materials), and oxidizing and corrosive materials.
<b>Attorney General's Office</b>	
Narcotics Division, Judicial Police, technical branch	Precursors and essential chemical substances subject to international control used illegally to produce drugs.
<b>National Public Service Authority</b>	Wireless telephones, telefax, teletypewriters, radio-telephony transmitters, broadcasting and television stations, television cameras, video cameras, radar and radio-navigation equipment, antennas and antenna reflectors.
<b>Secretariat of Energy</b>	
Directorate-General of Hydrocarbons	Petroleum byproducts imported during the period of suspension of the protection tariff. Machinery and equipment required for oil exploration and exploitation.

Competent body	Product
<b>National Environmental Authority</b> Directorate of Forestry Development	Logs, coniferous logs, non-coniferous logs, logs of tropical wood, sawn coniferous wood, sawn wood, non-coniferous tropical wood, plywood.
<b>National Transit and Land Transport Authority</b>	All vehicles to be used to carry goods and persons.

Source: Prepared by the WTO on the basis of online information from the Customs, viewed at: <http://aduanas.gob.pa/Manual>.

3.82. The import licensing system is governed by Law No. 23 of 15 July 1997 (Title III) and Resolution No. 5 of 18 November 1998, which deals with the granting of licences to import products subject to tariff quotas.<sup>44</sup> In 2004, Panama replied to the questionnaire on import licensing procedures<sup>45</sup> and in September 2013 notified the WTO that the information on the general import licensing system contained in the 2004 notification remained valid.<sup>46</sup> According to this notification, there are two types of import licence: automatic import licences, which are for statistical purposes, and non-automatic import licences, which apply to goods whose import is restricted and used for the administration of tariff quotas (section 4.2.2.1). It should be noted that, in October 2012, Panama adopted regulations for the administration of tariff quotas in connection with the Trade Promotion Agreement with the United States, which include, *inter alia*, a licensing mechanism for awarding quotas.<sup>47</sup>

3.83. Any interested person, company or institution may apply for an import licence and has a right of appeal through administrative litigation channels against decisions by the bodies in charge of granting licences (competent bodies). Import licences must be obtained before the import declaration is definitively registered. In some cases, they can be obtained using the Customs' computerized system (SIGA).

### 3.2.7 Contingency measures

3.84. The Directorate-General of Trade Protection (DGDC) of the National Directorate for the Administration of International Trade Agreements (DINATREC)<sup>48</sup>, attached to the MICI, is the authority responsible for conducting investigations into unfair trade practices and safeguards. The Minister of Trade and Industry has to recommend to the Cabinet Council the imposition or lifting of anti-dumping, countervailing or safeguard measures.

3.85. Panama's legal framework for trade protection is derived from the relevant WTO Agreements (incorporated into domestic legislation by Law No. 23 of 1997), Decree Law No. 7 of 15 February 2006 and its implementing Regulations (Executive Decree No. 1 of 8 January 2009). Panama notified the WTO of the latter two instruments<sup>49</sup> and they were examined by the relevant Committees.<sup>50</sup> Some Members posed questions, to which Panama replied in writing.<sup>51</sup>

3.86. Decree Law No. 7 of 2006 establishes rules for trade protection against unfair trade practices and market situations which require the application of safeguard measures, while its implementing Regulations provide mechanisms and detailed procedures for conducting investigations and applying anti-dumping, countervailing and safeguard measures.

<sup>44</sup> Notified in WTO documents G/LIC/N/1/PAN/1 of 18 August 1998 and G/LIC/N/1/PAN/2 of 16 November 1998.

<sup>45</sup> WTO document G/LIC/N/3/PAN/2 of 4 March 2004.

<sup>46</sup> WTO document G/LIC/N/3/PAN/4 of 30 September 2013.

<sup>47</sup> Executive Decree No. 154 of 10 October 2012.

<sup>48</sup> Although the DGDC conducts the investigations, the decisions are taken by DINATREC.

<sup>49</sup> WTO documents G/ADP/N/1/PAN/2, G/SCM/N/1/PAN/2 and G/SG/N/1/PAN/2 of 4 August 2006; and G/ADP/N/1/PAN/2/Suppl.1, G/SCM/N/1/PAN/2/Suppl.1 and G/SG/N/1/PAN/2 of 28 January 2009.

<sup>50</sup> WTO documents G/ADP/M/32 of 23 October 2007, G/ADP/M/36 of 15 July 2009, G/SCM/M/69 of 22 September 2009, G/SG/M/35 of 25 September 2009 and G/SG/M/36 of 2 February 2010.

<sup>51</sup> WTO documents G/ADP/Q1/PAN/5 of 11 April 2007, G/ADP/Q1/PAN/6 of 12 April 2007, G/ADP/Q1/PAN/7 of 20 October 2008, G/ADP/Q1/PAN/8 of 25 March 2009, G/ADP/Q1/PAN/9 of 24 April 2009 and G/ADP/Q1/PAN/10 of 28 April 2009. For the provisions on safeguards, WTO documents G/SG/Q1/PAN/3 of 27 October 2009, G/SG/Q1/PAN/4 of 12 March 2010 and G/SG/Q1/PAN/5 of 29 March 2010.



3.87. The implementing Regulations contain procedural rules common to the three types of investigation. They specify the obligation to notify the WTO of the initiation of an investigation, the imposition of provisional or definitive measures, the acceptance of price undertakings and the suspension, modification or extension of measures. They also provide for appeals against administrative decisions to the first-instance authority (DINATRADEC) and if, within a period of 15 working days, the official responsible has not issued any decision, the appeal is considered as having been rejected and government channels are exhausted. The implementing Regulations also contain common substantive rules regarding unfair trade practices, including provisions on determining serious injury and threat of injury, the period of investigation, the domestic industry, the definition of like product and the causal link (causality).

3.88. Decree Law No. 7 of 2006 (Article 46) prohibits the simultaneous application of anti-dumping and countervailing measures to the same product. Executive Decree No. 1 of 2009 (Article 101) provides that provisional countervailing or anti-dumping duties may not be adopted or imposed simultaneously in order to resolve the same situation resulting from subsidy or anti-dumping investigations.

### 3.2.7.1 Anti-dumping and countervailing measures

3.89. Panama does not make frequent use of trade protection measures. During the period under review, it initiated only one dumping investigation concerning imports of paint from El Salvador, the United States, Guatemala and Mexico. The investigation commenced in October 2009; no provisional duties were imposed and it concluded without the application of definitive anti-dumping duties as it was not determined that dumping had occurred.<sup>52</sup> Panama notified the Committee on Anti-Dumping Practices that it did not adopt any anti-dumping measures during the period 1 July 2011 to 30 June 2012<sup>53</sup>; it has not submitted any notifications since then. Panama did not apply any countervailing measures during the review period either. Nevertheless, except for the period January to June 2012<sup>54</sup>, it did not submit any notifications to the Committee on Subsidies and Countervailing Measures during the years under review.<sup>55</sup>

3.90. In dumping investigations, the basis for determining the normal value is the price of a like product destined for consumption in the country of export in the ordinary course of trade. If this method cannot be applied, the normal value has to be determined by constructing the price (the cost of producing the product in the country of origin plus administrative and selling costs and profit) or by comparison with the price of a like product exported to a third country. The investigating authority must take into account the differences between countries that affect price comparability, for example, different terms of sale, taxation, commercial levels and other factors.<sup>56</sup>

3.91. Panama's legislation defines subsidies and specificity, incorporating the concepts to be found in the WTO Agreement on Subsidies and Countervailing Measures.<sup>57</sup> Likewise, the implementing Regulations (Article 31) define the elements to be taken into account by the investigating authority in order to determine the amount of a subsidy.

3.92. Dumping or subsidy investigations may be initiated at the request of a party or ex officio. The domestic industry affected may request that an investigation be initiated when: (i) the request is supported by domestic producers representing over 50% of total production of the like product<sup>58</sup> (taking as a basis companies expressing support and those opposing the request); and (ii) producers which expressly support the request represent at least 25% of total production of that product.<sup>59</sup>

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<sup>52</sup> Resolution No. 05 of 21 April 2011. See also Panama's notification in WTO documents G/ADP/N/216/PAN of 13 July 2011 and G/ADP/N/216/PAN/Corr.1 of 26 July 2011.

<sup>53</sup> WTO documents G/ADP/N/223/Add.1/Rev.1 of 12 October 2012 and G/ADP/N/237/Add.1 of 10 April 2013.

<sup>54</sup> WTO document G/SCM/N/242/Add.1/Rev.1 of 12 October 2012.

<sup>55</sup> WTO document series G/SCM/N/\* /Add.1 (semi-annual reports under Article 25.11 of the SCM Agreement).

<sup>56</sup> Articles 10-12 of Decree Law No. 7 of 2006 and Articles 19-25 of the implementing Regulations.

<sup>57</sup> Articles 5 and 6 of Decree Law No. 7 of 2006 and Articles 28 and 29 of the implementing Regulations.

<sup>58</sup> The concept of like product is defined in Article 11 of the implementing Regulations.

<sup>59</sup> Article 27 of Decree Law No. 7 of 2006 and Article 71 of the implementing Regulations.

3.93. After it has received a request to initiate an investigation and has obtained all the necessary information, the investigating authority must issue a resolution, within 15 working days, declaring either the initiation or the rejection of an administrative investigation. Before publishing the resolution, the investigating authority must notify the government of the exporting country. Once they have received the notification, interested parties have 30 calendar days in which to defend their interests in writing.<sup>60</sup> The investigating authority collects information by means of questionnaires, to which interested parties must respond within 30 calendar days (which may be extended by a further 30 calendar days).

3.94. Following a minimum of 60 days after initiation of the investigation, the investigating authority may issue a preliminary determination, recommending to the Cabinet Council the imposition of provisional measures to prevent injury being caused to the domestic industry during the investigation. The provisional measures must be applied for the shortest possible time, and must not exceed six months for anti-dumping measures and four months for countervailing measures.<sup>61</sup>

3.95. The investigating authority must terminate an investigation immediately when it has determined that the margin of dumping or the amount of the subsidy is *de minimis* or when the volume of dumped or subsidized imports is insignificant.<sup>62</sup>

3.96. During the investigation, the investigating authority may inspect domestic and foreign companies *in situ* in order to verify the accuracy of the information furnished by the parties. Before issuing a final resolution, the authority invites the interested parties to attend a hearing to inform them of the essential facts that will serve as the basis for its decision and to give them an opportunity to defend themselves in writing. After receiving the claims, the authority has ten working days in which to issue a final resolution and recommend to the Cabinet Council whether or not to impose definitive anti-dumping or countervailing duties.<sup>63</sup> The Cabinet Council issues its decision in the form of a decree.

3.97. Anti-dumping or countervailing duties may not exceed the margin of dumping or the amount of the subsidy whose existence has been proved.<sup>64</sup> The investigating authority may decide to apply a lower rate provided that the circumstances so permit.<sup>65</sup> Anti-dumping or countervailing duties may not be imposed for more than five years.<sup>66</sup> The law contains provisions on review of the measures, at the instigation of a party or *ex officio*, after at least one year has elapsed since they were imposed, as well as provisions on consideration of an extension, provided that the request is submitted no later than 120 days prior to expiry of the measure. No extension may exceed five years.<sup>67</sup>

### 3.2.7.2 Safeguard measures

3.98. During the period under review, Panama conducted one safeguard investigation concerning the import of printed polypropylene (BOPP-type) film in rolls and printed polyvinyl chloride (PVC) film in rolls and notified the Committee on Safeguards of the adoption of provisional measures applicable to these products in early 2007.<sup>68</sup> Colombia raised questions on the criteria and procedures that led to the application of these measures.<sup>69</sup> Subsequently, Panama notified the Committee of a finding of serious injury caused to domestic producers and the adoption of definitive safeguard measures on the products under investigation, to last one year as

<sup>60</sup> This time-limit may be extended for a maximum of a further 30 calendar days.

<sup>61</sup> Title VI, Sections IV (Preliminary determination) and V (Provisional measures) of the implementing Regulations.

<sup>62</sup> Title V, Section VII (Early termination) of the implementing Regulations.

<sup>63</sup> Articles 41-44 of Decree Law No. 7 of 2006 and Articles 116 and 120 of the implementing Regulations.

<sup>64</sup> Article 19 of Decree Law No. 7 of 2006 and Article 117 of the implementing Regulations.

<sup>65</sup> Article 118 of the implementing Regulations.

<sup>66</sup> Article 19 of Decree Law No. 7 of 2006.

<sup>67</sup> Title VII, Section III (Review of measures) and Section IV (Consideration of extension) of the implementing Regulations.

<sup>68</sup> WTO documents G/SG/N/7/PAN/1 and G/SG/N/11/PAN/1 of 20 February 2007 and G/SG/N/7/PAN/1/Suppl.1 and G/SG/N/11/PAN/1/Suppl.1 of 24 April 2007.

<sup>69</sup> WTO document G/SG/Q2/PAN/2 of 7 May 2007.

of 13 April 2007.<sup>70</sup> In October 2008, Panama informed the Committee that its authorities had decided not to grant the requested extension of the safeguard imposed on one of the products (BOPP-type film).<sup>71</sup> Panama did not conduct any other investigation or apply other safeguard measures during the review period.

3.99. The implementing Regulations in Decree No. 7 of 2006 lay down substantive rules on safeguards, including provisions on the determination of serious injury or threat of serious injury, causal link, the concepts of like product and public interest, and the period of investigation. A safeguard measure may only be imposed in response to a rapid and significant increase in imports of a product as a result of unforeseen circumstances if this increase causes or threatens to cause serious injury to the domestic industry producing like or directly competitive products.<sup>72</sup>

3.100. Producers in the domestic industry affected may request the initiation of a safeguard investigation in writing provided that, when making the request, they represent at least 25% of total production of the like or directly competitive product. In special cases, the authority may initiate an investigation *ex officio*.<sup>73</sup> After it has received the request and has verified compliance with the substantive and formal requirements needed for the initiation of an investigation, the authority issues a resolution initiating the investigation. An extract from this resolution must be published in the Official Journal and notified to the country or countries whose products are under investigation and to the WTO Committee on Safeguards.<sup>74</sup> As a resolution initiating an investigation is deemed to be a "substantive resolution" (Article 58(d) of Executive Decree No. 1 of 2009), the procedures for its notification have to commence, at the latest, within five days following the date on which the resolution was issued.<sup>75</sup> Article 69 of Decree Law No. 7 of 2006 determines that the MICI has ten working days following the issue of the initiating resolution in which to issue the public notice and the communication to the interested parties.

3.101. During the investigation, the authority may recommend the adoption of provisional measures if it has been determined that the increase in imports has caused or threatens to cause serious injury and if delay might cause damage to the domestic industry which it would be difficult to repair. Provisional measures adopted must be in the form of tariff increases and may not last for more than 200 days.<sup>76</sup>

3.102. Interested parties are invited to attend a hearing in order to defend their interests; once the hearing has ended, the investigating authority has ten working days in which to issue a final resolution and, where applicable, to recommend to the Cabinet Council the imposition of definitive measures. These may be in the form of a tariff increase or a quantitative restriction on imports.<sup>77</sup> Their maximum duration is four years, which may be extended once only for up to six years. Measures lasting over one year, however, must be gradually liberalized at regular intervals, as specified in the WTO Agreement on Safeguards.<sup>78</sup> The authority is empowered to take account of arguments relating to the public interest in its final determination.<sup>79</sup>

3.103. The implementing Regulations provide for the application of bilateral safeguards under the international trade agreements signed by Panama. The criteria and requirements for applying such measures, including the assessment of injury, the increase in imports and the causal link, must comply with those set out in each of these agreements and with the provisions in the implementing Regulations, where necessary. Application of the special agricultural safeguard pursuant to Article 5 of the WTO Agreement on Agriculture is also foreseen.

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<sup>70</sup> WTO documents G/SG/N/8/PAN/1 of 7 June 2007 and G/SG/N/8/PAN/1/Suppl.1 of 19 October 2007.

<sup>71</sup> WTO document G/SG/N/8/PAN/1/Suppl. 3 of 12 November 2008.

<sup>72</sup> Article 39 of the implementing Regulations.

<sup>73</sup> Articles 146 and 147 of the implementing Regulations.

<sup>74</sup> Article 156 of the implementing Regulations.

<sup>75</sup> Articles 60 and 61 of the implementing Regulations.

<sup>76</sup> Articles 170-173 of the implementing Regulations.

<sup>77</sup> Article 40 of the implementing Regulations.

<sup>78</sup> Title VIII, Section VIII, of the implementing Regulations.

<sup>79</sup> Article 182 of the implementing Regulations.

### 3.2.8 Standards and technical regulations

3.104. Law No. 23 of 15 July 1997 lays down, *inter alia*, provisions on technical standardization, conformity assessment, accreditation and quality certification.<sup>80</sup> Executive Decree No. 55 of 6 July 2006 regulates the provisions on accreditation. Law No. 52 of 11 December 2007 introduces new provisions on calibration and measurement.<sup>81</sup> Panama has accepted the WTO's Code of Good Practice for the Preparation, Adoption and Application of Standards.<sup>82</sup>

3.105. Panama is a member of the International Organization for Standardization (ISO), the Pan American Standards Commission (COPANT) and the Codex Alimentarius, and is an observer on the International Electrotechnical Commission (IEC).

3.106. The MICI's Directorate-General of Standards and Industrial Technology (DGNTI) is the only body authorized to develop standards and technical regulations in Panama and acts through its two departments: Technical Standardization and Quality Certification. The DGNTI has been designated as the national enquiry point for the purposes of the WTO Agreement on Technical Barriers to Trade.<sup>83</sup> The Panamanian Industrial and Technical Standards Commission (COPANIT) advises the DGNTI on its studies and analyses.<sup>84</sup> The National Accreditation Council (CNA) is responsible for accreditation and the National Metrology Centre of Panama (CENAMEP) is in charge of metrology.

3.107. The preparation of a technical regulation goes through the following stages: an application is submitted to the DGNTI. If it considers that the application is valid, the DGNTI sets up a technical committee composed of interested parties from the public and private sectors, which then draws up a draft technical regulation. The draft's viability is based on criteria relating to safety, environmental protection, and human, animal and plant health and life. The draft is published on the MICI's website and is subject to a public enquiry lasting 60 days, during which interested sectors send in comments. At the same time, the DGNTI notifies the WTO of the technical regulation, so that Members can submit comments. After the public enquiry, the technical committee considers the comments and makes any necessary amendments. The final document is signed by the Minister of Trade and Industry. Once the document has become official, the technical committee decides on the timeframe for application of the technical regulation, which takes effect as of its publication in the Official Journal. Usually, at least one month is allowed for its entry into force, except in emergencies when it becomes applicable immediately. The procedure for preparing voluntary standards is the same, except that the draft is not notified to the WTO.

3.108. The private sector may adopt voluntary technical standards without having to inform the DGNTI. These may be transformed into national standards provided that they go through the procedure for preparing technical regulations described above.

3.109. As at October 2013, Panama had 88 technical regulations, of which 40 had been notified to the WTO, six of them during the period under review (Table A2.1).<sup>85</sup> Panama's technical regulations concern mostly food products, chemicals, petroleum and petroleum products, hygiene and industrial safety, metrology, water quality, drinking water, waste water, pesticides, pamphlets and labelling. They can be viewed on the MICI's website.<sup>86</sup> The authorities have indicated that most of the technical regulations adopted by Panama are based on international standards. Panama has modified some technical regulations since 2007, mainly to include the respective conformity assessment procedures. Technical regulations are applied in the same way to both domestic products and imports.

<sup>80</sup> Title II, Articles 90-131. WTO document G/TBT/2/Add. 53 of 7 May 1999.

<sup>81</sup> Law No. 52 of 2007 repealed Articles 105-109 of Law No. 23 of 15 July 1997.

<sup>82</sup> WTO document G/TBT/CS/N/98 of 22 April 1998.

<sup>83</sup> WTO document G/TBT/ENQ/38/Rev.1 of 8 July 2011.

<sup>84</sup> The responsibilities of COPANIT are described in Articles 97 and 98 of Law No. 23 of 15 July 1997. Law No. 52 of 11 December 2007 (Article 43) amends one of these descriptions.

<sup>85</sup> WTO documents: G/TBT/N/PAN/36 of 17 April 2007, G/TBT/N/PAN/37 of 24 May 2007, G/TBT/N/PAN/38 of 12 March 2013, G/TBT/N/PAN/39 of 3 July 2013, G/TBT/N/PAN/40 of 3 July 2013 and G/TBT/N/PAN/41 of 15 August 2013.

<sup>86</sup> See the electronic address:

<http://www.mici.gob.pa/imagenes/pdf/reglamentostecnicosnacionales.pdf>.

3.110. The DGNTI undertakes conformity assessment procedures, with the support of other public or private institutions. The public institutions involved include MINSA's Central Laboratory, MIDA, the Authority for Protection of the Consumer and Defence of Competition (APODECO), AUPSA, the National Environment Authority (ANAM), the Secretariat of Energy and the National Secretariat of Science and Technology. Once the conformity assessment procedures have been completed, the DGNTI issues a conformity certificate.

3.111. The CNA is responsible for accrediting Panamanian or foreign public and private conformity assessment bodies.<sup>87</sup> At October 2013, 37 Panamanian bodies had been accredited: 20 testing laboratories (of which four were public), one calibration laboratory and 14 inspection entities.<sup>88</sup> There were 24 accreditations during the period under review. Accreditation procedures comply with ISO's recommendations and the procedures of Inter American Accreditation Cooperation (IAAC).<sup>89</sup> In most cases, accreditation is mandatory.

3.112. The DGNTI is required by law to recognize the equivalence of the technical regulations of foreign institutions, provided that they comply with the objectives of its own regulations. Likewise, the DGNTI has to recognize the results of conformity assessment carried out by foreign institutions on the basis of mutual recognition agreements (MRA).<sup>90</sup> Panama had not signed any MRA at October 2013. It does, however, recognize the conformity certificates of foreign bodies that have been accredited by entities recognized by international accreditation organizations such as International Laboratory Accreditation Cooperation (ILAC), IAAC, the International Accreditation Forum (IAF), the Quality Assurance Program (PAC), European Cooperation for Accreditation (EA) and the IEC.

3.113. Persons wishing to market products with certificates issued abroad may request the DGNTI to issue a certificate of foreign recognition. The form for applying for this certificate can be found on the MICI's website. After verifying the application's compliance with the administrative and technical requirements, as well as the status of accreditation of the certifying foreign body with respect to the technical regulation in question, the DGNTI issues a certificate of foreign recognition.

3.114. In the case of food, compliance with technical regulations is verified through the monitoring at retail level of Panamanian products and products that have been customs cleared and entered the marketing chain; this is the responsibility of MINSA. For imported foodstuffs, verification of compliance with technical regulations takes place at the port of entry and is the responsibility of AUPSA (section 3.2.9).

3.115. The Protocol incorporating Panama into SIECA came into force on 6 May 2013. At that time, Panama undertook to adopt the Central American Regulations on Standardization Measures, Metrology and Authorization Procedures, the Guidelines for the Drafting and Presentation of Central American Technical Regulations and the Procedures for Preparing, Adopting and Approving Central American Technical Regulations and Conformity Assessment Procedures.<sup>91</sup> In addition, it undertook to adopt two Central American technical regulations when the Protocol came into force and the remainder within two years as of its integration into SIECA.<sup>92</sup>

3.116. The procedure for drafting Central American technical regulations commences with a request from one or more SIECA member countries to the Directors of Integration, who decide on its pertinence. After it has been accepted, the request is forwarded to the Coordinators of the Technical Registration Group and the competent working subgroup, which coordinates consultations with national technical committees. The resulting draft is put up for public consultation by means of notification to the WTO. The time-limit for submitting comments is 60 days. The internal public consultation process is conducted in accordance with each

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<sup>87</sup> Article 101 of Law No. 23 of 15 July 1997 and Executive Decree No. 55 of 6 July 2006.

<sup>88</sup> Information provided by the DGNTI.

<sup>89</sup> Online information from the CNA, viewed at: <http://www.cna.gob.pa>.

<sup>90</sup> Articles 121 and 122 of Law No. 23 of 15 July 1997.

<sup>91</sup> Annex 3.2 to the Protocol incorporating Panama into SIECA.

<sup>92</sup> Annexes 7.1 and 7.2 to the Protocol incorporating Panama into SIECA.

State's legislative provisions. The final text, approved by COMIECO, is published and incorporated into each member State's legislation.<sup>93</sup>

3.117. The various preferential trade agreements signed by Panama (section 2.3.2) contain chapters on technical regulations and standards. Among other provisions, these specify commitments on concluding mutual recognition and equivalence agreements.

3.118. The provisions on consumer protection provide that labelling must include clear and truthful information on the nature, composition, content, weight, origin, expiry date, toxicity, warnings, price and any other essential information on the product.<sup>94</sup> Imported products may be labelled in the language of origin and there is no requirement that labels be in Spanish<sup>95</sup>, except in the case of medicines, agricultural chemicals and toxic products, as well as food products that necessitate special warnings or precautions because they constitute a danger to human health. The DGNTI is at present preparing a technical regulation on the labelling of prepackaged foodstuffs, based on the Codex Alimentarius, which will make labelling in Spanish compulsory. Work is currently proceeding on other drafts on quality certification, including nutritional labelling, the labelling of fermented beverages, the labelling of distilled beverages, pasteurized milk and cheese.

### 3.2.9 Sanitary and phytosanitary measures

3.119. The main legal instruments governing sanitary and phytosanitary matters include Law No. 47 of 9 July 1996 on phytosanitary protection measures, Law No. 23 of 15 July 1997 on animal health and agricultural quarantine measures and authority and Decree Law No. 11 of 22 February 2006 setting up AUPSA and prescribing food safety regulations.<sup>96</sup> Law No. 1 of 10 January 2001 and its implementing Regulations (Decree No. 178 of 12 July 2001) regulate, *inter alia*, sanitary registration of medicines and other human health-related products.

3.120. The preparation and application of sanitary and phytosanitary (SPS) measures involves a number of government agencies. In order to coordinate their action, an intersectoral group was set up informally in 2006 to prepare a National Agenda for the period 2008-2012, with an action plan to improve the application of SPS measures in Panama.<sup>97</sup> This includes measures to increase Panama's attendance at international fairs on SPS topics, to develop institutional and human capacity in this field, to support the process of harmonizing national regulations with international standards and to enhance sanitary and phytosanitary surveillance of pests and diseases. At April 2014, the creation of the Intersectoral SPS Committee had not yet been formalized.

3.121. MIDA is responsible for protecting animal and plant health through the National Animal Health (DINASA) and Plant Health (DNSV) Directorates and the Executive Directorate of Agricultural Quarantine (DECA).

3.122. DINASA has the task of laying down the animal health requirements for importing live animals, products of animal origin, veterinary pharmaceuticals and biological, biotechnological, chemical and food products for animal consumption and use. It is also responsible for issuing export certificates for animal products, whether or not foodstuffs.<sup>98</sup> The law on the National Traceability Programme was adopted in October 2013; it will commence with bovine livestock production and gradually be extended throughout Panama.

3.123. The DNSV lays down the phytosanitary requirements for the import and transit of products of plant origin not deemed to be food for human or animal consumption. It is also responsible for aspects concerning their export.<sup>99</sup> When preparing phytosanitary import requirements,

<sup>93</sup> COMIECO Resolution No. 162-2006.

<sup>94</sup> Article 18 of Decree Law No. 9 of 20 February 2006, amending Article 31 of Law No. 29 of 1 February 1996.

<sup>95</sup> Standard No. 52 of 1978, which is voluntary, provides that packaged foodstuffs for human consumption must bear an additional label in Spanish, but this is not always the case.

<sup>96</sup> The provisions in Decree Law No. 11 of 2006 can be found in procedural manuals and in the sanitary and phytosanitary requirements published on AUPSA's website.

<sup>97</sup> See Inter-American Institute for Cooperation on Agriculture (2009).

<sup>98</sup> Articles 5-9 of Law No. 23 of 15 July 1997.

<sup>99</sup> Law No. 47 of 9 July 1996.

the procedures followed are those determined in Decision (*Resuelto*) No. 93 of 24 October 1997 and Decision (*Resuelto*) No. DAL-067-ADM-2006 of 20 November 2006, which contains the general and specific phytosanitary requirements to be observed when introducing plants and plant products into Panama. ISPM guidelines Nos. 1, 5, 11 and 20 are also taken into account.

3.124. The DECA is the executive arm of DINASA and the DNSV; it carries out inspections and quarantines animals, plants and their byproducts not deemed to be food at entry points into Panama. It is also in charge of issuing animal and plant health licences for imports or transit of such products.<sup>100</sup> MIDA's Centre for Sanitary and Phytosanitary Surveillance and Emergency Operations (COP) collects and analyses national and international information on pests and diseases and warns DINASA, the DNSV and DECA of any likely sanitary or phytosanitary emergencies.

3.125. AUPSA is an autonomous State agency responsible for ensuring the protection of human health, Panama's agricultural assets and the interests of consumers in relation to imported foods.

3.126. MINSA, through the Food Protection Department (DEPA), is in charge of sanitary registration of foods and beverages produced in Panama, as well as soaps, detergents and related products for use in the food industry, whether Panamanian or imported. Some of DEPA's other tasks include monitoring and controlling the entire production and retail chain for food, certifying Panamanian and foreign food processing plants and issuing sanitary certificates for export to authorized plants.<sup>101</sup> In order to be certified, processing plants must follow standardized cleaning and disinfection procedures, good manufacturing practices and the Hazard Analysis and Critical Control Points (HACCP) system.<sup>102</sup>

3.127. MINSA's Animal Disease Monitoring and Control Department prevents and controls diseases of animals and food of animal origin transmissible to humans. MINSA's National Pharmacy and Drugs Directorate is responsible for sanitary registration and control of the import, export and re-export of medicines, narcotics and other human health products.

3.128. The MICI's National Directorate for the Administration of International Trade Agreements and Trade Protection is responsible for WTO notifications.<sup>103</sup> MIDA (through DINASA and the DNSV) and AUPSA are the national enquiry points notified to the WTO.

3.129. Panama submitted eight sanitary and phytosanitary notifications to the WTO between 2007 and 2013, of which five were emergency measures intended to suspend imports temporarily because they concerned shipments of products with quarantine diseases regulated in Panama (Table A2.1).<sup>104</sup> The following were the products notified: bananas, fresh and chilled fruit and vegetables, potato tubers for consumption, flowers, foliage and plants. No Member expressed any concern regarding the application of Panama's sanitary and phytosanitary measures during the period under review and the concerns raised prior to 2007 have been resolved.<sup>105</sup>

3.130. Panama is a member of the World Organisation for Animal Health (OIE), the Codex Alimentarius Commission, the International Plant Protection Convention (IPPC)<sup>106</sup> and the Regional International Organization for Plant Protection and Animal Health (RIOPPAH). The Panamanian authorities have indicated that the sanitary and phytosanitary measures Panama has taken are based on recommendations by the international reference organizations.

3.131. MIDA determines the animal and plant health requirements on the basis of a risk analysis assessment. The requirements are issued in the form of decisions ("*resueltos*"), which are published in the Official Journal. Except in an emergency, MIDA must allow a period of no less than 60 days between publication of a decision (*resuelto*) and its entry into force to allow

<sup>100</sup> Articles 49-56 of Law No. 23 of 15 July 1997.

<sup>101</sup> Decree No. 256 of 13 June 1962, amended by Executive Decree No. 331 of 22 July 2008.

<sup>102</sup> Executive Decree No. 352 of 10 October 2001 and Executive Decree No. 81 of 31 March 2003.

<sup>103</sup> WTO document G/SPS/NNA/16 of 11 March 2011.

<sup>104</sup> The emergency measures relating to food were adopted on the basis of the Procedural Manual for monitoring the introduction (import, transit and/or transshipment) of any food for human and/or animal consumption (MPDNNV-001-08, text of 15 May 2009).

<sup>105</sup> WTO SPS Information Management System. Online information, viewed at: <http://spsims.wto.org>.

<sup>106</sup> WTO document G/SPS/GEN/49/Rev. 5 of 4 July 2013.

producers to adapt and to comply with the obligation of notifying international organizations.<sup>107</sup> MIDA does not at present have a database to permit online consultation of the animal and plant health requirements prescribed by DINASA and the DNSV, but it is in the process of being created.

3.132. The import of live animals and products of animal origin requires a prior animal health permit. A plant health permit is also required for the import of plants and products of plant origin. Applications for both these permits can be made on the website of MIDA'S DECA.<sup>108</sup> DECA keeps lists of specific animal and plant health requirements by product and by country. The competent authority in the country of origin has to certify that the product to be exported meets these requirements. Once the permit has been issued, the importer must present it at DECA's offices at the entry point 48 hours prior to arrival of the goods. The sanitary permit for the import of live animals is issued subject to authorization by the veterinarian at the quarantine station. There are quarantine stations at the airports of Tucumán and Paso Canoá, where live animals may enter and remain (for 7 to 15 days). An appointment with the veterinarian has to be made before the animals arrive. Applications for permits for veterinary pharmaceuticals, biological and biotechnological products, agricultural chemicals, chemicals and food for animal use and consumption must be accompanied by a copy of the registration previously granted by DINASA or the DNSV.<sup>109</sup> Permits may be cancelled if there is an animal or plant health emergency. Animal and plant health permits are issued via the Internet and may require just a few minutes (if the information required is correct) up to a maximum of 24 hours. The authorities have indicated that 263,617 permits were issued over the period 2011-2013.

3.133. When live animals or products of animal origin or plants or products of plant origin are imported for the first time, pre-inspection at origin in the processing facilities or plants or of the phytosanitary material is required. This is done by analysing the risk which, depending on the type of product, is undertaken by DINASA or the DNSV, following the recommendations of the relevant international organizations (OIE or IPPC).<sup>110</sup> In the case of a product of plant origin for which there is no phytosanitary requirement, for example, an importer has to forward a request for a phytosanitary requirement to the DNSV's Section for Pest Risk Analysis and Phytosanitary Requirements, attaching all the necessary information. The Section has ten working days in which to decide whether to undertake a pest risk analysis (PRA) and to inform the importer. The cost of the PRA is paid by the importer.

3.134. The import, transit and transshipment of foods are subject to the sanitary and phytosanitary requirements issued by AUPSA on the basis of Decree Law No. 11 of 2006, which provides that such requirements must be made public and be based on clearly proven scientific criteria. Requirements that are issued for the first time come into effect at the time they are issued and are then published in the Official Journal, while any amendments to such requirements come into force 21 days after their publication.<sup>111</sup> Requirements are drafted in accordance with the Manual of Procedures for the Preparation and Revision of Sanitary and Phytosanitary Requirements (MPDNN-006-11, text of 15 March 2011). AUPSA has an online database for consulting the requirements it has established, including new and amended requirements, before they are published in the Official Journal so that interested parties may be kept up to date and adapt their products accordingly.<sup>112</sup> Up to now, AUPSA has not had any mechanism for notifying the WTO of sanitary or phytosanitary requirements, except for emergency measures.

3.135. With regard to the import of food for human or animal consumption classified as medium or high risk, the following are required depending on the sanitary or phytosanitary requirement applicable: an evaluation of the sanitary/phytosanitary system in the country, province, region, zone or area where the product is produced and exported; inspection of the processing facilities or plants. These evaluations are carried out in accordance with the provisions in the various Manuals of Procedure<sup>113</sup> and their cost is usually borne by the importer, the exporter or both,

<sup>107</sup> Article 22 of Law No. 23 of 15 July 1997.

<sup>108</sup> The website is: <http://168.77.213.144/LicImport/formularios/login.aspx>.

<sup>109</sup> Executive Directorate of Agricultural Quarantine, MIDA (2009).

<sup>110</sup> In Decision (*Resuelto*) No. DAL-043-ADM-2008 of 7 July 2008, Panama adopted IPSP No. 11 of the IPPC for quarantine pest risk analysis.

<sup>111</sup> Article 51 of Decree Law No. 11 of 22 February 2006.

<sup>112</sup> The database is available online at: <http://www.aupsa.gob.pa/RES>.

<sup>113</sup> These are: Manual of Procedure for the sanitary eligibility of countries, regions, zones and provinces; and phytosanitary recognition of: areas, places, sites free of quarantine diseases and areas of low prevalence



except for evaluations carried out in European Union countries, where the cost is paid by AUPSA pursuant to the Association Agreement between Central America and the EU.

3.136. No prior authorization is required to import food into Panama, but a sanitary or phytosanitary certificate issued by the competent authority in the product's country of origin must be produced.<sup>114</sup> AUPSA must be notified of the arrival of the food at the point of entry at least 48 hours beforehand, using the website of the Food Import Notification Scheme (SISNIA), on which the Import Notification Form is completed. SISNIA shows which foods are classified as high risk and warns of the need to take a sample at the border.

3.137. Packaged, bottled or wrapped foods bearing a particular name or trademark have to be registered with AUPSA before being imported.<sup>115</sup> Registration is free-of-charge and may be done through SISNIA's website or at AUPSA offices, and usually takes 24 hours.<sup>116</sup> No registration is required for unprocessed products such as fresh meat (not packed), fresh fruit or vegetables, grains, dairy produce in bulk, food ingredients and additives. The authorities may also identify packaged foods for which sanitary standards are recognized internationally and therefore do not need to be registered.<sup>117</sup> No such foods have been identified so far.

3.138. When food imports arrive at the point of entry, they must be accompanied by the Import Notification Form, the certificate of origin, the commercial invoice and the customs pre-declaration. Imports of raw materials and fresh food of animal origin also need a sanitary certificate; unprocessed food of plant origin must have a phytosanitary certificate; and prepackaged foods need a free sale certificate.<sup>118</sup> In Decision (*Resuelto*) No. AUPSA-DINAN-077-2009 of 27 July 2009, AUPSA determined that, when a free sale certificate has been furnished at the time of registration, it does not have to be submitted again for each shipment.<sup>119</sup>

3.139. Panama allows the import of genetically modified products. It does, however, prohibit the production, import, sale and use of products containing certain additives for animal consumption. Panama approved the Cartagena Protocol on Biosafety to the Convention on Biological Diversity and has set up a National Biosafety Commission, as well as biosafety committees in the areas of health, the environment and agriculture.<sup>120</sup> The authorities are planning to develop more rules in this regard.

3.140. The CNA is empowered to accredit or certify national sanitary and phytosanitary testing laboratories. It is also working, however, on obtaining their international certification. For those laboratories undertaking analyses for the purpose of importing food, the accreditation given by the CNA has to be approved by AUPSA. The CNA recognizes the tests carried out by foreign laboratories accredited by international organizations.

3.141. The Panamanian authorities retain the right to undertake laboratory testing when goods arrive at entry points in order to ensure that they comply with sanitary and phytosanitary requirements and the legislation applicable. The tests are carried out randomly by means of a sample based on the product's risk and origin and the importer's background, taking into account international sanitary or phytosanitary warnings and any cases of non-conformity detected in previous imports. Imports of live animals and plants, fresh fruit and vegetables and grains undergo testing in 100% of cases.

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of regulated pests (MPDNN-001-09, text of 15 March 2011); Manual of Procedure for approval of facilities, production chains and/or processing plants for the export of food to the Republic of Panama (MPDNN-005-09, text of 15 March 2011); and Manual of Procedure for the recognition of the equivalence of a sanitary or phytosanitary measure that is specific or related to a particular product or a particular category of products, or at the system level (MPDNN-004-09, text of 15 March 2011). The countries recognized as eligible to export certain products to Panama in 2007-2013 are listed in the Annex to Decision (*Resuelto*) AUPSA-DINAN No. 092 – 2007 (of 2 March 2007), and the facilities approved can be viewed on AUPSA's website.

<sup>114</sup> Article 53 of Decree Law No. 11 of 22 February 2006.

<sup>115</sup> Article 54 of Decree Law No. 11 of 22 February 2006.

<sup>116</sup> AUPSA (2011).

<sup>117</sup> Article 55 of Decree Law No. 11 of 22 February 2006.

<sup>118</sup> AUPSA (2009).

<sup>119</sup> This applies to foods covered by AUPSA-DINAN Decisions (*Resueltos*): 003-2006, 008-2006, 049-2007, 054-2007, 262-2007, 055-2008, 057-2008, 152-2008 and others.

<sup>120</sup> The Cartagena Protocol was approved by Law No. 72 of 26 December 2001, and Law No. 48 of 8 August 2002 created the National Biosafety Commission and the sectoral committees.

3.142. Since 2006, Panama has recognized the equivalence of the sanitary and phytosanitary systems of the United States for meat (including bovine and pigmeat), poultry and poultry products, as well as dairy produce and other processed products for human or animal consumption.<sup>121</sup> Panama is still working on achieving the equivalence of its sanitary system for meat products with those of the United States. Since 2009, Panama has also recognized as equivalent Canada's sanitary system for bovine and pigmeat products (chilled, frozen or fresh). It recognizes as well the equivalence of the sanitary systems of Italy and Spain for cheese and pigmeat products having undergone inactivation treatment: and of Denmark and the Netherlands for dairy produce.<sup>122</sup>

3.143. Chapters on SPS measures appear in the trade agreements signed by Panama. These determine that the application of such measures must be based on international regulations and advocate recognition of equivalence. Panama has undertaken to adopt the Central American Regulations on Sanitary and Phytosanitary Measures and Procedures when the Protocol incorporating Panama into SIECA comes into force. These regulations seek the gradual harmonization of SPS measures in intraregional trade.<sup>123</sup>

### 3.3 Measures directly affecting exports

#### 3.3.1 Export procedures and requirements

3.144. VICOMEX, within the MICI, is responsible for regulating procedures relating to exports.<sup>124</sup> The bodies involved in export are ANA; MIDA, through the National Animal Health and Plant Health Directorates and the Executive Directorate of Agricultural Quarantine; MINSA, through DEPA; and the Panamanian Aquatic Resources Authority (ARAP).

3.145. The following documents are required in order to export from Panama: the export declaration, the sworn commercial invoice and the certificate of origin. Companies exporting for the first time must submit their single taxpayer's registration so as to be registered in SIGA's electronic system. Furthermore, depending on the nature of the product to be exported and the requirements in the country of destination, it may be necessary to have a sanitary certificate (food and seafood), an animal health certificate (live animals), a phytosanitary certificate (fresh vegetables and fruit, grains and wood) or a catch certificate (seafood and fish), issued by the competent authorities.<sup>125</sup> Export documents are forwarded through SIGA. It is not compulsory to use the services of a customs broker in order to export Panamanian products.

3.146. Panama has a single window in VICOMEX to centralize and streamline export formalities.<sup>126</sup> There are also single windows in the regional customs administrations.<sup>127</sup> These windows offer services such as endorsement of export and re-export customs declarations; issue and endorsement of certificates of origin; sale and endorsement of documents covering commercial activities in free zones. Officials from each of the bodies dealing with export transactions are, however, not present at all these windows. In recent years, the authorities have been working on computerizing all the formalities and setting up a single electronic window. In January 2013, a Pilot Plan for a Single Electronic Foreign Trade Window was launched and it is hoped that the second phase will start operating in May 2015 when the remaining competent bodies are linked to the digital platform.

3.147. Through the single export window, VICOMEX issues certificates of origin for exports not eligible for preferential tariffs, for exports covered by trade agreements under which a certificate

<sup>121</sup> WTO document G/SPS/N/EQV/PAN/1 of 9 August 2007. See also the AUPSA press release, *Medidas sanitarias y/o fitosanitarias para la importación de alimentos originarios de los Estados Unidos de América* of 17 May 2013. Online information viewed at: <http://www.aupsa.gob.pa>.

<sup>122</sup> The relevant resolutions can be viewed on AUPSA's website.

<sup>123</sup> COMIECO Resolution No. 271-2011. Online information viewed at: <http://www.sieca.int/Portal/EnlacesDeInteres.aspx?NodoNavegacionId=11&NodoId=724>.

<sup>124</sup> VICOMEX was created by Law No. 53 of 21 July 1998.

<sup>125</sup> See online information from *Panama Export* at: <http://www.panamaexport.gob.pa/es/documentacion-y-tramite/documentos-y-tramites-para-la-exportacion.html>.

<sup>126</sup> Created by Executive Decree No. 53 of 15 July 1985.

<sup>127</sup> Located in Colón and Comarca Kuna Yala; Chiriquí; Bocas del Toro; Coclé, Veraguas, Herrera and Los Santos; Tocumen airport; Panama City and Darién.

of origin issued by a government authority is required (the agreements with Colombia, the Dominican Republic, the EU and Chinese Taipei), as well as for exports covered by the GSP and LAIA regimes. VICOMEX simply endorses the certificate of origin for exports covered by free trade agreements that permit self-certification (section 3.2.3). Panama's Chamber of Commerce, Industry and Agriculture, the Industry Association of Panama (SIP) and the Panamanian Exporters' Association (APEX) are authorized to issue certificates of origin, but these must be endorsed through the single export window and only serve as a reference to determine the origin of the goods and not for eligibility for tariff preferences.

3.148. Exports are not generally subject to physical inspection, except in some cases such as wood, which is inspected by ANAM, and polychaete worms (used in fishing), shark fins and lobster tails, which are inspected by ARAP. Through its respective directorates, MIDA performs inspections prior to issuing a phytosanitary certificate for the export of products of plant origin and the animal health certificate needed for the export of live animals. MINSA is responsible for inspecting plants processing food for export and issues the relevant sanitary certificates.

### 3.3.2 Export taxes, charges and levies

3.149. There are no domestic taxes on exports. Panama does not have any export taxes, except on processed wood from natural forests, on which a levy of 1% of the export value is imposed by ANAM.<sup>128</sup> There are no minimum export prices.

### 3.3.3 Export prohibitions, restrictions and licensing

3.150. Cabinet Decree No. 41 of 11 December 2002 provides that all domestic products may be exported, with the exception of drugs (unless they are for medicinal or scientific purposes); products endangering the safety of fauna, flora or the nation's cultural, historical or archaeological heritage; staple goods of which there is a shortage in Panama and those determined by the Executive as being in Panama's economic interests. The authorities have indicated that the latter situation has not yet occurred.

3.151. Executive Decree No. 83 of 10 July 2008 (Article 6) prohibits the export of wood in the form of logs, stumps, roundwood or blocks, sawn or roughly dressed, of any species from natural forests.<sup>129</sup> The objective is to ensure the sustainable use of this natural resource and to boost national value added by processing the wood. Panama does not allow the export of certain plants and animals in danger of extinction pursuant to the International Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).<sup>130</sup> Panama also regulates the export and re-export of substances controlled by the International Narcotics Control Board.

3.152. In addition to any requirements or certificates which the country of destination may determine, in Panama the export of some products is restricted or requires a special procedure, as shown in Table 3.6.

**Table 3.6 Exports subject to control or special procedures**

Product	Procedure	Competent body	Legislation
Polychaete worms (marine species) and lobster tails	Resolution and marketing permit	Panamanian Aquatic Resources Authority (ARAP)	Executive Decree No. 4 of February 1997 and Executive Decree No. 15 of 30 March 1981
Shark fins	Export certificate	ARAP	Law No. 9 of 16 March 2006 and Resolution No. 022-2011 of 10 February 2011
Wood	Permit and export transport document	National Environment Authority (ANAM)	Executive Decree No. 83 of 10 July 2008

<sup>128</sup> Forestry Law No. 1 of 3 February 1994.

<sup>129</sup> Executive Decree No. 83 of 10 July 2008 (which repealed Executive Decree No. 57 of 5 June 2002) allows the export of wood from natural forests provided that it involves finished products or wood processed to a higher degree than simply sawn or roughly dressed; or wooden frames to be used for market research.

<sup>130</sup> This applies, for example, to wood of the species *Dalbergia retusa* and *Dalbergia darienensis* (cocobolo), whose export is subject to Decree No. 83 of 10 July 2008, pursuant to Resolution AG No. 0260-2011 of 28 April 2011 and Resolution AG No. 0696-2013 of 17 October 2013.

Product	Procedure	Competent body	Legislation
Inflammable products	Authorization	Fire brigade	Law No. 48 of 31 January 1963, Law No. 21 of 18 October 1982, Resolution No. CDZ03-99 of 11 February 1999 and Resolution No. 132-05 of 31 August 2005
Firearms, ammunition, explosives, non-lethal defensive and similar articles. Weapons of mass destruction, including dual application technologies for final use in weapons of mass destruction	Authorization	Ministry of the Interior and Justice	Decree No. 354 of 29 December 1948, Decree No. 2 of 2 January 1991 and Law No. 48 of 1980.  Law No. 27 of 17 April 2013
Farmed frogs and lizard skin	CITES export certificate	ANAM	Law No. 24 of 7 June 1995; Law No. 39 of 24 November 2005; Executive Decree No. 43 of 7 July 2004; and CITES

Source: WTO Secretariat, with online information from ANA, viewed at: <http://www.ana.gob.pa/images/stories/Articulos/regimenes/exportacion/regimendeexportaciondefinitiva.pdf>; and information from *Exporta Fácil*, viewed at: <http://www.exportafacil.gob.pa/exporta-facil/que-no-puedo-exportar.html> and WTO (2007).

### 3.3.4 Export incentives

3.153. Panama has a number of export support programmes. These include drawback, temporary import, and various types of special economic zones (free zones, the ZLC and the Panama-Pacific Special Economic Area), as well as other tax concession schemes. During the period under review, Panama amended its legislation in order to comply with the rules in the WTO Agreement on Subsidies and Countervailing Measures.

3.154. Panama notified the WTO of three export subsidy programmes: the ZPE, ROIN<sup>131</sup> and CAT programmes.<sup>132</sup> In 2006, Panama sought an extension from the WTO for the elimination of export subsidies granted under the ZPE and ROIN programmes (it did not request an extension for the CAT).<sup>133</sup>

3.155. The extension was approved in July 2007, thus allowing Panama to maintain export subsidies under these two programmes until 31 December 2015, provided that it adopts a plan of action for their elimination.<sup>134</sup> In 2010, Panama notified the WTO of the action taken to dismantle the subsidies granted under the ROIN (sections 3.4.1.1 and 3.4.1.2) and ZPE programmes.<sup>135</sup> In 2011, Panama notified the adoption of a new law on free zones repealing the law on the ZPE (section 3.3.4.2).<sup>136</sup>

3.156. Panama has not submitted any notification on agricultural export subsidies since 2007.

#### 3.3.4.1 Drawback, duty-free replacement of goods and temporary admission regimes

3.157. Cabinet Decree No. 41 of 11 December 2002 governing the drawback, duty-free replacement of goods and temporary admission regimes remains in force.

3.158. The drawback regime allows all the taxes paid on the import of goods used to produce the goods for export to be refunded at the time of export.<sup>137</sup> The sale of raw materials, containers, packaging and semi-finished products on the domestic market to companies whose production is at least 90% for export is also deemed to be an export.

<sup>131</sup> The ROIN programme also gives tax incentives to companies producing for the domestic market.

<sup>132</sup> WTO document G/SCM/N/95/PAN of 3 July 2003.

<sup>133</sup> WTO document G/SCM/W/537 of 23 June 2006.

<sup>134</sup> WTO document WT/L/691 of 31 July 2007.

<sup>135</sup> WTO documents G/SCM/N/211/PAN of 24 June 2010 and G/SCM/N/211/PAN/Corr.1 (Spanish only) of 29 September 2010.

<sup>136</sup> WTO document G/SCM/N/253/PAN-G/SCM/N/260/PAN of 2 July 2013.

<sup>137</sup> Articles 193 and 194 of Cabinet Decree No. 41 of 11 December 2002.

3.159. The duty-free replacement of goods regime allows goods that are equivalent (of a similar type, quality and technical specifications) to be imported free of import duty to replace imported goods used to obtain products previously exported definitively. Goods that are incidental to production (for example, fuel) or parts for machinery or equipment cannot be replaced.<sup>138</sup>

3.160. The temporary admission regime allows duty-free import of goods intended for re-export in the same state. Security has to be posted to cover all duties if the goods remain in Panama.<sup>139</sup>

#### 3.3.4.2 Free zones covered by Law No. 32 of 2011

3.161. In order to comply with its commitment to eliminate export subsidies, Panama repealed Law No. 25 of 30 November 1992, which governed the ZPE.<sup>140</sup> Instead, it enacted Law No. 32 of 5 April 2011 establishing a new free zones regime and its implementing Regulations, Executive Decree No. 26 of 9 February 2012. Promoters and companies that operated under the ZPE regime have continued their operations under the new free zones law, but the export subsidies they receive will terminate on 31 December 2015.

3.162. In order to dismantle these subsidies, Law No. 32 on free zones introduces radical changes to the tax regime.<sup>141</sup> As of 1 January 2016, companies established in free zones will have to pay the following taxes, *inter alia*:

- a. income tax (ISR) and the ITBMS on local leasing and subleasing operations;
- b. the 5% tax on dividends, irrespective of the source, and the 2% additional tax applicable if no profits are distributed;
- c. the 1% annual tax on the company's capital (a minimum of B 100 and a maximum of B 50,000);
- d. the ISC on goods and services (section 3.2.5); and
- e. the Special Interest Compensation Fund (FECCI) on loans, unless they are guaranteed by bank deposits.

3.163. Based on information from ANIP, Table 3.7 shows the tax incentives given over the period 2007-2012 to companies in the former export processing zones and, since 2012, to those in the free zone covered by Law No. 32.

**Table 3.7 Tax incentives given in free zones, 2007-2012**

(Balboas)

	Income tax (ISR)	Amount of the incentive
2007	2,945,259,376	883,577,813
2008	3,315,318,779	994,595,634
2009	1,590,705,305	477,211,592
2010	1,750,532,786	525,159,836
2011	1,386,038,423	415,811,527
2012	1,176,157,185	323,443,226

Source: Information provided by ANIP.

3.164. Under the new regime, the tax concessions given to companies established in free zones consist of exemption from all domestic taxes, charges and levies (except for those mentioned in the preceding paragraph), as well as import duties, for all operations, transactions and transfer of movable and immovable property, the purchase of equipment and building materials, raw materials, machinery, tools, accessories, inputs and any good or service needed for their operations. Services companies, hi-tech companies, research and higher education centres will still be exempt from the ISR as long as they engage in foreign operations and operations among

<sup>138</sup> Article 200 of Cabinet Decree No. 41 of 11 December 2002.

<sup>139</sup> Articles 195-200 of Cabinet Decree No. 41 of 11 December 2002

<sup>140</sup> For further details on the previous ZPE regime, see WTO (2007).

<sup>141</sup> WTO document G/SCM/Q3/PAN/19 of 12 October 2012.

themselves. Promoters of free zones, for their part, remain exempt from the ISR and ITBMS on local leasing and subleasing operations.<sup>142</sup>

3.165. Goods produced in free zones and exported to markets abroad are not subject to any type of domestic taxes, charges and levies or export duties. Goods produced in or introduced into free zones and then imported into national fiscal territory must pay the applicable customs tariffs or duties and the corresponding ISR. Goods manufactured in free zones using foreign inputs and then imported into national fiscal territory pay customs tariffs and duties solely on the value of the foreign inputs, using as a basis the tariff on the end product, for which the importer has to forward the Input-Product Ratio Sheet, approved by ANA.<sup>143</sup>

3.166. Another change introduced by Law No. 32 is extension of the categories of company eligible for the free zone regime to include all those engaged in manufacturing, assembly or processing of finished and semi-finished products; hi-tech and scientific research firms; higher education establishments; companies providing logistics, environmental and health services, etc. Companies in free zones are not, however, authorized to import finished products for re-export without any form of processing to add local value.<sup>144</sup>

3.167. A licence has to be obtained from the National Free Zones Commission (CNZF)<sup>145</sup> in order to act as a promoter or operator of a free zone, and the applicant has to be registered in the Official Register of Free Zones. Likewise, companies wishing to set up business in a free zone have to obtain a licence from the CNZF and be registered in the Official Register of Companies Established in Free Zones. No minimum capital is required of free zone companies in order to start their business. Promoters of free zones, on the other hand, have to invest a minimum of B 250,000 and have at least two hectares available for the zone.

3.168. Companies established in free zones also benefit from streamlined customs procedures, for example, use of a single form for the Free Zone Commercial Activity Declaration, which can be used for imports, exports and transfer of goods. This form has to be submitted at the VUCE and is verified by the customs office operating in each free zone.<sup>146</sup> Companies operating in free zones are also given migration and labour facilities.

3.169. At April 2014, 16 licences for free-zone companies had been issued under Law No. 32 of 2011, of which: ten were operating, three were in the process of setting up and another three were preparing the infrastructure for their operations. In all, 96 firms were established in free zones, employing around 2,600 people. The main branches of activity for free-zone companies are: services (40%), processing of finished or semi-finished products (31%), assembly (16%) and manufacturing (13%).<sup>147</sup> In 2013, exports from free zones reached B 463.6 million, while imports amounted to B 414.5 million; both figures are fairly modest and account for 3.0% and 1.6% of total exports and imports, respectively (Table 3.8).

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<sup>142</sup> Articles 31-37 of Law No. 32 of 5 April 2011 and Executive Decree No. 26 of 2012.

<sup>143</sup> Article 36 of Law No. 32 of 5 April 2011.

<sup>144</sup> Article 24 of Law No. 32 of 5 April 2011.

<sup>145</sup> The CNZF was created by Law No. 32 of 5 April 2011 as a body under the Ministry of Trade and Industry and is composed of the ministers (or their representatives) of the MICI, MEF, Employment and Labour Development, MINSA, the Director-General of ANA, the Director-General of the National Migration Service, the National Secretary for Science, Technology and Innovation, a representative of SIP and one of the free zone promotion companies.

<sup>146</sup> Commercial activities in free zones are governed by Executive Decree No. 26 of 9 February 2012.

<sup>147</sup> Information provided by the Panamanian authorities.

**Table 3.8 Value of free zone exports and imports, 2007-2013**

(B million)

	Exports (f.o.b)	% of total exports <sup>a</sup>	Imports (c.i.f)	% of total imports <sup>b</sup>
2007	122.7	1.3	97.7	0.7
2008	171.9	1.6	169.9	0.9
2009	129.8	1.1	132.2	0.8
2010	93.3	0.8	162.4	0.8
2011	163.5	1.0	187.4	0.7
2012 <sup>c</sup>	312.1	1.8	276.4	1.0
2013 <sup>c</sup>	463.6	3.0	414.5	1.6

a Total exports include re-exports from the ZLC.

b Total imports include imports into the ZLC.

c Provisional figures.

Source: Information on free zones provided by the Panamanian authorities on the basis of data from the Office of the Comptroller-General of the Republic. Information on total trade based on data from the National Institute of Statistics and Censuses (INEC) in the Office of the Comptroller-General of the Republic.

### 3.3.4.3 Colón Free Zone

3.170. The ZLC was set up in 1948 and is situated at the Atlantic entrance to the Panama Canal.<sup>148</sup> The fiscal and corporate benefits afforded by the ZLC and its privileged geographical position make it a pole of attraction for investment and an important multimodal logistics centre, with four container ports, a motorway and an airport for cargo and passengers.<sup>149</sup> The ZLC is the world's second largest free zone after Hong Kong, China, and is of the utmost importance for Panama's economy. In 2012, when an historic record was reached, the ZLC handled commercial operations (imports and re-exports) amounting to close to US\$31 billion, corresponding to 7.5% of national GDP. In 2013, there was a drop in commercial operations to US\$27.421 million (Table 3.9).

**Table 3.9 Foreign trade in the Colón Free Zone, 2007-2013**

(US\$ million)

	Imports	Re-exports	Total trade
2007	7,634	8,519	16,154
2008	9,056	9,607	18,664
2009	8,260	10,922	19,182
2010	10,221	11,389	21,609
2011	14,041	15,111	29,152
2012 <sup>a</sup>	14,651	16,142	30,793
2013 <sup>a</sup>	12,686	14,736	27,421

a Provisional figures.

Source: Information provided by the Panamanian authorities.

3.171. In order to set up in the ZLC, companies have to obtain an operating permit, undertake to re-export at least 60% of imported goods and employ a minimum of five Panamanian staff on a permanent basis.<sup>150</sup> No minimum investment capital is required. Companies established in the ZLC may engage in import, export, re-export, manufacturing, selling, marketing or distribution, and may have their own physical facilities or be represented by a direct user.

3.172. The fiscal concessions available to ZLC companies include exemption from payment of taxes on: imports, re-exports and manufacture of goods, re-export earnings and the repatriation of dividends, as well as exemption from other national and provincial taxes. They also benefit from low-cost leasing of land and property, discounted leasing costs for public services (leaseback), migration concessions for foreign executives, and computerized commercial

<sup>148</sup> The ZLC was created by Law No. 18 of 17 June 1948, and implemented by Executive Decree No. 428 of 7 September 1953.

<sup>149</sup> Online information on the ZLC viewed at: <http://www.zolicol.gob.pa/index.php> and <http://www.zolicol.gob.pa/detalle.php?cid=2&sid=21&id=54>.

<sup>150</sup> Resolution JD 06-06 of 19 June 2006. Online information viewed at: <http://www.zolicol.gob.pa/detalle.php?cid=1&sid=19&id=56>.

transactions. In 2009, a Declaration of Electronic Commercial Activity (DMCE) scheme was introduced to speed up trade formalities for ZLC companies. This scheme enables information to be exchanged among those involved in processing declarations of commercial activity. These are approved automatically and, if any controls are needed, the information is forwarded under the DMCE scheme to the government body responsible for approval.<sup>151</sup>

3.173. The ZLC hosts around 3,000 companies and provides direct employment for 30,000 people and indirect employment for another 5,000. The main trade flows handled in the ZLC concern the import of goods from Asia (essentially China and Singapore) and their re-export to Latin America (Bolivarian Republic of Venezuela and Colombia) and Puerto Rico. In value terms, the main products traded are textiles and clothing, footwear, electrical and electronic appliances, and pharmaceuticals.<sup>152</sup>

3.174. In 2013, the ZLC encountered problems that led to a slow-down in trade activity, owing in part to Colombia's imposition of a compound tariff on Panama's exports of textiles, clothing and footwear and because of delays in payment by Venezuelan traders to companies established in the ZLC. With regard to the measure introduced by Colombia, Panama requested the establishment of a WTO dispute settlement panel in August 2013, and this was set up in January 2014.<sup>153</sup>

#### 3.3.4.4 Other free zones

3.175. In addition to the free zones covered by Law No. 32 of 2011 and the ZLC, there are other special economic areas in specific geographical areas: the Panama-Pacific Special Economic Area and the Barú Free Zone, which are governed by their own laws.

3.176. The Panama-Pacific Special Economic Area was created by Law No. 41 of 20 July 2004<sup>154</sup> in order to boost investment and create jobs in the zone. The aim is to turn the Area into a regional centre for the distribution of goods because of its position at the Pacific entrance to the Panama Canal and connections to road and rail networks and the international airport.<sup>155</sup> In order to operate in the Area, companies must be registered with the Panama-Pacific Area Agency, a government body which manages the Area. There is no minimum investment requirement. The activities of companies registered are exempt from payment of indirect taxes and import and export/re-export duties, but the following direct taxes have to be paid: the ISR, the tax on dividends, the additional tax and the tax on remittances abroad.<sup>156</sup> Companies in the Area also benefit from special customs procedures, with customs offices situated in the Area available 24 hours on request and an integrated procedures scheme (SIT), which acts as a single window.<sup>157</sup> The Law on Legal Stability of Investment also applies to them, as does flexibility with regard to migration and labour laws applicable to their employees.

3.177. Companies established in the Panama-Pacific Area may engage in any form of production or trade activities, including the import and re-export of finished products at the wholesale level. The incentives are, however, intended to attract activities such as the head offices of multinationals, call centres, logistics and multimodal services, hi-tech manufacturing, aviation and related services, digital and data transmission, and the sale of services to ships, aircraft and passengers, *inter alia*. In January 2014, there were 174 companies in the Panama-Pacific Special Economic Area, but it was not possible to obtain statistics on their imports and exports.

3.178. The Barú Free Zone is situated in the province of Chiriquí on the border with Costa Rica and was set up by Law No. 19 of 4 May 2001 with the aim of promoting investment in this geographical area by offering tax and other incentives. Among the benefits available to companies

<sup>151</sup> Online information on the DMCE scheme, viewed at: <http://dmce.zonalibredecolon.gob.pa>.

<sup>152</sup> ICEX (2012).

<sup>153</sup> For further details, see WTO document series WT/DS461.

<sup>154</sup> Amended by Law No. 31 of 22 June 2009, Law No. 69 of 6 November 2009, Law No. 8 of 15 March 2010 and Law No. 33 of 30 June 2010.

<sup>155</sup> Online information from the Panama-Pacific Area Agency, viewed at: <http://www.app.gob.pa/index.php?p=noticias> and <http://www.app.gob.pa/index.php?p=ventajas>.

<sup>156</sup> Companies registered as involved in "special business activities" in accordance with Law No. 41 of 2004 are exempt from the ISR, the tax on dividends, the additional tax and the tax on remittances abroad.

<sup>157</sup> Executive Decree No. 77 of 2006 and online information from the Panama-Pacific Area Agency, viewed at: <http://www.app.gob.pa/index.php?p=sit>.



operating in the Barú Free Zone are exemption from payment of all national taxes and import duties.<sup>158</sup> Companies may carry out industrial, trade and tourism activities. Since it was set up, the Barú Free Zone has only attracted around 15 companies and its performance has not come up to expectations.

### 3.3.4.5 Other export incentive programmes

#### 3.3.4.5.1 CAT and CeFA

3.179. During the period under review, Panama granted export incentives for agricultural products through the CAT and the Agricultural Exports Promotion Certificate (CeFA) programmes; the former was eliminated while the latter continues to apply, except in the case of exports to some countries with which Panama has signed trade agreements.

3.180. Until 31 December 2009, exports of non-traditional agricultural products were eligible for the CAT.<sup>159</sup> This was a tax credit used to pay domestic and import taxes. To be eligible for the CAT, exporting firms had to meet a minimum percentage of national value added amounting to 20% for those established in the metropolitan region and 10% in other regions. The credit granted corresponded to a percentage of the national value added of the product exported, which increased if the company used technologies to upgrade productivity, and varied from 5% to 12%.<sup>160</sup> As the CAT constituted an export subsidy within the meaning of the WTO SCM Agreement, the Panamanian authorities decided to eliminate it and replace it with the CeFA on 1 January 2010. Companies which exported agricultural products with CAT benefits up until the end of 2009 could request the certificate up to 31 March 2010 and it became invalid on 31 May 2013.<sup>161</sup>

3.181. The CeFA was introduced by Law No. 82 of 31 December 2009, and implemented by Executive Decree No. 65 of 25 March 2010, in order to boost the competitiveness of exports and growth of the agricultural sector.<sup>162</sup> The CeFA consists of a tax credit that can only be used to pay national taxes (except municipal taxes). Its value corresponds to a percentage (10% or 15%) of the reference value per unit exported. The reference value is the estimated average of the cost of marketing incurred for wrapping, packing, transport and domestic freight costs.<sup>163</sup> The exporter has six months from the date of exporting the goods in which to request the certificate and must register with the MICI the first time it makes such a request. The CeFA is granted without any national value added requirement. Companies established in free zones are not eligible for the CeFA. Some 250 agricultural products may be granted the CeFA.<sup>164</sup>

3.182. The amounts of the incentives granted under the CAT and CeFA programmes over the period 2007-2013 are shown in Table 3.10. According to figures from the MICI, the value of the CeFAs issued in 2011 corresponded to 13% of the f.o.b. value of total exports of the products concerned. Pineapples received the greatest support under the CeFA.<sup>165</sup>

<sup>158</sup> Law No. 19 of 4 May 2001 and online information from the Barú Free Zone, *Beneficios*, viewed at: <http://www.zfb.gob.pa>

<sup>159</sup> The CAT was introduced by Law No. 108 of 30 December 1974, which was amended on a number of occasions. Law No. 11 of 23 January 2009 extended its applicability until 31 December 2009.

Laws No. 3 of 8 January 2007, No. 37 of 1 August 2007, No. 11 of 23 January 2009, No. 82 of 31 December 2009 and No. 28 of 8 March 2012. Executive Decree No. 62 of 30 November 2007.

<sup>160</sup> For further details, see WTO (2007).

<sup>161</sup> Article 14 of Law No. 28 of 8 March 2012.

<sup>162</sup> Law No. 82 of 31 December 2009 was amended by Law No. 28 of 8 March 2012.

<sup>163</sup> See Annex 1 to Law No. 82 of 31 December 2009.

<sup>164</sup> The list of products can be found in Annex 1 to Law No. 82 of 31 December 2009.

<sup>165</sup> Online information from the MICI, viewed at: <http://www.mici.gob.pa/detalle.php?cid=18&id=489>.

**Table 3.10 Cost of the tax incentives given under the CAT, CeFA and CPC programmes, 2007-2013**

(B million)

	2007	2008	2009	2010	2011	2012 <sup>a</sup>	2013 <sup>a</sup>
Tax Credit Certificate (CAT)	33.4	22.4	22.7	18.5	11.6	0.2	4.3
Agricultural Exports Promotion Certificate (CeFA)	n.a.	n.a.	n.a.	0.7	6.8	10.7	10.6
Payment certificate (CPC) <sup>b</sup>	1.5	2.6	2.0	0.8	2.9	3.9	1.4

a Provisional figures.

b Credit used (does not necessarily correspond to the credit granted).

n.a Not applicable.

Source: Figures provided by ANIP and the MEF's Directorate-General of Revenue.

3.183. In some of the trade agreements it has signed, Panama has undertaken not to apply the CeFA. For example, on 31 October 2012, when the Trade Promotion Agreement with the United States came into force, Panama notified exporters that, as of that date, the CeFA was eliminated for exports to the United States. Likewise, the CeFA ceased to apply to exports to Canada on 1 April 2013 and to those to the European Union on 15 August 2013, pursuant to the commitments undertaken by Panama in the respective agreements with these trading partners. The CeFA remains in force for exports to other countries with which Panama has trade relations.

#### 3.3.4.5.2 Payment certificates

3.184. Payment certificates (CPC) are granted to taxpayers which export or re-export goods and which, because of the scale of their operations, continually maintain a balance in their favour in ITBMS declarations.<sup>166</sup> The CPC can only be used to pay the ITBMS. In 2013, the fiscal cost of this instrument for the State was B 1.4 million (Table 3.10).

#### 3.3.5 Export financing, insurance and guarantees

3.185. There are no official export financing or export insurance programmes in Panama.

3.186. The private firm Panamericana de Seguros S.A. offers export credit insurance. The policy only covers the commercial risks and the amount insured is up to 85% of the credit, but the term may not exceed one year. The premium is determined according to the financial situation of the buyer, economic and political stability in the country of destination of the exports and the particular features of each export transaction.

#### 3.3.6 Export promotion

3.187. Promoting exports is a cornerstone of Panama's foreign trade policy. The Government particularly promotes exports of high value-added non-traditional products and the expansion of exports to new markets.

3.188. The MICI's VICOMEX is in charge of promoting exports through the National Export Promotion Directorate (DNE) and the Investment and Export Promotion Agency (PROINVEX). The DNE is responsible for managing the single export window (section 3.3.1). PROINVEX, created in 2010, is the agency in charge of promoting exports and attracting foreign direct investment.<sup>167</sup>

3.189. PROINVEX offers training services to micro, small and medium-sized entrepreneurs, promotes trade missions abroad and advises exporters on export formalities, among other tasks.<sup>168</sup> During the review period, PROINVEX continued to implement the PANAMÁ EXPORT 2009-2014 programme (the successor to the EXPORTA 2004-2009 programme) and introduced other programmes such as the Agricultural Exports Platforms and the Exporta Fácil programme.

<sup>166</sup> The legal basis for the CPC is Law No. 75 of 1976.

<sup>167</sup> Created by Executive Decree No. 134 of 14 July 2010.

<sup>168</sup> Online information from PROINVEX, viewed at:

[http://proinvex.mici.gob.pa/index.php?option=com\\_content&view=article&id=95&Itemid=43&lang=es](http://proinvex.mici.gob.pa/index.php?option=com_content&view=article&id=95&Itemid=43&lang=es).

3.190. The objective of the PANAMÁ EXPORT programme is, *inter alia*, to assist companies with externalization and consists of promotion and marketing technique campaigns, organization of trade fairs and missions, training programmes and upgrading of the single export window.<sup>169</sup> In 2012, this programme's total budget amounted to B 925,979. In December 2012, the MICI launched the [Panamaexport.gob.pa](http://Panamaexport.gob.pa) website, through which exporters can register to announce their products and services.<sup>170</sup>

3.191. The purpose of the Agricultural Export Platforms is to diversify and increase the number of exporters and the value of agrifood exports to specific markets. It is aimed at companies in the agrifood sector (some 25 firms) which have no export experience or do not regularly export to the chosen market. The programme consists of three stages: training in export logistics; validation of the product (sending samples to the destination market, visits to potential buyers, suggestions for adapting the product, obtaining samples and prices for competing products); and *in situ* marketing (attendance at trade fairs and in trade missions, visits to supermarkets and distribution centres, and meeting with potential partners). The authorities have indicated that exports from the agroindustrial sector have performed positively, increasing from US\$66 million in 2008 to around US\$130 million in 2013.

3.192. The Exporta Fácil programme is designed to facilitate the artisanal exports of micro, small and medium-sized enterprises (MSMEs). It is a simplified export scheme using postal services and allows these companies to send goods up to a maximum weight of 30 kg per package and a value not exceeding US\$5,000. The aim of this scheme is to improve efficiency and achieve low costs, as well as to offer competitive rates and the possibility of tracking dispatches. No customs broker is required for export formalities. The export declaration is completed on the Exporta Fácil website<sup>171</sup> and sent to the Posts and Telegraph Office (COTEL) electronically. The goods are deposited unwrapped at the offices of Exporta Fácil located in COTEL's branches, together with a copy of the export declaration and the necessary certificates (origin, sanitary and quality).<sup>172</sup> The time-limits for dispatch of the goods by COTEL are 7 to 30 days. The first dispatches through Exporta Fácil took place in December 2011. The scheme is available in the provinces of Panama City, Los Santos, Herrera and Coclé and will gradually be extended to the rest of Panama.<sup>173</sup> To date, some 10 to 20 companies regularly use the Exporta Fácil scheme.

3.193. The private sector is actively involved in promoting exports. APEX groups and represents exporters from all economic sectors and small and medium-sized enterprises seeking to externalize.<sup>174</sup> Other groups of exporters include the Group of Exporters of Non-Traditional Agricultural Products of Panama (GANTRAP), the Seafood Producers' and Exporters' Association (APEXMAR) and SIP. Representatives of APEX and SIP belong to the National Commission for International Trade Negotiations, where they represent the interests of the exporting sector in negotiations on trade agreements.

### 3.4 Measures affecting production and trade

#### 3.4.1 Incentives

##### 3.4.1.1 Official National Industry Register

3.194. In 2006, Panama requested the WTO for an extension of the time-limit for eliminating the export subsidies granted under the ROIN programme.<sup>175</sup> This was granted in July 2007, thus allowing the companies registered to continue to benefit from export subsidies under the ROIN programme up to 31 December 2015 (section 3.3.4).<sup>176</sup> To meet its WTO commitment, Panama amended its legislation on the ROIN and informed beneficiary enterprises of the termination of the

<sup>169</sup> Ministry of Trade and Industry (2009b).

<sup>170</sup> Online information from the MICI, viewed at: <http://www.mici.gob.pa/detalle.php?cid=20&id=3939>.

<sup>171</sup> Available online at: <http://www.exportafacil.gob.pa>.

<sup>172</sup> For further details, see online information from Exporta Fácil Panamá. Viewed at: <http://www.exportafacil.gob.pa/exporta-facil/como-funciona.html>.

<sup>173</sup> Online information from Exporta Fácil Panamá. Viewed at: <http://www.exportafacil.gob.pa>.

<sup>174</sup> APEX (2012).

<sup>175</sup> WTO document G/SCM/W/537 of 23 June 2006.

<sup>176</sup> WTO document WT/L/691 of 31 July 2007.

programme.<sup>177</sup> It also introduced a new incentive scheme called the Industrial Promotion Certificate (CFI) (section 3.4.1.2).

3.195. Companies registered in the ROIN engage in industrial manufacturing or assembling and may produce either for the domestic market or wholly or partially for the export market. By the end of 2013, 152 companies had been registered, of which 90 were exporting firms.<sup>178</sup>

3.196. The tax incentives given to ROIN companies are determined in accordance with the company's type of registration (Table 3.11). For companies which produce entirely for export, for example, the benefits include, *inter alia*, exemption from import duty and the ITBMS on machinery, equipment and spare parts used in the production process, together with full exemption from the ISR on profits and from taxes on capital. All these benefits will remain in effect until 31 December 2015.

**Table 3.11 Tax incentives given under the ROIN programme**

<b>1. Companies wholly engaged in export production</b>	
Exemption from all levies, taxes or customs duties, and from the ITBMS on the import of machinery, equipment and spare parts used in the production process, excluding construction materials, vehicles, furniture, office supplies and any other inputs not used in the production process.	
Full exemption from income tax on profits, with the exception of mining industries or those using the country's natural resources.	
Full exemption from export tax (where applicable).	
Full exemption from sales taxes.	
Full exemption from production taxes.	
Full exemption from taxes on the company's capital or assets, except licence and immovable property taxes.	
<b>2. Companies partially engaged in export production</b>	
Full exemption from income tax on profits earned from production for export, with the exception of mining industries or those using the country's natural resources.	
Full exemption from export tax.	
Full exemption from export sales taxes (where applicable).	
Full exemption from export production tax.	
Deduction of fixed costs (interest, depreciation, maintenance) from taxable income, provided that total export sales do not exceed 20% of the total value of sales.	
<b>3. Companies engaged in production for the domestic market</b>	
Import duty equivalent to 3% of the c.i.f. value of the foreign inputs <sup>a</sup> entering into the composition or the production process, as well as machinery and equipment used in the production process, plus the ITBMS.	
Exemption from income tax on net profits reinvested in the expansion of their production capacity or in producing new articles, applicable to the portion of that reinvestment in excess of 20% of taxable income in the tax year concerned.	
Special carry-over regime for losses.	
Special depreciation formula.	
For companies setting up in the districts of Santiago, Chitré, Bugaba, Chorrera, Los Santos, Las Tablas, Aguadulce, Natá, Penonomé and in the province of Colón, the following benefits:	
(a) 100% exemption from real estate tax for a period of ten years;	
(b) 100% exemption from income tax on profits from their sales on the domestic market for the first five years of production and 50% for the following three years.	

a Import of raw materials, semi-finished and intermediate goods, inputs, spare parts for machinery and equipment, together with containers and packaging.

Source: WTO document G/SCM/N/95/PAN of 3 July 2003 and information provided by the Panamanian authorities.

<sup>177</sup> Law No. 11 of 4 January 2008 and MICI Resolution No. 2 of 4 June 2008. Online information viewed at: <http://www.gacetaoficial.gob.pa/pdfTemp/26144/13142.pdf>.

<sup>178</sup> Information provided by the authorities. See also WTO document G/SCM/N/253/PAN-G/SCM/N/260/PAN of 2 July 2013.

3.197. According to Panama's notifications to the WTO, during the period 2007-2012 the amount of the tax incentives given under the ROIN programme amounted to US\$288.5 million, almost 66% of which were for exemption from, or a rebate on, import duty (Table 3.12).

**Table 3.12 Amount of the tax incentives under the ROIN programme, 2007-2012**

(US\$ million)

Type of incentive	2007	2008	2009	2010	2011	2012
Import duty exemption or rebate	22.7	31.0	23.2	34.3	33.3	45.3
Income tax exemption for reinvestment	4.8	11.2	16.2	11.4	16.5	3.0
Exemption from income tax on profits	2.7	5.3	10.8	5.3	5.5	6.0
<b>Total</b>	<b>30.2</b>	<b>47.5</b>	<b>50.2</b>	<b>51.0</b>	<b>55.3</b>	<b>54.3</b>

Source: WTO document series G/SCM/N/\* /PAN, several years.

### 3.4.1.2 Industrial promotion certificate

3.198. In 2010, Panama notified the WTO that it had adopted the CFI as a measure for eliminating the export subsidies granted under the ROIN programme (section 3.4.1.1).<sup>179</sup>

3.199. The CFI was introduced by Law No. 76 of 2009, and implemented by Executive Decree No. 15 of 15 January 2010<sup>180</sup>, with the objective of promoting the development of Panama's industry by giving incentives designed to boost investment and competitiveness. It is a non-transferable tax credit valid for eight years, with which a company is able to pay all national taxes, charges and contributions. It is not valid for the payment of the tax on dividends, the additional tax, the ICCDP or withholding taxes.<sup>181</sup>

3.200. Companies engaged in manufacturing, agro-industry, processing of marine resources, obtaining and processing agricultural and forestry raw materials and which carry out the following activities are eligible for the CFI: R&D, quality management and assurance systems, environmental management, investment or reinvestment of profits, human resource training and coaching and creating production-related jobs.<sup>182</sup> Companies which receive any other form of tax incentive and those engaged in communications, supplying electric power, construction, packaging and distribution of products are not eligible for the CFI.<sup>183</sup> Investments made as of 23 January 2010 may benefit from the CFI.

3.201. The CIF consists of a percentage of the investment made corresponding to 35% for agro-industrial companies and 25% for other companies. The goods that have benefited may not be sold or transferred for a period of five years as of their purchase or import. Applications for the CFI are made to the MICI and the National Industrial Policy Council (CONAPI)<sup>184</sup>, which approves or rejects the application. MEF issues the CFI following endorsement by the Office of the Comptroller-General of the Republic. Companies have to prove that they have created new jobs in order to apply for the CFI.<sup>185</sup>

3.202. Beneficiaries of the CFI may also opt for the following benefits:

- a. preferential import duty of 3% of the c.i.f. value for imports of raw materials, semi-finished products, machinery, equipment and spare parts, containers, packaging and other inputs used in the composition or preparation of their products;<sup>186</sup>

<sup>179</sup> WTO documents G/SCM/N/211/PAN of 24 June 2010 and G/SCM/N/211/PAN/Corr.1 (Spanish only) of 29 September 2010.

<sup>180</sup> This Decree was amended by Executive Decree No. 66 of 25 May 2010.

<sup>181</sup> Article 14 of Law No. 76 of 23 November 2009.

<sup>182</sup> WTO document G/SCM/Q3/PAN19 of 12 October 2012.

<sup>183</sup> Article 2 of Law No. 76 of 23 November 2009.

<sup>184</sup> CONAPI is composed of representatives of: MICI, MEF and MIDA, the National Science and Technology Secretariat, ANAM, the Office of the Comptroller-General of the Republic, SIP, APEX, Agricultural Producers of Panama and the National Private Enterprise Council.

<sup>185</sup> WTO document G/SCM/N/253/PAN-G/SCM/N/260/PAN of 2 July 2013.

<sup>186</sup> Article 35 of Law No. 76 of 23 November 2009.

Raw materials, semi-finished products and other inputs deemed to be sensitive for the national economy are excluded;<sup>187</sup>

- b. carry-over of losses for the five tax years following the issue of the certificate, in the amount of 20% per annum not exceeding half of taxable income;
- c. possibility of entering the customs drawback regime.

3.203. According to the information provided by the authorities, in 2011 three applications for the CFI were endorsed representing a total of B 1.1 million; in 2012, ten applications were endorsed for an amount of B 2.7 million; and in 2013 ten applications corresponding to B 3.8 million were approved. To date, the CFI has been little used, partly owing to the multitude and length of the bureaucratic formalities needed for its endorsement and the fact that many companies are still operating under the ROIN programme.

#### 3.4.1.3 Special regime for multinational business headquarters

3.204. Law No. 41 of 24 August 2007, amended by Law No. 45 of 10 August 2012<sup>188</sup>, introduced a special regime for the head offices of multinationals (SEMs) in Panama. Under this regime, SEMs which are set up in Panama and operate from there are eligible for tax incentives, as well as labour and migration facilities. A SEM is a multinational company which provides the services defined in Law No. 41 to the business grouping to which it belongs, or which establishes its head office in Panama.<sup>189</sup> In order to be eligible for the SEM regime, a licence issued by the MICI has to be obtained.<sup>190</sup>

3.205. The tax incentives available to SEMs are exemption from the ISR and the ITBMS on services provided to their business grouping outside Panama which do not generate taxable income in Panama; exemption from the tax on dividends and the additional tax. The supply of services by SEMs within Panama is taxable. SEMs also pay the ITBMS on the purchase of goods or services within Panama and on their imports.<sup>191</sup>

3.206. Medium- and high-level foreign personnel recruited by SEMs benefit from a special migration regime, and from exemption from the ISR if their salaries come from abroad, together with duty-free import of their household effects. SEMs have the right to recruit the number of personnel "of confidence" and executives needed for their business. In addition, pursuant to Cabinet Decree No. 9 of 9 April 2013, they may also opt for the legal stability of investment regime (section 2.4.1).

3.207. At December 2013, 101 companies had been accepted as SEMs, with activities in the following sectors: engineering and construction (13), logistics (7), automobiles (7), consumer goods (6), electronic goods, (6) finance (6), food (5), industrial manufacturing (5), energy (5), pharmaceuticals (4), textiles (4), oil and gas (3), and other sectors (30).<sup>192</sup>

#### 3.4.1.4 Credit and financial incentives

3.208. There are two development banks active in Panama: the National Bank of Panama (BNP) and the Agricultural Development Bank. The latter grants loans on preferential terms to businesses in the agricultural sector (section 4.2.2.2.2).

3.209. The BNP is the State's financial arm, and acts both as a development bank and a commercial bank. As a development bank, it grants loans at competitive rates in order to finance

<sup>187</sup> Sensitive products are listed in Panama's WTO Schedule CXLII, Section IB, Tariff quotas, incorporated into Law No. 23 of 15 July 1997 (pork, chicken, milk and dairy produce, rice, potatoes, maize, tomatoes and beans) and the products listed in Cabinet Decree No. 25 of 16 July 2003 (onions, coffee, whether or not decaffeinated, raw cane sugar and refined sugar).

<sup>188</sup> Law No. 41 of 2007 was implemented by Executive Decree No. 28 of 2009, amended by Executive Decree No. 39 of 2009.

<sup>189</sup> Articles 3 and 4 of Law No. 41 of 24 August 2007.

<sup>190</sup> Online information on SEMs, viewed at: <http://www.sem.gob.pa/requisitos.php>.

<sup>191</sup> Articles 21-23 of Law No. 41 of 24 August 2007, amended by Law No. 45 of 2012.

<sup>192</sup> Information provided by PROINVEX.

production activities, mainly in agriculture. In 2013, it granted loans amounting to B 3,264 million, of which B 2,765.6 million went to the private sector and the remainder to the public sector. In 2012, total loans provided by the BNP amounted to B 2,990.8 million, of which B 2,516.8 million were channelled to the private sector. Agricultural loans accounted for 15.5%, loans to business for 14.7% and those to industry for 2.3%. The remainder consisted of mortgages, personal loans, loans to financial institutions, overdrafts and financial leasing.<sup>193</sup>

3.210. The Trust Fund for the Financing of Competitiveness and Productivity (FINDEC), set up by the MICI in 2008, is a trust fund which operates as a second-tier bank, making two lines of credit available to financial institutions in order to finance the investment and working capital needs of companies providing goods and services. The maximum amount of the loans which financial institutions may grant is US\$25,000 for micro and small enterprises, US\$500,000 for other enterprises and US\$2 million for cooperative and similar associations.<sup>194</sup>

3.211. The Authority for Micro, Small and Medium-Sized Enterprises (AMPYME) provides training, technical assistance and financial intermediation services in support of MSMEs.<sup>195</sup> Law No. 72 of 9 November 2009 (implemented by Executive Decree No. 126 of 23 June 2010) created the Business Promotion Fund, with minimum annual resources of B 10 million. AMPYME offers the following financial products: (i) security for loans contracted by micro and small enterprises (MSEs) with financial entities in order to acquire fixed assets and working capital, which cover 60% to 80% of the loan depending on the type of activity; (ii) lines of credit of up to B 1 million for financial entities to allow them to grant loans of up to B 25,000 per enterprise to MSEs; (iii) seed capital, which is a non-refundable contribution of up to B 1,000 to finance new endeavours by MSEs and is granted by means of a competition.<sup>196</sup> In addition, MSEs listed in AMPYME's register of businesses do not pay income tax for a period of two years as of registration, nor do they pay the annual interest surtax under the FECl on their loans, and they have priority in public tendering procedures if a competition is held.<sup>197</sup>

#### 3.4.1.5 Sectoral incentives

3.212. Panama grants incentives to support the development of specific economic sectors. In 2012, a new incentives law was introduced to promote tourism, granting tax concessions for activities such as the building of tourist accommodation or the promotion of new tourism products (section 4.5.6).<sup>198</sup> Tax incentives are also given to companies engaged in reforestation, mining, renewable energy and the construction of coastal vessels (section 4.5.5).

### 3.4.2 Competition and price control policy

#### 3.4.2.1 Competition policy

3.213. During the period under review, Panama adopted Law No. 45 of 31 October 2007<sup>199</sup>, which contains rules on consumer protection and the defence of competition, and Executive Decree No. 8-A of 22 January 2008, which implements Title I (Monopolies) and other provisions of this Law. Four guidelines regulate other aspects such as: (i) lawful collaboration among competitors; (ii) vertical practices; (iii) control of economic mergers; and (iv) monitoring competition. The body responsible for defending competition is the Authority for the Protection of the Consumer and Defence of Competition (ACODECO)<sup>200</sup>, which is a decentralized government agency with its own legal status, internal autonomy, independence in the performance of its functions and legislative initiative through the MICI. It has an Administrator at its head, a National Free Competition Directorate and a National Consumer Protection Directorate, and is subject to control by the Office of the Comptroller-General of the Republic.

<sup>193</sup> Online information from the National Bank of Panama, viewed at: [https://www.banconal.com.pa/images/stories/pdf\\_nuevo/10\\_ESTRUCTURA\\_Y\\_EJECUCION\\_PRESUPUESTARIA\\_ESTADOS\\_FINANCIEROS\\_AUDITADOS\\_2012/estados\\_financieros\\_auditados\\_2012.pdf](https://www.banconal.com.pa/images/stories/pdf_nuevo/10_ESTRUCTURA_Y_EJECUCION_PRESUPUESTARIA_ESTADOS_FINANCIEROS_AUDITADOS_2012/estados_financieros_auditados_2012.pdf).

<sup>194</sup> Online information from FINDEC, viewed at: <http://www.findec.gob.pa/productos/index.html>.

<sup>195</sup> Law No. 33 of 25 July 2000.

<sup>196</sup> For further details, see the AMPYME website: <http://www.ampyme.gob.pa/home/financiamientos>.

<sup>197</sup> AMPYME (2011).

<sup>198</sup> Law No. 80 of 8 November 2012, which repealed Law No. 58 of 28 December 2006.

<sup>199</sup> Law No. 45 of 31 October 2007 repealed Law No. 29 of 1 September 1996, Executive Decree No. 31 of September 1998 and Decree Law No. 9 of 20 February 2006.

<sup>200</sup> ACODECO replaced the Free Competition and Consumer Affairs Commission (CLICAC).

3.214. Some of the main changes introduced by Law No. 45 include explicit consideration of the criterion of economic efficiency, the introduction of the concept of cornering the market as a relative monopolistic practice, limitation of the period for collecting evidence in judicial hearings, the introduction of payment for information and higher fines.

3.215. The purpose of Law No. 45 is "to protect and ensure free economic competition by eradicating monopolistic practices and other restrictions on the efficient operation of the markets in goods and services, in the best interests of the consumer". The Law applies to almost all economic operators, whether natural or legal persons, private companies or State or municipal institutions, and to all those actively engaged in economic activities. It does not apply to those economic activities that the Constitution or other laws reserve exclusively for the State and which have not been put out to concession, for example, electricity transmission and airport management. ACODECO nevertheless has the power to investigate, consider and verify monopolistic, anti-competitive or discriminatory practices by companies or entities which provide public services, with the support and collaboration of the technical personnel of the National Public Service Authority (ASEP). As regards penalties, the Law created a programme of payment for information or leniency, but by April 2014 it had not been used.

3.216. Pursuant to Law No. 45, absolute monopolistic practices, defined as any act, contract or practice that restricts, lessens, injures, prevents or in any other way harms free competition in the production, processing, distribution, supply or marketing of goods or services, are prohibited. The Law does not, however, prohibit a monopoly if it has not been achieved by means of prohibited practices. It does prohibit relative monopolistic practices<sup>201</sup>, meaning unilateral acts, pacts, arrangements, agreements or contracts with the objective and effect of unreasonably causing other operators to withdraw from the market, unfairly preventing their access or unfairly establishing exclusive advantages in favour of one or more economic operators, for which the cost and the benefits have to be weighed in order to determine whether the acts in question can be allowed. As already mentioned, the Law also introduces the concept of cornering the market as a relative monopolistic practice.

3.217. Exceptions to Law No. 45 are acts whose purpose is to increase, save on or improve the production and/or distribution of goods or services or which promote technical or economic progress, or generate benefits for consumers or the market, provided that they involve: (i) the exchange of technical information or technology; (ii) the joint establishment and/or development of infrastructure, equipment, resources or production facilities; (iii) the joint establishment and/or development of collection, storage, transport or distribution facilities; or (iv) the result of such acts is export. By including the concept of economic efficiency and these exceptions to application of the Law, economic criteria have been incorporated into the legal assessment evaluating the interests of the consumer.

3.218. Law No. 45 does not cover mandatory prior notification of mergers, but ACODECO is responsible for examining mergers, whether at the request of the interested party or ex officio, by carrying out preliminary checks or post facto investigation. Mergers that have been verified and endorsed by a favourable opinion may not subsequently be challenged by ACODECO, unless the decision was based on false or incomplete information provided by the interested party. The favourable opinion is denied if the ensuing merger: (i) confers or potentially confers on the economic operator the power to fix prices or materially restrict supplies on the relevant market; (ii) is intended to remove other competitors from the relevant market or block their access; or (iii) materially facilitates the exercise of prohibited monopolistic practices. Mergers that have not been voluntarily submitted to verification may be challenged for up to three years after having occurred. If an investigation determines the existence of a prohibited practice, ACODECO may make completion of the transaction conditional upon compliance with the conditions necessary to bring it into conformity with the law or may challenge the merger in the appropriate courts with a view to ordering the partial or total demerger of what was improperly merged. These remedial measures are taken without prejudice to penalties which ACODECO or the courts may impose or any criminal liability that arises.

3.219. ACODECO may impose administrative sanctions for failure to comply with the law and bring the case before the courts for the purpose of other civil measures such as fines of up to three times the amount of the damages caused, together with legal costs. The legal framework

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<sup>201</sup> Articles 15 and 16 of Law No. 45 of 31 October 2007.



in effect at ACODECO permits that, following initiation of an investigation, an agreement procedure can be set in motion at the request of a party and, once this has been agreed by the parties, it is forwarded for approval by the Cabinet. In this connection, ACODECO conducted agreement procedures for an amount of B 1.3 million between 2010 and 2013. From 2009 to 2013, it carried out eight to 13 investigations each year, mostly into absolute monopolistic practices, but in 2010 there were 23, of which 12 were into absolute monopolistic practices. There are currently more negotiated agreements between parties than judicial solutions.<sup>202</sup>

3.220. As regards legal proceedings, Law No. 45 created three civil circuit courts in the First Judicial District of Panama (Eighth, Ninth and Tenth Chambers) and a circuit court in Colón, Coclé (Second Chamber), Chiriquí (Fourth Chamber) and Los Santos (Second Chamber), to hear such cases and intellectual property disputes. A Third High Court was also set up in the First Judicial District. Lastly, the Law limits the period for evidence-based hearings to 45 days, with the possibility of a maximum 30-day extension, thus speeding up the process. According to information from the authorities, however, there have not been any notable improvements in the delays.

3.221. The principal economic mergers examined between 2007 and 2012 concerned a number of different economic sectors. Two cases were in the banking sector, one in insurance and two in the food sector. ACODECO gave a favourable opinion in all these cases. In one case relating to gaming and another to fuel, ACODECO gave a favourable opinion subject to conditions, and it was ratified following the submission of a modified non-competition agreement in the gaming case and the acceptance of certain conditions and the posting of a guarantee in the fuel case.<sup>203</sup> ACODECO also responded to two viability questions in 2008: in one it gave a favourable opinion and in the other the response was positive, leaving the way open to a case-by-case examination.

3.222. Investigations into monopolistic practices involved both Panamanian and foreign companies. The cases settled mainly concerned the following practices: agreement between competitors to manipulate and agree on the price for buying services to control advertising investment (2008), the practice of excluding economic operators (2009), agreement on the cost of fire insurance premiums (2010), strategy to lower the percentage of the no-claims rebate in private motor insurance policies (2010), fixing the buying price of rice (2010), fixing the selling price of bread (2010). The following are some of the cases pending before the courts: price fixing by five oil companies (2000), concerted action by five airlines to fix the basic commission paid to travel agencies (2001), code-sharing agreement among three airlines, agreement on buying prices among dairy produce processors (2008), agreement to impose transport prices and rates on certain routes (2009), fixing of the price of laundry services (2010) and laundrettes (2011). ACODECO or its predecessors found violations of the competition law in all these cases and they were referred to the courts.<sup>204</sup> In March 2014, the proceedings begun in 2003 against monopolistic practices by advertising agencies ended with a ruling to compensate for the damage caused amounting to around B 881,000. Pursuant to Law No. 29 of 1996 in force at the time of the facts, ACODECO is also responsible for imposing fines on each of the companies accused (ranging from B 25,000 to B 100,00 each, depending on factors such as the seriousness of the offence, the size of the company, etc.).

3.223. Between 2007 and 2012, several bilateral trade agreements signed by Panama containing provisions on competition policy came into force. In the Free Trade Agreement between Central America and Panama, the parties undertake to endeavour to establish mechanisms to facilitate and promote competition policy and prevent the negative effects of anti-competitive practices. In the agreement with Peru, the parties undertake to adopt or maintain domestic legislation which fully and effectively covers anti-competitive practices and to establish or maintain a competent responsible authority. This agreement also covers notification and holding of consultations on any activity that might affect important interests of the parties. In the agreement with Canada, the parties agree to ban anti-competitive practices through measures consistent with the principles of transparency, non-discrimination and due process, but the parties may designate monopolies. In the agreement with the European Union, the parties agree that

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<sup>202</sup> Information provided by ACODECO.

<sup>203</sup> For further details, see ACODECO's website (Economic mergers):  
[http://www.autoridaddelconsumidor.gob.pa/nuestra\\_labor.asp?area=11](http://www.autoridaddelconsumidor.gob.pa/nuestra_labor.asp?area=11).

<sup>204</sup> For further details, see ACODECO's website (Monopolistic practices):  
[http://www.autoridaddelconsumidor.gob.pa/nuestra\\_labor.asp?area=11](http://www.autoridaddelconsumidor.gob.pa/nuestra_labor.asp?area=11).

arrangements, decisions on association, concerted practices with the aim of distorting competition, abuse of a dominant position and mergers among companies which hinder competition are inconsistent with the agreement.

3.224. ACODECO is viewed positively by the public, economic operators and members of the judiciary who deal with competition issues, but is better known for its activities in defence of consumers. Competition policy as such is not very visible in Panama.<sup>205</sup> Although it has been applied more forcefully since the approval of Law No. 45, Panama's markets show a high level of concentration, particularly in relation to goods. In some cases, only a few businesses operate in certain sectors (cement, plastics, oil, bakeries) and, in others, tariff protection is high (dairy produce, pigmeat, sugar, confectionery). A proactive policy is therefore particularly important to guarantee competition. According to information provided by the authorities, however, the number of ACODECO employees did not increase between 2007 and 2013, although its operating budget rose from B 613,000 in 2007 to B 797,683 in 2013.

#### 3.4.2.2 Price controls

3.225. In accordance with Law No. 45, exceptionally and only when the market's operations are restricted, the Executive may decide on and implement policies to control prices; this is done by ACODECO, which temporarily fixes maximum selling prices for specific goods and services for periods not exceeding six months, although this may be extended for an equal period. Controls only apply to products whose applied import tariff exceeds 40% *ad valorem*, except for hydrocarbons, petroleum products and staple goods, which only require due substantiation in order to be adopted. The Executive determines the goods and services subject to controls in a decree, after non-binding consultation with ACODECO.

3.226. In addition, Law No. 1 of 10 January 2001 on Medicines and Other Products for Human Health provides that, exceptionally and at any time, the Executive may impose ceiling reference prices for medicines for six-month periods, which may be extended, if price trends on the domestic market bear no relation to the price of the said or like products on international markets. Pharmaceutical establishments are obliged to forward the price lists for their products to ACODECO together with any changes. After examining these, ACODECO makes any recommendations and proposals to the Executive.

3.227. The price of some services is controlled, for example, land transport of passengers, whose rates are fixed by the Land Transit Authority, the distribution and sale of electric power and telecommunications services when there is only one concessionaire (Chapter 4).

3.228. ACODECO's National Free Competition Directorate reviews the prices of some products and draws up reports which can be viewed on ACODECO's website.<sup>206</sup> The purpose of these reviews is to promote competition and inform consumers so that they have more information on which to base their decisions. Products whose prices are monitored include: fuels, medicines, the 50 products making up the basic basket (food and beverages), and some goods and services such as teaching and garage workshops.

3.229. Executive Decree No. 20 of 25 January 2013 introduced price controls for petrol and diesel fuel for extendable six-month periods, by setting ceiling prices every fortnight. Executive Decree No. 495 of 23 July 2013 determined the maximum retail and wholesale selling price for liquefied petroleum gas in 25-litre containers (Chapter 4).

#### 3.4.3 State trading, government enterprises and privatization

3.230. Panama has notified that it does not have any State trading enterprises within the meaning of Article XVII of the GATT.<sup>207</sup>

3.231. By Executive Decree No. 110 of 4 August 2009, Panama created the Directorate of Investment, Concessions and State Risks (DICRE) within the MEF's organizational structure

<sup>205</sup> OECD-IDB (2010).

<sup>206</sup> Online information viewed at: <http://www.autoridaddelconsumidor.gob.pa>.

<sup>207</sup> WTO documents G/STR/N/11/PAN, G/STR/N/12/PAN, G/STR/N/13/PAN, G/STR/N/14/PAN of 23 April 2012.

and under the competence of the Vice-Ministry of Finance. The main tasks of this new Directorate are: to evaluate the operation and performance of semi-public companies so as to guarantee the State the maximum benefit, to draw up proposals on concessions granted or to be granted in the Republic of Panama, to take part with the right to speak in administrative and decision-making bodies, to recommend to the MEF policies to improve operations, profitability and risk management in companies, and to collaborate with other government institutions involved in these companies' decision making. The Coordinating Unit for the Privatization Process, better known as PROPRIVAT, has been dissolved and some of its responsibilities have been transferred to DICRE and other MEF Directorates.

3.232. Panama has the following government enterprises wholly owned by the State: the Panama-Pacific Special Economic Area Agency (AAEEPP); Tocumen International Airport S.A. (AITSA); Panama Maritime Authority (AMP); National Bingos; the Civil Aviation Authority (AAC), Household Garbage Collection Authority (AAUD); Power Generation Company S.A. (EGESA); Power Transmission Company S.A. (ETESA); National Highway Company S.A. (ENA); National Water Supply and Sewerage Company (IDAN); Agricultural Marketing Institute (IMA); National Welfare Lottery; Colón Free Zone (ZLC); National Bank of Panama; and the Savings Bank.<sup>208</sup>

3.233. Table 3.13 shows the semi-public companies and the level of State participation.

**Table 3.13 Semi-public companies**

Company	State share
AES Panamá, S.A. (Hidroeléctricas La Estrella, Los Valles and Bayano)	50.39%
Empresa de Distribución Eléctrica Metro-Oeste (EDEMET)	48.24%
Empresa de Distribución Eléctrica Chiriquí (EDECHI)	49%
Elektra Noreste S.A. (ENSA) formerly Empresa de Distribución Eléctrica Noreste	48.25%
Empresa de Generación Bahía las Minas	49%
Cable & Wireless Panamá, S.A.	49%
Enel Fortuna	49.9%
Energía y Servicios de Panamá, S.A.	47.96%
Panama Ports Company	10%
Petroterminal de Panamá, S.A.	50%

Source: Information provided by the Panamanian authorities.

3.234. Lastly, the authorities have indicated that the Atlapa Convention Centre, which was being privatized in 2007, is being sold through a special procedure after three calls for bids at public auctions in 2013 did not result in any bids.

#### 3.4.4 Government procurement

3.235. Panama is an observer on the Committee on Government Procurement. It is not party to the WTO Plurilateral Agreement on Government Procurement. It sought accession in 1997 and submitted two offers, the more recent in 1999. In a communication circulated on 9 August 2013, Panama declared its decision not to accede to the GPA and withdrew its offers.<sup>209</sup> In connection with the review of Panama's trade policy, the authorities have indicated that their conclusion was that it was more in Panama's interest to negotiate access to government procurement on a bilateral basis and that, having agreed on further trade liberalization with important trading partners, Panama intended to continue along those lines.

3.236. Among the bilateral agreements which came into force between 2007 and 2013, Panama's agreements with Central America, Peru, Canada, Singapore<sup>210</sup>, the European Union and the United States all contain provisions on government procurement. The last three include procurement by the Panama Canal Authority above certain thresholds and subject to the terms negotiated in each agreement.

<sup>208</sup> Online information, viewed at: [http://www.mef.gob.pa/es/informes/Documents/INSTITUCIONES\\_DEL\\_SECTOR\\_PUBLICO\\_2013.pdf](http://www.mef.gob.pa/es/informes/Documents/INSTITUCIONES_DEL_SECTOR_PUBLICO_2013.pdf).

<sup>209</sup> WTO document GPA/ACC/PAN/1 of 9 August 2013.

<sup>210</sup> The Agreement with Singapore came into force in 2006, but was notified in 2007.

3.237. The main instruments covering government procurement are Law No. 22 of 27 June 2006 and Executive Decree No. 366 of 28 December of the same year, implementing it. Law No. 22 replaced Law No. 56 of 27 December 1995 and amended and repealed other contrary provisions. Between 2007 and 2013, Panama adopted several laws reforming and clarifying Law No. 22, specifying its provisions more precisely (Table 3.14). A number of other instruments were also adopted, for example, executive decrees, resolutions and circulars. In general, the amendments to Law No. 22 extend the time-limits between publication and submission of tenders and reduce some of the time-limits for submission of the evaluation commission's report, thereby improving the procedure for bidders.

**Table 3.14 Summary of laws amending Law No. 22 of 27 June 2006**

Law	Summary of principal amendments
Law No. 41 of 10 July 2008, amending Law No. 22 of 2006	Specifies the functions of the Government Procurement Administrative Tribunal. Expands the provision on contractual balance for articles used in construction in unforeseeable cases. Publication of invitation to tender: Makes changes to the time-limits conditional upon publication in PanamaCompra. Exceptions to the selection of contractors: energy and hydrology resources and others of importance for national development; procurement by the National Assembly for up to B 50,000; works and supplies relating to the security of citizens, the President and the State for up to B 3 million, with authorization from the Minister of the President's Office and from the Cabinet Council if this sum is exceeded. Consultancy contracts: the criterion of incompatibility with industries engaged in exploration, development and exploitation of mineral and hydrocarbons resources is waived. Consultancy amounting to up to B 300,000 is exempt from the contractor's selection procedure and direct contracting authorization. Provides that public assets can only be disposed of in the form of a donation by the MEF to non-profit-making entities for activities of proven national or social interest. Determines a period of five days in which to lodge an appeal against a decision by the contracting agency administratively terminating a contract. The appeal suspends the procedure.
Law No. 69 of 6 November 2009 prohibiting the comparison of contracts	Prohibits changes, adjustments or alterations for the purpose of comparison. Defines and adds abbreviated tendering as a selection procedure. Complements the provisions on the obligations of contracting entities and contractors, on contractual balance, the requirements for participation by legal persons in contracts exceeding B 3 million, publication of the invitation to tender, minor contracting, procurement procedures, appeal bonds, administrative rescue.
Law No. 80 of 31 December 2009, coastal zones and islands and other provisions	Amends, supplements and adds provisions on abbreviated tendering, the new invitation to tender and direct sale of goods, decisions on selection, exceptions to the selection procedure, notification, and appeals.
Law No. 12 of 19 March 2010	Adds the best value procedure with separate and complementary evaluation of the requirements for participation by legal persons.
Law No. 18 of 23 April 2010	Establishes a special regime for the procurement of works, goods and services by the Ministry of Education.
Law No. 66 of 26 October 2010, amending Law No. 22 of 2006	Increases the amount of appeal bonds to 15% of the value of the claimant's proposal.
Law No. 48 of 10 May 2011, amending Law No. 22 of 2006	Designates the competent authorities for evaluation and approval of contracting through special procedures. Lays down time-limits according to the amount and complexity of the invitation to tender. Introduces amendments to the various procurement procedures. Determines the composition of the evaluation or verification commission. Establishes the special procurement procedure.

Source: WTO Secretariat.

3.238. Despite the aforementioned amendments, in its report for 2012 the Office of the Comptroller-General of the Republic insisted on the need to bring down to the minimum and the strictly necessary requests for exemption for the purchase of goods and services, and that State institutions should comply with the prior procedures set out in Law No. 22 and make provision for

procurement in their budgets.<sup>211</sup> The authorities stressed that a Special Procedure<sup>212</sup> had been established for this purpose and required an official substantiated technical report signed by the technical officer responsible and endorsed by the legal representative of the institution concerned. Moreover, all special procedures have to be registered in the PanamaCompra electronic procurement system and, in certain cases, a notification has to be published in PanamaCompra.

3.239. Law No. 22 and amendments thereto apply to public contracts from the Central Government, autonomous and semi-autonomous agencies, municipal authorities, the Social Insurance Fund<sup>213</sup>, financial intermediaries and public limited companies in which the State owns 51% or more of the shares or assets for: (i) the purchase or leasing of goods; (ii) the execution of public works; (iii) the disposal of State goods, including leasing; (iv) the provision of services; (v) the operation and management of goods; and (vi) concessions or any other contract not governed by a special law. The Law applies residually to communal and local authorities but this does not exempt them from the mandatory use of the PanamaCompra electronic government procurement system. The Law also applies to companies, associations, non-governmental organizations, foundations and other bodies that receive donations from the State or from foreign States or international organizations for public purposes. The rules and procedures set out in the loan contracts may be incorporated into contracts financed by international credit organizations.

3.240. Law No. 22 established the Directorate-General of Government Procurement (DGCP) as an autonomous entity with its own assets, legal status, and independence in the performance of its functions, for the purpose of regulating, interpreting, monitoring and advising on procedures for the selection of contractors by State institutions. The DGCP is also responsible for keeping the register of electronic procurement bidders, contracts and ineligible contractors; its other tasks include the development, organization, operation and control of procedures and appeals, ongoing monitoring and everything to do with the PanamaCompra system. The purchasing departments or directorates in contracting agencies become links between the DGCP and its offices, and are responsible for ensuring compliance with the DGCP's policies, guidelines and directives, but the DGCP itself does not conduct the contractor selection procedures. Panama has a centralized procurement system (PanamaCompra), in which each agency is responsible for its own public acts or tenders and has the competence, autonomy and responsibility for the purchases it makes and the contracts it concludes according to its own budget. The agencies nevertheless remain subject to the DGCP's oversight as regards compliance with Law No. 22 of 2006 and endorsement by the Office of the Comptroller-General of the Republic.

3.241. Law No. 22 also set up the Government Procurement Administrative Tribunal as an independent and impartial body, with jurisdiction throughout Panama and, depending on the case, it has exclusive competence as the sole instance for hearing appeals challenging any award of a contract. In this connection, Law No. 41 of 10 July 2008 gives more precise details on such appeals and adds to the list complaints not resolved by the DGCP. The Tribunal consists of three lawyers appointed by the President of the Republic for an initial term of five years, with the possibility of being re-appointed. The President of the Republic is the highest authority responsible for suspension, removal or dismissal of members of the Tribunal and for applying disciplinary measures, for the reasons specifically determined in the Law. For its internal administrative functions, the Tribunal is subject to the regulations governing public officials, but administrative acts by the Tribunal can only be reviewed by the courts.

3.242. Panamanian or foreign natural or legal persons, legally established, may enter into contracts with State agencies provided that they have not been declared ineligible for the reasons specified in the Law.<sup>214</sup> For procurement exceeding B 3 million, the shares in legal persons participating must be registered shares.

3.243. Procurement procedures are based on transparency, efficiency, effectiveness, due process, publicity, economy and responsibility. There are no preferences for domestic suppliers, but there is

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<sup>211</sup> Online information, viewed at: [http://www.contraloria.gob.pa/archivos\\_informesdelc/INFORMES\\_2013/INFORME\\_ANUAL/INFORME\\_DE\\_LA\\_CONTRALORA\\_-completo2013.pdf](http://www.contraloria.gob.pa/archivos_informesdelc/INFORMES_2013/INFORME_ANUAL/INFORME_DE_LA_CONTRALORA_-completo2013.pdf).

<sup>212</sup> Law No. 48 of 10 May 2011.

<sup>213</sup> The purchase of medicines, medical inputs and equipment by the Social Insurance Fund is governed by Law No. 1 of 10 January 2001 on medicines and other human health products, Law No. 51 of 27 December 2005, amending the Law on the Organization of the Social Insurance Fund and other relevant legal provisions in force.

<sup>214</sup> Article 117 of Law No. 22 of 27 June 2006.

provision for promoting competitive participation by MSMEs. This is set out in Executive Decree No. 366, which stipulates that, when bids are equal, if one of the bidders is an MSME it should be awarded the contract. The programme for the distribution of milk and nutritional biscuits also gives preference to domestic products. Furthermore, Law No. 22 does not apply to the National Support Programme (PAN), created for the implementation of social development programmes aimed at poor and marginal sectors.<sup>215</sup> In 2013, funds earmarked for this programme amounted to B 268 million.<sup>216</sup>

3.244. Streamlined formalities apply to minor procurement amounting to B 3,000 to B 30,000. Procurement above this amount must, in principle, be through a public act selecting the contractor, following the procedures determined in the law: open tendering, best value tendering, best value tendering with separate evaluation, tendering under a framework agreement, reverse auction, abbreviated tendering and special procedure. These forms of procurement are described in Table A3.3 (Types of government procurement).

3.245. The time-limits imposed for publication of the invitation to tender depend on the amount and complexity of the contract and may not be less than four working days for amounts ranging from B 30,000 to B 175,000 and 40 calendar days if the contract exceeds B 175,000. For works, the time-limits may not be less than eight working days for amounts ranging from B 175,000 to B 5 million and 40 calendar days if the contract exceeds B 5 million. In the higher ranges and in the situations determined in the Law, the contracting agency may set shorter time-limits, but in general these may not be less than five calendar days and ten calendar days for works. The notices must mandatorily be published in PanamaCompra. The purchase of information technology products for amounts of over B 175,000 necessitates a favourable opinion from the Secretariat for Innovation in the Office of the President.

3.246. Between 28 December 2006 and 27 December 2012, overall procurement under Law No. 22 amounted to B 15,349 million. The figure for 2012 was B 3,801 million, corresponding to 11% of current GDP and was broken down as follows: procurement covered by Law No. 51 on the Social Insurance Fund (25%); best value tendering with separate evaluation (21%); abbreviated best value tendering (12%); best value tendering (11%); open tendering (9%); abbreviated tendering by price (8%); minor procurement (6%); special procedure (4%); purchases from a catalogue (3%); and auction (1%).<sup>217</sup>

3.247. The ACP has its own procurement system whose legal basis is paragraph 6 of Article 319 of the Political Constitution and Section Four of Law No. 19 of 11 June 1997. Procurement is governed by the implementing Regulations adopted by Agreement No. 24 of 4 October 1999, with the amendments contained in agreements issued by the Board of Directors. The Regulations lay down uniform rules and procedures applicable to: (i) contracting or purchase of works, goods and services necessary for the operation, maintenance, preservation, modernization and expansion of the Panama Canal; (ii) disposal and sale of ACP property; and (iii) the granting of concessions and contracting for special services. Contracts signed by the Authority are subject to and fulfilled in conformity with the ACP regulations and, residually, the provisions in Panama's legislation.<sup>218</sup> Panamanian or foreign natural or legal persons that have not become ineligible to bid may take part in the selection of contractors and enter into contracts with the Authority, subject to approval in accordance with the Regulations.

3.248. The following are the procedures followed by the ACP when selecting contractors in order to promote competition: streamlined procurement, open price-based tendering, negotiated tendering, two-stage open tendering and the sale of movables belonging to the Authority. There is also restricted procurement, for example, when a particular make or manufacturer is requested, although certain formalities have to be fulfilled depending on the amount.

3.249. The Authority uses the Internet tendering system (LSI). The centralized procurement office and the units expressly authorized by the Administrator engage in minor procurement, streamlined procurement and tendering. The ACP's other administrative units may engage in minor

<sup>215</sup> The PAN was introduced by Executive Decree No. 690 of 22 July 2010.

<sup>216</sup> Budget of the Office of the President of the Republic at 31 October 2013.

<sup>217</sup> Memorandum of the Directorate-General of Government Procurement 2011-2012.

<sup>218</sup> Provision incorporated by Article Eight of Agreement No. 142 of 30 July 2007.

procurement and streamlined procurement for up to B 10,000.<sup>219</sup> Contracts for amounts exceeding B 100,000 are subject to a legal opinion. Streamlined procurement applies to amounts ranging from B 1,000 to B 100,000. Administrative units may purchase goods and services by issuing purchase orders for not more than B 10,000 per order, on the basis of agreements containing lists of official unit prices, with a period of validity of not more than one year. Procurement that exceeds B 100,000 and sale of property no longer used by the ACP is through tendering. In the 2013 financial year, the ACP notified 8,773 purchases, received 23,979 bids and awarded 19,671 contracts. Investment projects (not including investment in works/expansion) amounting to B 554 million and centralized and decentralized purchases amounting to B 1,033 million were handled.<sup>220</sup>

3.250. The ACP's implementing Regulations have been amended several times since the previous review in 2007. The principal amendments concern, for example, the time-limits, negotiated tendering, the amendment and term of contracts, the procurement of special services, specific risks and objections.

### 3.4.5 Intellectual property rights

3.251. The WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) entered into force for Panama when it joined the WTO on 6 September 1997, without any transition period. As part of the preparations for accession, Panama amended its intellectual property legislation to bring it into line with the TRIPS Agreement. Panama has notified the WTO that the Directorate for International Trade Negotiations (DINECI), the Directorate-General for Industrial Property Registration (DIGERPI), the Intellectual Property Department of the DGA, the Intellectual Property Department of the ZLC and the Tenth Circuit Prosecution Service (specializing in intellectual property offences) of the Office of the Public Prosecutor are the contact points specified in Article 69 of the TRIPS Agreement.<sup>221</sup> In addition, Panama deposited its instrument of acceptance of the Protocol amending the TRIPS Agreement on 24 November 2011.

3.252. During the review period, Panama adopted Law No. 61 of 5 October 2012<sup>222</sup> (amending Law No. 35 of 10 May 1996 on industrial property), Law No. 63 of 5 October 2012 (amending Law No. 23 of 1977 on rules for the protection of new plant varieties) and Law No. 64 of 10 October 2012 on copyright and related rights (repealing Law No. 15 of 8 August 1994, Law No. 10 of 22 February 2011, and other contrary legal provisions). With the approval of these three laws, Panama amended its intellectual property rights (IPR) legislation to bring it into line with the bilateral treaties it has signed, notably the Trade Promotion Agreement with the United States and the WIPO international treaties to which it acceded in 2012 and 2013. It has also added certain articles to the single text of the Penal Code. Panama has considerably extended the term of protection and has introduced changes which upgrade and strengthen its system for the protection of intellectual property. The legislative amendments concern virtually all IPRs and improve and amplify the provisions on processing and enforcing such rights. It should be noted that, by mid-May 2014, Panama had still not notified the WTO of the legislative amendments adopted.

3.253. Panama's legislation covers all aspects of the TRIPS Agreement. Table A3.4 provides an overview of the protection of IPRs.

3.254. Panama is a member of the World Intellectual Property Organization (WIPO) and the International Union for the Protection of New Varieties of Plants (UPOV), with which it deposited its instrument of ratification of the 1991 Act on 22 October 2012, which entered into force one month later. Panama has signed many of the WIPO-administered international treaties<sup>223</sup>, some of which contain broader provisions than those in the TRIPS Agreement, for example, the WIPO Copyright Treaty (WCT) and the Trademark Law Treaty (TLT). In 2012, it acceded to the Budapest Treaty on the International Deposit of Microorganisms for the Purposes of Patent Procedure, the Patent Cooperation Treaty (PCT) and the TLT. In 2014, Panama ratified the European Convention on Cybercrime, which also deals with copyright infringement.

<sup>219</sup> Provision amended by Article Four of Agreement No. 142 of 30 July 2007.

<sup>220</sup> Panama Canal (2013).

<sup>221</sup> WTO document IP/N/3/Rev. 9 of 8 November 2005.

<sup>222</sup> The implementing Regulations for the Industrial Property Law are being drafted.

<sup>223</sup> See the list of the treaties signed by Panama online at:

[http://www.wipo.int/treaties/es/ShowResults.jsp?country\\_id=136C](http://www.wipo.int/treaties/es/ShowResults.jsp?country_id=136C).

3.255. Panama is not party to any treaty on classification, but Law No. 35 of 10 May 1996, amended by Law No. 61 of 5 October 2012, provides that industrial designs are to be registered according to the International Classification system established under the Locarno Agreement and trademarks according to the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification), revised in 1967 and 1977.

3.256. Panama has also undertaken commitments on intellectual property in the free trade agreements it has signed with LAIA, Canada, Central America, Chile, Chinese Taipei, Cuba, the European Union (European Union-Central America), Peru, the Central American Economic Integration Subsystem (SIECA), and the United States. SIECA members have agreed to harmonize their intellectual and industrial property legislation and registration so that registration in any of the members is valid in all other member countries.<sup>224</sup>

3.257. The MICI is responsible for developing and implementing Panama's intellectual property policies and is in charge of the Interinstitutional Commission<sup>225</sup> responsible for ensuring the harmonization, coordination and monitoring of relevant policies. The Commission determines policies and guidelines for protection and enforcement in order to prevent infringement. The MICI's DIGERPI is responsible for the industrial property register and its activities are governed by Law No. 35 of 10 May 1996, amended by Law No. 61 of 5 October 2012, and Executive Decree No. 7 of 17 February 1998. The changes introduced by Law No. 61 include the creation of the Register of Authorizations in DIGERPI, the use of electronic media and digital signatures for administrative formalities and the creation of an electronic database to facilitate the safekeeping, consultation and issue of authenticated copies and certifications throughout the term of industrial property rights. The Register of Authorizations is not a pre-condition for the formalities but makes them easier inasmuch as, with a registered authorization, attorneys may act on behalf of right holders simply by indicating the registration number, which also serves in proceedings before Competition Tribunals. Chapter V of Law No. 61 incorporates the PCT into Panama's legislation.

3.258. The functions of the National Copyright Directorate (DNDA), attached to the MICI since February 2011<sup>226</sup>, are registration, filing, monitoring and inspection of copyright pursuant to Law No. 64 of 10 October 2012. It is empowered to act as arbitrator, authorize the operation of collective management entities and oversee them, take preventive measures ex officio or at the request of a party and file a criminal complaint. Through its Register of Copyright and Related Rights, the DNDA handles applications for the registration of works, productions and contracts. Between 2007 and 2012, 3,355 works were registered.<sup>227</sup>

3.259. Law No. 64 of 10 October 2012 on Copyright and Related Rights and the implementing Regulations (Decree No. 261 of 1995) protect all literary, artistic or scientific works. The Law includes special provisions on audiovisual works, computer programs, databases and data compilations, architectural works, three-dimensional works, and journalistic works. The author's moral and economic rights are both protected, together with the related rights for original and derived works. Foreigners receive national treatment for their works published in Panama. The Law extends the term of economic rights from 50 to 70 years after the death of the author or performer; after disclosure or first publication in the case of anonymous or pseudonymous works; and from the first publication or their termination for collective or audiovisual works or computer programs. Phonogram producers have the right to receive remuneration for communication of their phonograms to the public, which is shared equally with the performer and is collected by the collective management entity. The Panamanian Society of Authors and Composers (SPAC) is responsible for the collective management of copyright in musical works. In January 2007, the DNDA approved the operation of the Panamanian Society of Phonographic Producers (PRODUCE) as a collective management entity.

3.260. Law No. 35 of 1996 on Industrial Property, amended by Law No. 61 of 2012, contains provisions on patents, utility models and industrial designs. Some of the main changes introduced by Law No. 61 include the elimination of second use patents, extension of the term of patents

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<sup>224</sup> Information provided by the Panamanian authorities.

<sup>225</sup> The Interinstitutional Commission is composed of the DIGERPI, the National Copyright Directorate (DNDA), the Administration of the ZLC, ANA, the Office of the Public Prosecutor, DINECI and the Judicial Investigations Directorate.

<sup>226</sup> Law No. 10 of 22 February 2011.

<sup>227</sup> Information provided by the Panamanian authorities.



because of unreasonable administrative delays, requests for unofficial management with posting of a bond until the documentation has been submitted, the introduction of specific time-limits and fees for making good omissions, and acceptance of the results of substantive examinations or the equivalent conducted by foreign offices. It is deemed that a delay is unreasonable if the time taken for the decision exceeds five years as of the date of filing the application or three years from the request for a substantive examination. Additional protection is at the rate of one day per day of delay for the first five years and one day for every two days of delay for the following years, up to a maximum of seven and a half years. International applications must be filed in Spanish. Patents are published in the Official Bulletin of the Industrial Property Register (BORPI). Between 2008 and 2013, 1,860 patents were registered, of which 40 were by Panamanian residents.<sup>228</sup>

3.261. Law No. 61 extends the term of protection for utility models and industrial designs without registration from two to three years. It also provides that an industrial design is considered new if it has been created independently and shows a significant difference in comparison with known industrial designs. Utility models or industrial designs and trademarks are deemed to be property and the rights conferred may serve as surety, be subject to usufruct or be taxed, be confiscated, banned or subject to other judicial measures resulting from an executory procedure. Such legal acts may only be used against third parties if they have been registered. Revocation or cancellation of a patent is confined to those cases in which the person who has obtained the patent is not the inventor or his assignee or the patent has been granted contrary to the rules of patentability.

3.262. Panama has no special legislation regulating the protection of layout-designs, which are protected through copyright legislation, provided that they meet the requirements for being considered a protected work. Another innovation introduced by Law No. 61 is that of non-voluntary licences, which must be non-exclusive and intended mainly to supply Panama's domestic market. Voluntary or non-voluntary licences must be registered with DIGERPI in order to have effect against third parties.

3.263. Title V of Law No. 23 of 15 July 1997, amended by Law No. 63 of 5 October 2012 and its implementing Regulations (Executive Decree No. 13 of 19 March 1999), govern the protection of new plant varieties. Law No. 63 of 2012 extends the scope to all plant genera and species but not to the product of the harvest. The Council for the Protection of New Plant Varieties (COPOV), chaired by the Minister of Agricultural Development and composed of the Agricultural Research Institute of Panama, DIGERPI, the Agricultural Sciences Faculty, the Executive Secretariat of the National Seeds Council, and other members, is the advisory body for matters relating to the protection of new plant varieties. DIGERPI is responsible for keeping the register of protected varieties and for granting breeders' rights.

3.264. In principle, parallel imports are not prohibited inasmuch as Panama recognizes the international exhaustion of industrial property rights; nevertheless, the right holder may bring an action. They are not prohibited in relation to copyright either, but the importer of intellectual property protected by copyright may not exploit it by any means that has not been authorized.<sup>229</sup>

#### **3.4.5.1 Enforcement of intellectual property rights**

3.265. Panama responded to the Checklist of Issues on Enforcement in 1998.<sup>230</sup> The legislation on enforcement of IPRs includes: Resolution No. 9 of 27 December 2002; Resolution No. 013 of 9 March 2006; Law No. 45 of 4 June 2003; and Law No. 1 of 5 January 2004. In addition, the Copyright Law makes provision for administrative, civil and criminal proceedings for infringement of copyright.

3.266. ANA's Intellectual Property and Copyright Directorate is in charge of monitoring at the border in order to protect intellectual property. The Intellectual Property Department of the ZLC is responsible for the protection of IPRs pertaining to goods and services marketed through the Zone. The Office of the Public Prosecutor is responsible for prosecuting intellectual property offences. Border measures include administrative or judicial measures to suspend the release of goods

<sup>228</sup> Information provided by DIGERPI.

<sup>229</sup> Paragraph 2 of Article 9 of Law No. 61.

<sup>230</sup> WTO document IP/N/6/PAN/1 of 23 June 1998.

through the enforcement of provisional measures, which must subsequently be reviewed by a court.

3.267. Law No. 61 of 5 October 2012 amplified the acts deemed to constitute improper use, for example, manufacturing products which give the same general impression as the registered product, or use of containers bearing a geographical indication for commercial purposes. The Law also gives the Interinstitutional Intellectual Property Commission the task of determining policies and guidelines for protection and enforcement that are sufficiently effective to discourage infringement and broadens the Commission's composition, adding a member of the Judicial Investigations Directorate. The Law also increases the term of imprisonment and the severity of sanctions in general. Moreover, the import or export of counterfeit, altered or imitated products, even if they are in transit through Panama, is defined as an offence in the Penal Code, punishable by a term of imprisonment of four to six years, and two to four years for products with indications of source or appellations of origin that infringe IPRs.

3.268. Resolution No. 19 of 10 July 2008, amending Resolution No. 9 of 27 December 2002, extends and strengthens the enforcement system by appointing a Higher Prosecution Service Specializing in Intellectual Property Offences and Informatics Security and the Third Prosecution Service in the Chiriquí circuit as the prosecution office specializing in intellectual property offences. The former is responsible for handling investigations into intellectual property offences and bringing criminal proceedings before the competent courts throughout Panama. The Judicial Investigations Directorate of the National Police Force, which also has a department specializing in intellectual property and informatics security, assists the Office of the Public Prosecutor in the investigation, the judgment and the punishment of authors of intellectual property offences and accomplices. There are specialized IPR tribunals, pursuant to the provisions in Law No. 45 of 31 October 2007, which created the circuit courts and a Third Higher Commercial Court with competence for intellectual property matters.

3.269. Between 2007 and 2012, the Higher Prosecution Service for intellectual property dealt with an average of 801 cases, carried out an average of 140 searches, and seized products that infringed copyright amounting to an average of US\$1,820,938, and an average of US\$23,026,162 for those violating industrial property rights. It should be noted that, in 2013, following the entry into force of the new legislation, the Prosecution Service dealt with 743 cases, carried out 216 searches and seized products infringing copyright amounting to US\$853,876 and violating industrial rights for an amount of US\$131,238,635.<sup>231</sup> These figures show that, although the value of the goods seized for infringement of copyright is lower than the average over the period 2007-2011, seizures for violation of industrial property rights multiplied almost sixfold.

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<sup>231</sup> Information provided by the Panamanian authorities.

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## 4 TRADE POLICY BY SECTOR

### 4.1 Overview

4.1. Services continue to be the dominant sector of the Panamanian economy, thanks to both their greater productivity and their dynamism. Between 2007 and 2013, services grew at an average real annual rate of 7.4% (at 2007 prices), while the manufacturing sector grew by 1.8% and the agricultural sector by only 0.7%.<sup>1</sup> The services sector developed within a largely open and competitive regulatory framework, enabling Panama to consolidate its position as an important international provider of financial, port, logistical, tourism and Panama Canal transit services. For its part, agricultural and manufacturing production, despite receiving protection and various types of government support, nevertheless failed to increase its share of GDP.

4.2. In fact, between 2007 and 2013 the relative importance of the agricultural sector in the Panamanian economy continued to decline. There was also a decline in the percentage of the labour force employed in agriculture, particularly in the case of fishing since this activity contracted considerably between 2007 and 2013. In 2013, the average tariff in the agricultural sector (WTO definition) was 13.7%, above the general average, and the products with the highest tariffs were agricultural products. The average fill rate of tariff quotas for agricultural products featuring in Panama's schedule of commitments varied between 60% and 100%. Panama granted domestic support in the green box category. Domestic support under the heading "development programmes" increased considerably between 2007 and 2012.

4.3. In 2013, manufacturing industry accounted for 5.1% of GDP and employed 7.7% of the labour force. The sector is concentrated in a few activities, such as food and beverage manufacturing, publishing and printing, and non-metallic mineral products. The average level of tariff protection for non-agricultural products was 6.4% in 2013. There are various fiscal and financial incentives for manufacturing activities. The main imports include fuel, mineral oils and machinery, and the main exports precious metals and cast iron and steel.

4.4. The electricity market is decentralized and regulated. Generation is mainly private and operates under conditions of free competition, whereas transmission is in the hands of a single State enterprise and there are three semi-public companies responsible for distribution in exclusive concession areas. Panama is connected to the Central American power grid. In Panama, the installed capacity margin relative to demand is narrow but has improved, though still insufficient to meet the demand in all seasons of the year. The State is allocating subsidies to mitigate the effect of the increase in end-user tariffs. Panama does not produce hydrocarbons but has substantial storage capacity and an extensive port infrastructure. In 2013, it took measures to promote exploration with a view to the commercial exploitation of the confirmed deposits on its territory.

4.5. The services sector plays a fundamental role in Panama's economy and in 2013 contributed 70% of GDP (at 2007 prices), two thirds of total employment and one third of total exports. Panama has made specific market access and national treatment commitments in 11 of the 12 sectors defined in the General Agreement on Trade in Services (GATS). Although the commitments in the financial sector are relatively broad, those in the telecommunications and transport sectors are limited, and in the case of maritime transport non-existent. In practice, the scope of Panama's commitments under the GATS has been largely surpassed by the current openness of its services regime.

4.6. The telecommunications sector has maintained its dynamism and competition has increased, mainly as a result of the market entry of two mobile telephone operators at the beginning of 2009. This has encouraged a steady reduction in prices, improvements in quality and diversification of the supply of services. The market is open without restriction to foreign investment in private businesses. To operate in Panama foreign companies must establish a subsidiary with a local presence. The changes in legislation during the review period include, in particular, the adoption of the Law on Universal Service and Access (2008) and the Number Portability Regulations (2009).

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<sup>1</sup> Does not include fishing, which recorded negative average annual real growth of 9.6% between 2007 and 2013.

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Within the framework of the GATS, Panama has made specific commitments only with respect to added value services and has not adopted the Basic Telecommunications Reference Paper.

4.7. The financial sector grew at an average annual rate of 6.0% between 2007 and 2013 (at 2007 prices). The banking system is sound and diversified, with high levels of capitalization and liquidity, and has recently experienced a credit boom. In Panama, there are no restrictions on the establishment of foreign banks, which can be set up through subsidiaries or branches under three types of licences: to operate in Panama; to carry out exclusively external transactions; or to establish a representative office. During the review period, Panama amended its banking legislation to strengthen supervision and bring it into line with international standards, improve transparency, prevent tax evasion and protect consumers. Moreover, financial conglomerates were subjected to supervision and the Financial Coordination Council was established to improve cooperation between the bodies responsible for regulating the various segments of the financial market.

4.8. Foreign insurance companies can be set up as public limited companies constituted in Panama or as branches. Authorization to operate a branch in Panama is limited to the categories of insurance in which a company is engaged in its country of origin. Insurance policies on property and persons situated in Panama can only be taken out with insurers established in the country. In 2012 a new insurance law was adopted. Among other things, this law broadened the responsibilities of the sector's supervisory body; clarified the requirements for establishing insurance companies; updated the rules on minimum capital, solvency, reserves and investment; and allowed insurance to be sold through finance companies and trading companies. Foreign reinsurance companies can offer reinsurance services to companies domiciled in Panama, but must be enrolled in a register created for the purpose at the end of 2012. In relation to the securities market, it is worth noting the approval, in 2011, of the law establishing the Securities Market Supervisory Authority, with broad regulatory and supervisory powers.

4.9. Tocumen International Airport has become the busiest airport in Central America and a regional air transport hub. Between 2007 and 2013, the total number of passengers grew at an average annual rate of 12.8%, while the total number of passengers in transit grew by 21% and the volume of freight and mail by 5.2%. There are no restrictions on foreign investment in international traffic operators, but there are restrictions on cabotage traffic which is reserved, in principle, for companies with a minimum of 60% of the shares in Panamanian hands. By law, the Tocumen Airport management company is 100% State-owned. International passenger and freight air traffic operating certificates are granted to foreign companies under bilateral agreements. The agreements signed by Panama since 2005 are much more liberal than earlier agreements and include the Fifth Freedom.

4.10. Panama's National Maritime Strategy, approved in 2009, is designed to turn the country into an integrated centre of excellence for competitive maritime and logistical services. Panama has an extensive network of ports and offers a wide range of services for vessels. The State owns the ports but their management can be outsourced to private companies on concession and, in fact, the largest ports are under private management. In 2012, the maritime transport sector's contribution to GDP amounted to 2.3%. Panama has the world's largest merchant fleet, with 8,124 vessels registered at the end of 2012. There are no nationality restrictions on registration. Panama is seeking to rejuvenate its fleet by granting various discounts on the registration of newly built vessels.

4.11. The Panama Canal's contribution to GDP was 3.2% in 2012. The Canal is a nerve centre of global maritime transport which generates a variety of economic activities, in addition to the contribution from tolls. During the review period, the Panama Canal Authority changed its pricing policy to bring the tolls more closely into line with the value offered by the route. In 2007, work began on expanding the Canal by building a third set of locks for vessels with a greater draught, but owing to problems with the financing of cost overruns the completion of the works may be delayed until the end of 2015.

4.12. Tourism is one of the main generators of foreign exchange and accounted for 12% of GDP in 2012. Between 2007 and 2012, investment in the sector increased considerably, especially in Panama City. During the same period, Panama extended the coverage of the tax incentives granted to investment in tourism, lifted the restrictions on foreign participation in tour

operator and travel agency businesses, which ceased to be regarded as retail trade, and strengthened the sector's system of institutional support.

## 4.2 Agriculture and fishing

### 4.2.1 General features<sup>2</sup>

4.13. In 2013, Panama's agricultural sector only accounted for 2.6% of GDP and fishing for 0.4%. The importance of the agricultural sector and fishing must be measured by considering the percentage of the labour force engaged in these activities. According to household surveys carried out during the period 2007-2013, the percentage of the labour force employed in the agricultural sector, which includes livestock farming, hunting, forestry, fishing and related service activities fell from 18.9% in 2007 to 16.7% in 2012. Between 2007 and 2011, imports of agricultural products, based on Chapters 1 to 24 of the Harmonized System, rose from 10.7% to 11.2% of total imports while exports fell from 83.5% to 56.2% of total exports.<sup>3</sup> Panama's main agricultural exports are sugar cane, bananas, coffee, shrimps and prawns, and meat of bovine animals.

4.14. In 2012, the agricultural sector grew by 4.9% relative to the previous year, sugar cane production increased by 5.2% and there was also an increase in bean production. Exports of pineapples and watermelons increased by 21.7% and 7.4%, respectively. Banana production grew by 3.5%, thanks to domestic consumption since exports of this product declined by 6.3%. Rice production also decreased (by 5.8%), as did that of vegetables, melons and coffee. In 2012, livestock production grew by 7.0%, while milk and poultry production recorded increases of 10.7% and 6.7%, respectively. Forestry grew by 9.5% but agricultural services decreased due to a reduction in the areas planted and harvested. The Panamanian authorities have noted that the *El Niño* phenomenon was a factor in the reduced production of rice, vegetables and melons and that coffee rust affected coffee production. The effect of the shift in crops to African palm production was also felt. Moreover, there was a decrease in cultivated areas due to the use of the land for other, more profitable economic activities such as tourism.

4.15. The fishing sector recorded an increase of 2.5% in 2012, thanks to a 20.2% increase in shrimp exports and increased non-industrial fishing.

### 4.2.2 Agriculture

#### 4.2.2.1 Objectives

4.16. In accordance with Chapter 8 of the Constitution, which establishes Panama's Agricultural Regime, the State regulates "labour relations in the agricultural sector by promoting maximum productivity and a fair distribution of profits". Article 26 stipulates that the State is responsible for organizing assistance with credit to meet the financing needs of agriculture, for measures for stabilizing markets and achieving fair prices, and for establishing means of communication and providing technical assistance.

4.17. The Ministry of Agricultural Development (MIDA) is the entity responsible for formulating and implementing policy in the sector. MIDA is also entrusted with sanitary and phytosanitary protection through the National Animal Health (DINASA) and Plant Health (DNSV) Directorates and the Executive Directorate of Agricultural Quarantine (DECA) (section 3.2.9). MIDA's principal partner organizations in the implementation of agricultural policy are the Agricultural Development Bank (BDA), the Agricultural Insurance Institute (ISA), the Agricultural Research Institute (IDIAP) and the Agricultural Marketing Institute (IMA).

4.18. The Strategic Action Plan (PAE) for the Agricultural Sector 2010-2014 defines the strategic approach to agricultural development. Its general objective is "an agricultural sector at the service of producers and the population, which ensures competitiveness and the fair and sustainable improvement of the rural environment by bringing together all the sectors involved, thus enabling

<sup>2</sup> National Institute of Statistics and Censuses (2013).

<sup>3</sup> If the Colón Free Zone is included, imports accounted for 6.8% of total imports in 2007 and in 2011, and exports for 12.6% and 5.5% of total exports in 2007 and 2011, respectively.

the producers and the rest of the population to rise above the poverty line". The objective has five components: (i) food security and the basic basket<sup>4</sup>; (ii) the restructuring of production; (iii) marketing; (iv) rural development; and (v) institutional modernization of the agricultural public sector. The Plan envisages the establishment of an Inter-Institutional Committee, chaired by the MIDA and composed of the directors and managers of the national institutions involved in the programmes, and of a Joint Council for coordination with the various public and private sector bodies in which representatives of producers, agribusiness enterprises and consumers participate. The PAE seeks to make good the deficiencies observed in the sector, such as inadequate infrastructure and high costs of production and commercial intermediation, which affect the competitiveness of producers. Panama intends to boost domestic food production through the timely use of the agricultural sector support mechanisms permitted by the WTO.<sup>5</sup>

#### 4.2.2.2 Agricultural policy instruments<sup>6</sup>

##### 4.2.2.2.1 Border measures

4.19. In 2013, the average level of tariff protection in the agricultural sector was 13.7% (Table 3.2), with the highest tariffs being recorded for the following products: poultry meat (260%), dairy products (110%, 120% and 155%) and cane sugar (144%).

4.20. As indicated in section 3.2.9, to import products of animal or plant origin a zoo- or phytosanitary licence is required.

4.21. Agricultural products in the natural state are exempt from the payment of sales tax (ITBMS) (section 3.2.5). In the natural state means not having undergone changes that alter their form or natural state as a consequence of processing or treatment, except where necessary for preservation purposes. Imports of capital goods and inputs for the exclusive use of the agricultural sector are exempt from import duty.<sup>7</sup>

4.22. Panama has notified the WTO that in 2007 and 2009 no special safeguard measures were applied<sup>8</sup>, but has not submitted any notifications regarding special safeguard measures for the years 2008, 2010, 2012 and 2013.

4.23. In accordance with its market access commitments under the WTO Agreement on Agriculture, between 2007 and 2013 Panama submitted six notifications on imports subject to tariff quotas.<sup>9</sup> Panama applies tariff quotas to some headings for pig meat, poultry meat, dairy products, potatoes, beans, maize, rice and tomatoes. As can be seen from Table 4.1, the out-of-quota tariff for these products varies between 0% and 260%. The in-quota tariff may be 3% or 15%. The 3% tariff is applied to inputs, raw materials, intermediate goods and capital goods destined for buyers with an industrial licence granted by the MICI.<sup>10</sup>

4.24. The average quota fill rate varies from one product to another. In the case of rice and tomatoes utilization reached 99.2% and 98.8%, while in the case of pig meat and potatoes the average fill rate was around 88.5% and 73.5%, respectively. In the case of beans, the quota was not used but there were out-of-quota imports of more than 2,000 tonnes in 2011; it should be mentioned that the out-of-quota applied tariff is 0%. For dairy products there are 11 quotas whose fill rate varies considerably depending on the tariff lines concerned, being almost total

<sup>4</sup> The 50 products in the basic basket include: meat (beef, pork, chicken, fish, ham, sausages), vegetables and salads, pulses, fruit (bananas, apples and oranges), fats (vegetable oil and margarine), dairy products (powdered, evaporated and fresh milk, yellow cheese), eggs, white sugar, and other items such as tomato sauce, dried soup, coffee, tea, salt, etc.

<sup>5</sup> MIDA (2010).

<sup>6</sup> Shortly before the publication of this Report, the Panamanian authorities indicated that they had submitted notifications on domestic support and market access for 2013, and the notification concerning use of special safeguard provisions for 2008, 2010, 2011, 2012 and 2013.

<sup>7</sup> By virtue of Law No. 28 of 20 June 1995, Decree Law No. 1 of 13 February 2008 and paragraph 8 of Article 1057-V of the Tax Code.

<sup>8</sup> WTO documents G/AG/N/PAN/16 of 3 October 2008 and G/AG/N/PAN/21 of 16 July 2010.

<sup>9</sup> WTO documents G/AG/N/PAN/17 of 5 November 2008, G/AG/N/PAN/20 of 12 February 2010, G/AG/N/PAN/22 of 6 September 2010, G/AG/N/PAN/23 of 11 May 2012, G/AG/N/PAN/25 of 3 September 2012, and G/AG/N/PAN/29 of 3 October 2013.

<sup>10</sup> Resolution No. 2 of 10 June 2005.

in some cases and non-existent in others. In the case of poultry meat the quotas were not used and neither were there any imports during the period in question. Finally, in-quota maize imports exceeded the amount of the quota, particularly in 2010. The authorities have pointed out that the demand for maize, particularly for animal feed, is much greater than domestic production. Nevertheless, in 2012, Panama negotiated the withdrawal of the maize quota within the framework of the WTO. The tariff for the tomatoes quota was also reduced to zero.<sup>11</sup>

**Table 4.1 Agricultural products subject to tariff quotas, 2007-2012**

Product group	Number of tariff lines	Average quota announced (tonnes)	Average fill rate (%)	Tariff applied 2012	
				In-quota %	Out-of-quota %
Pig meat	25	880.0	88.5	3 - 15	60 - 70 <sup>a</sup>
Poultry meat	2	756.0	0	15	260
Dairy produce	27 30 <sup>c</sup>	12,075	62.6	3 - 15	30 - 155 <sup>a</sup>
Potatoes	1	618.0	73.5	15	81
Tomato concentrate <sup>b</sup>	3 6 <sup>c</sup>	1,656	98.8	3 - 15	81
Beans	1	500.0	0	15	0
Maize <sup>b</sup>	3	150,000.0	110	3 - 15	40
Rice <sup>b</sup>	4	9,711.6	99.2	3 - 15	90

a The tariff varies with the specific tariff line.

b For these products quotas additional to those agreed at the WTO were approved because of lack of supply.

c As from 2012.

Source: WTO Secretariat and Panama's notifications.

4.25. Panama is also opening autonomous tariff quotas for lack of supply for products deemed "sensitive"<sup>12</sup> by the Cabinet Council.<sup>13</sup> Between 2007 and 2013, lack of supply quotas were announced for maize, rice, unprocessed tomato paste or pulp, and coffee. In the case of rice as a finished product, in accordance with Cabinet Decree No. 9 of 27 March 2012, only enterprises that "sell to end consumers in accordance with that which they have purchased from the mills or to distributors in accordance with that which they have purchased from the mills" may participate in the invitation to tender. In the case of maize, in accordance with Cabinet Decree No. 10 of 19 June 2013, quota importers must take precautions to fulfil the commitment to purchase domestic maize, in particular as regards the storage silos that must be available for domestic production at harvest time. Moreover, Panama has granted tariff quotas within the framework of its regional trade agreements, for example, with Central America<sup>14</sup>, Canada, Peru and the United States. The amount of these quotas and the tariffs applicable vary with the country concerned and are additional to the WTO commitments.

4.26. Law No. 23 of 15 July 1997 and its implementing regulations contained in Resolution No. 5 of 18 November 1998 govern the award of tariff quotas. The Tariff Quota Licensing Commission prepares the invitation to tender for the quota and sends it to the National Commodities Exchange (BAISA), which is the only private commodities exchange and has a licence from the National Commodities Exchange Commission to negotiate agricultural product quotas in Panama. The invitation to tender for quotas must be published in two newspapers with a national circulation at least 21 calendar days before the negotiating rounds begin and must include, at least, a description of the product, the total amount of the quota, the raw material part of the quota, the part that is finished product, and the starting and closing dates of the procedure. Interested economic operators must register, using a special form, five working days before the date of the negotiating round; once registered, they participate in the negotiating rounds through a broker's office. The final contract must be signed within three days of the closure of the negotiating round. The Exchange informs the Technical Secretariat of the Tariff Quota

<sup>11</sup> WTO documents G/MA/265; G/SECRET/33 and Add.1.

<sup>12</sup> Under Law No. 26 of 4 June 2001, the following are sensitive products: pig meat, poultry meat, dairy products, potatoes, tomato concentrate, beans, maize and rice. In addition, for quota purposes coffee, onions and sugar have been declared to be sensitive products (Cabinet Decree No. 25 of 16 July 2003).

<sup>13</sup> The Regulation for the Awarding of Tariff Quotas for Lack of Supply was approved by Resolution No. 02-05 of 10 June 2005.

<sup>14</sup> El Salvador, Costa Rica, Guatemala, Honduras and Nicaragua.

Licensing Commission<sup>15</sup> within a period of two working days and the latter issues the buyer with a certificate, also within two working days.

#### 4.2.2.2.2 Internal measures

4.27. Panama does not impose price controls on agricultural or food products. However, the MEF monitors the costs of the products that make up the basic basket (foods and beverages) on the basis of INEC data. The Agricultural Marketing Institute monitors the prices of various agricultural products on the Central Agricultural Market and the San Felipe Market and of products on sale in the subsidized food markets (*Jumbo Ferias del Ahorro*).

4.28. Panama has notified the WTO of the domestic support granted between 2007 and 2012 for research purposes (Agricultural Research Programmes), pest and disease control, information and training services, extension and advisory services, inspection, health, safety, standardization and integrated pest management services, marketing, promotion and market intelligence services, infrastructure services (irrigation, reservoirs, environmental programmes, roads, etc.), natural disaster relief, and structural adjustment through support for investment (Livestock Improvement Programme, Agricultural Conversion Programme and Agricultural Competitiveness Programme). Between 2007 and 2012, the cumulative total of this support, considered to be "green box", exceeded B 638 million. Panama has also notified measures under the heading "Development Programmes" consisting of generally available subsidies for investment in agriculture, which increased considerably in amount between 2007 and 2012. In addition, it notified *de minimis* specific product payments for tomatoes for processing (Table 4.2).

**Table 4.2 Domestic support, 2007-2012**

(Balboas)

Category	2007	2008	2009	2010	2011	2012
General services	90,164,804	89,945,084	73,240,687	91,880,158	102,826,893	128,325,920
Natural disaster relief	1,806,412	1,139,850	1,567,079	322,445	3,060,795	1,959,634
Assistance for structural adjustment	5,136,636	10,364,259	7,625,196	10,673,633	11,484,235	7,042,104
Development programmes	13,272,426	14,928,518	17,461,198	20,578,136	25,218,673	31,263,186
Direct payments	365,570	358,545	733,998	0	164,000	111,767
Tomatoes for processing	<i>de minimis</i>	<i>de minimis</i>	<i>de minimis</i>		<i>de minimis</i>	<i>de minimis</i>

Source: WTO Secretariat, on the basis of notifications submitted by Panama.

4.29. The Agricultural Development Bank (BDA) provides financing for the development of agricultural and agro-industrial activities. It finances non-traditional products with export potential such as: melons, watermelons, pumpkins, yucca, yams, pineapples, fresh and processed vegetables, flowers, okra, coffee, oranges, cocoa and bananas, *inter alia*. The Executive Committee of the BDA sets interest rates, within the guidelines laid down by the Banking Supervisory Authority.

4.30. Under the Consumer Support Programme (PAC), the preferential interest rate charged by the BDA is 2% per annum for items such as rice, maize and beans and for the purchase of agricultural machinery or equipment that can be used for producing two or more products interchangeably, whereas between 5% and 6% is charged for ordinary loans. The security required by the Bank may take the form of: mortgages and antichresis, liens, crops, livestock, equipment or machinery, personal or fiduciary bonds (collateral), possessory rights, chattel mortgages, combinations thereof or other collateral security. The terms and amortization schedule are drawn up taking into account various aspects of the project to be financed, for example, the investment

<sup>15</sup> Technical Secretariat of the Tariff Quota Licensing Commission, Article 5 of Resolution No. 5 of 18 November 1998. The Tariff Quota Licensing Commission is composed of the Ministries of Agricultural Development, Trade and Industry, and the Economy and Finance.



plan and the marketing calendar. The repayment period for each loan depends on the type of operation.<sup>16</sup>

4.31. Between 2007 and 2013, the cumulative total of the loans granted to the agricultural sector by the BDA amounted to B 335.6 million with a balance in the loan portfolio of B 153.8 million in December 2013. The total annual amounts vary considerably from year to year. Most of the loans are granted for livestock farming, in particular, cattle raising, the cumulative total for the period between 2007 and 2013 being more than B 173 million with a balance of B 94 million in the loan portfolio at the end of 2013. Lending to the traditional agricultural sector<sup>17</sup> amounted to B 94 million with a balance in the loan portfolio of B 25.3 million in December 2013. The cumulative total of the loans for export products (melons, watermelons, pumpkins, pineapples) between 2010, the starting year, and 2013 amounted to B 1.2 million with a loan portfolio of B 830,000 in December 2013. The amount of lending for export products is small compared with that for traditional agriculture. In fact, as the authorities have pointed out, the official agricultural credit programmes administered by the BDA and the National Bank of Panama do not favour exports. The BDA loans destined for other agricultural activities (agro-industry, land purchase and titling, purchase of farms, etc.) totalled B 67.4 million with a cumulative portfolio of B 32.9 million.<sup>18</sup>

4.32. Under Law No. 2 of 20 March 1986, as amended by Law No. 28 of 1995, Panama provides incentives for agriculture (for the production of food, wood, crop and livestock farming, aquacultural and forestry raw materials, and other agricultural products) for the purpose of making food available for domestic consumption and export. The Law establishes a preferential rate, up to 30% lower than the ordinary rate, for the installation and consumption of electricity for agricultural purposes and tax exemption of up to 30% for sums invested in crop and livestock farming, fishery, aquacultural and agro-industrial activities, although the deduction may not exceed 40% of the taxable income. To qualify, taxpayers must invest in the production of goods, the cancellation of obligations or the introduction of more productive technology and maintain the investment for at least three years.

4.33. Law No. 52 of 28 August 2012 introduced changes in the Tax Code that favour the agricultural sector. For example, it raises from B 250,000 to 300,000 the gross annual income threshold below which natural and legal persons engaged in agriculture or agro-industry are exempt from income tax. Moreover, persons engaged in agriculture or agro-industry with incomes in excess of B 300,000, together with persons engaged in importing and manufacturing food or pharmaceutical and medicinal products for human consumption, may deduct on their estimated tax return the total amount of the ITBMS they have paid solely on the purchase of packaging materials, services and inputs necessary for manufacturing food or pharmaceutical and medicinal products for human consumption.

4.34. During the period from 2007 to 2013, Panama did not notify any export subsidies. At the end of 2009, Panama adopted Law No. 82 of 31 December 2009 establishing the Programme for the Promotion of Agricultural Export Competitiveness through export incentives, consisting of tax credits exclusively for paying domestic taxes and, in 2010, issued the corresponding implementing regulations (Executive Decree No. 65 of 25 March 2010). The authorities have noted that a law for establishing a trade promotion fund for financing the export of agricultural products is being drawn up.

4.35. The ISA is the agricultural insurance intermediary and offers the following categories of insurance: (i) agricultural and forestry insurance which covers, for example, drought, floods, disease and pests; (ii) bonds, for example, for loan payments and product delivery; (iii) livestock insurance; and (iv) supplementary insurance, for example, machinery insurance, agricultural and transport insurance, storage and infrastructure insurance and rural life insurance. The premiums set by the ISA are percentages of the insured value and the term varies

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<sup>16</sup> Online information viewed at: [http://www.bda.gob.pa/terminos\\_legales.html](http://www.bda.gob.pa/terminos_legales.html). BDA Executive Committee Resolution No. 10-2010.

<sup>17</sup> Traditional agricultural sector products, for example: rice, maize, tomatoes, vegetables, beans, potatoes, onions, sugar cane; and coffee, pineapple, yams, yucca, bananas, and watermelons, for domestic consumption.

<sup>18</sup> Round numbers. BDA figures provided by the Panamanian authorities.

with the risk covered.<sup>19</sup> For example, in the case of livestock the premium varies with the nature of the animal (3.5% for female breeding stock for meat and fattening, 2.7% for female breeding stock for milk, 3.0% for dual-purpose female breeding stock, 4% for male breeding stock, whether for milk or meat). In crop farming, the premium varies between 4% and 7% of the insured value depending on the agronomic conditions and the province. The excess varies between 10% and 30%. The term of the coverage is variable, for example, in the case of feeder cattle, it is up to two years and in the case of male and female breeding stock up to 72 months. Crop coverage depends on the agricultural cycle. There is also a Guarantee Fund Programme, a B 10 million trust fund deposited in the National Bank of Panama for guaranteeing agricultural loans granted by that institution for crops approved by the MIDA in its crop manuals, livestock breeding and agricultural product processing. The guarantee covers up to 80% of the loan.

#### 4.2.3 Fishing

4.36. The fishing sector consists of industrial and non-industrial fishing and aquaculture. Non-industrial fishing is small-scale and mainly for domestic consumption. Although the fishing sector's contribution to GDP continued to decline between 2008 and 2012, from 2.2% to an estimated 0.4%, the gross aggregate value of the sector recorded annual growth of 2.5% in 2012, mainly due to an increase in shrimp exports (20.2%) and non-industrial fishing.

4.37. The Panamanian Aquatic Resources Authority (ARAP) is responsible for the observance and application of the laws and regulations concerning the management, conservation and exploitation of aquatic resources and the national fishing and aquaculture policies adopted by the Executive. The ARAP is represented in its relations with the Executive by the Ministry of Agricultural Development.<sup>20</sup> The ARAP is authorized to grant international fishing licences to Panamanian-registered vessels.<sup>21</sup> Industrial fishing also requires an industrial licence, granted by the MICI to Panamanian nationals and foreigners without distinction. Commercial shrimp fishing is restricted to vessels built in Panama and only Panamanian nationals may engage in coastal or non-industrial fishing.<sup>22</sup> Moreover, there is a series of technical requirements for limiting the exploitation of fisheries resources which apply without distinction to nationals and foreigners alike.

#### 4.3 Energy

4.38. The National Energy Secretariat (SNE), established in 2008 and attached to the Ministry of the President's Office, is responsible for overseeing the energy sector.<sup>23</sup> The SNE designs and implements the energy policy contained in the National Energy Plan 2009-2023, whose main objectives are to ensure, within competitive parameters, the availability and sustainable supply of energy, promote the development of renewable sources and the rational use of energy, and strengthen regional integration through interconnections with Central and South America.<sup>24</sup>

4.39. The demand for electricity grew by 8.4%<sup>25</sup> in 2012 with 64.4% of electricity output being generated in hydraulic power stations and 35.5% in thermal power plants.<sup>26</sup> Between 2007 and 2013, Panama was a net exporter of electricity in some years and a net importer in others.

4.40. Panama participates in the Regional Electricity Market (MER), together with Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua. The MER has a 1,800 km electricity

<sup>19</sup> Online information from ISA, viewed at: <http://www.isa.gob.pa/programas.php#>.

<sup>20</sup> Law No. 44 of 23 November 2006.

<sup>21</sup> Executive Decree No. 49 of 13 November 2009 and Executive Decrees Nos. 160, 161, and 162 of 6 June 2013.

<sup>22</sup> Executive Decree No. 124 of 8 November 1990.

<sup>23</sup> In 2008, the SNE replaced the MICI's Directorate-General of Hydrocarbons and Alternative Energies.

<sup>24</sup> SNE (2009).

<sup>25</sup> Online information viewed at: <http://capamec.org/wp-content/uploads/2013/08/Sector-EI%C3%A9ctrico-julio-2013.pdf>.

<sup>26</sup> Online information from ASEP, viewed at: [http://200.46.47.233/images/electricidad/estadisticas/II%20Semestre\\_2012/OFERTA.pdf](http://200.46.47.233/images/electricidad/estadisticas/II%20Semestre_2012/OFERTA.pdf).

infrastructure known as the Central America Electrical Interconnection System (SIEPAC). There are also plans for an electrical interconnection between Panama and Colombia.<sup>27</sup>

4.41. Panama does not produce hydrocarbons but has a storage capacity of 21.5 million barrels<sup>28</sup> and an extensive port infrastructure. There is an oil pipeline in operation but only 12% of its capacity is being used. Fuel free zones have been established to supply the existing infrastructure. Under this procedure, crude petroleum and petroleum products can enter fuel free zones without payment of taxes, levies and other fiscal charges at importation, and exemption from export taxes is granted on sales of these products to ships and aircraft in international traffic that use Panamanian ports and airports and on sales to vessels that transit through the Panama Canal. Bunkering is an important commercial activity in the hydrocarbons subsector.

#### 4.3.1 Electricity

4.42. Panama's electricity market is decentralized and regulated, generation is mainly private and operates under conditions of free competition. The Power Transmission Company (ETESA), which is 100% State-owned, is responsible for transmission; the National Dispatch Centre (CND), which is controlled by ETESA, operates and supervises the National Interconnected System (SIN) maintaining a balance between supply and demand. There are three semi-public electricity distributors operating in different areas under exclusive concessions, namely, Empresa de Distribución Eléctrica Metro Oeste, S.A (EDEMET), Elektra Noreste, S.A. (ENSA) and Empresa de Distribución Eléctrica Chiriquí, S.A (EDECHI), which in December 2012 held 44.5%, 42.2% and 13.3% of the market, respectively. The Central American regional transmission system is the responsibility of Empresa Propietaria de la Red (EPR), which is composed of the transmission companies of each of the countries of Central America and three shareholders from outside the region.<sup>29</sup>

4.43. In September 2013 total installed capacity was 2,441.7 MW, with firm capacity standing at 1,825 MW as compared with a maximum demand of around 1,440 MW, recorded on 13 April 2013. Since 2007 the firm power margin relative to maximum demand has improved but is still narrow. In May 2013, Panama experienced a crisis which led to the adoption of energy saving measures and the importation of electricity from the Central American regional market<sup>30</sup>; moreover, in April 2014 measures were taken to reduce energy consumption and prevent a crisis. Exports are authorized only if the energy and power to be exported are not needed to supply the domestic market.<sup>31</sup> Assessments of the quality of the distribution service show that the indicators reflecting the frequency and duration of interruptions exceed the permissible level, the difference being more pronounced in the rural sectors. According to ETESA, to improve the efficiency of the system it is proposed to build a fourth transmission line which would be ready in 2021. A Panama-Colón transmission line is also being planned, and the Chan II hydroelectric power station is expected to come on stream in 2018.

4.44. Law No. 6 of 3 February 1997 and its amendments, which govern the provision of public electricity services, guarantee market operators non-discriminatory access to transmission networks. The transmission company acts as an intermediary and does not receive any net profit or assume any costs or risks under block energy supply contracts, all the costs associated with such contracts being transferred on average to the distributors. The National Public Service Authority (ASEP) is the market regulator. It grants licences and concessions, regulates distribution prices, establishes calculation methods and approves companies' tariff proposals. Only the prices at which electricity is sold to end customers, other than large customers, are regulated. The end consumer pays a price calculated as a function of consumption and voltage. The average consumer price rose from B 0.15 per kWh in 2006, then one of the highest tariffs in Latin America, to over B 0.16 in 2012, after hitting a peak of B 0.185 in 2008 due to the surge in oil prices.

<sup>27</sup> SNE (2013).

<sup>28</sup> Online information viewed at:

<http://www.energia.gob.pa/admin/gal/12/files//Zonas%20Libres%20de%20Combustible%20-%20Contratos%20Vigentes.pdf>

<sup>29</sup> Online information from the EPR, viewed at:

[http://www.eprsiepac.com/quienes\\_siepac\\_transmision\\_costa\\_rica.htm](http://www.eprsiepac.com/quienes_siepac_transmision_costa_rica.htm).

<sup>30</sup> *La Prensa* of 8 May 2013, online information viewed at:

<http://www.prensa.com/impreso/panorama/crisis-energetica-rationamiento-sector-publico-y-privado-falta-de-lluvias/175942>.

<sup>31</sup> Executive Decree No. 22 of 19 June 1998, Article 30.

4.45. Law No. 57 of 13 October 2009, which amended Law No. 6, introduced important changes. For example, it authorizes ETESA to prepare specifications and call for bids, obliges the generators to offer their firm capacity and available energy in the bids, which in its turn authorizes them to participate in the contingency market. The distributors' energy purchases from the transmission company are paid for through tariffs that reflect the economic costs of supply, which cover all the costs of energy, capacity, special services and other costs of purchasing energy from the generators. Customers who are up to date in paying for the service and submit claims in connection with invoicing problems can suspend payment of the portion claimed until the ASEP settles the claim. Law No. 57 also raises the level of the fines, which can amount to B 20,000,000.

4.46. ASEP has granted 20 generating companies 19 concessions, of which nine are operational, and 22 licences, of which 21 are operational. The State owns two generating companies. The transmission company cannot participate in generation, distribution or sales to large customers.<sup>32</sup> Generating companies and distributors may not apply for new concessions that increase their market share to more than 25% and 50%, respectively. The ASEP can modify these levels and, in fact, permitted a temporary increase in the participation of the hydroelectric companies to 40% between 2005 and 2012. The participation of distributors in generating companies is restricted, while the participation of generators in distribution is prohibited.<sup>33</sup>

4.47. To fulfil its plans for saving energy and diversifying its energy sources, Panama grants tax incentives for the construction of new hydroelectric power plants or solar, wind and geothermal energy projects and those that use natural gas or biomass.<sup>34</sup> In the tender processes for the purchase of energy and capacity, a preference of 5% of the evaluated price is granted to projects that use renewable sources.<sup>35</sup> The Strategic Plan for the Rational and Efficient Use of Energy, supported by the Fund for the Rational and Efficient Use of Energy<sup>36</sup>, is intended to finance programmes and projects in the private commercial and residential sector and to grant incentives and subsidies for equipment, machinery, materials and spare parts that use less energy and/or recover energy for their own operation. It prohibits, from 2014, the manufacture and importation of equipment with energy efficiency ratings below the minima determined by the Energy Efficiency Ratings Management Committee.<sup>37</sup> Equipment, machinery, structures or appliances that reduce energy consumption, marketed in Panama, must bear a label indicating at least their energy consumption under normal conditions, the normal conditions for calculating energy consumption and their energy efficiency rating.<sup>38</sup>

4.48. The State subsidizes electricity consumption through discounts on the end customer's invoice. Discounts are given to the agricultural sector (5% of the tariff), to subsistence consumption customers (up to 20%), to pensioners and third-age customers and to political parties (50%). The subsidy for subsistence consumption customers is funded from the contributions of customers whose monthly consumption exceeds 500 kWh, at a rate of up to 0.6% of their invoice.<sup>39</sup>

4.49. Cross subsidies are allocated through the Tariff Stabilization Fund (FET) to mitigate the effect of end-customer tariff increases and to constitute the Energy Compensation Fund (FACE). The FET is intended for all tariffs but, in recent years, has been restricted to customers on the simple low-voltage tariff who consume up to 500 kWh per month. The State is progressively reducing the number of FET beneficiaries, with a view to limiting the subsidies to customers with

<sup>32</sup> Article 83 of Law No. 6 of 3 February 1997.

<sup>33</sup> Articles 69 and 94 of Law No. 6 of 3 February 1997.

<sup>34</sup> Law No. 45 of 4 August 2004 and Executive Decree No. 45 of 10 June 2009 (hydropower and geothermal energy); Law No. 37 of 10 June 2013 (solar energy); Law No. 44 of 25 April 2011 as amended by Law No. 18 of 26 May 2012 (wind energy); Law No. 41 of 2 August 2012 (natural gas); and Law No. 42 of 20 April 2011 (biomass).

<sup>35</sup> Law No. 41 of 2 August 2012 and Law No. 42 of 20 April 2011.

<sup>36</sup> The Fund can receive reimbursable and non-reimbursable contributions from bilateral and multilateral financing organizations, technical cooperation funds, governments and energy market operators. The State allocates annual budget appropriations to bolster the capital.

<sup>37</sup> The Ratings Management Committee consists of representatives of the MICI, the MEF, the National Secretariat of Science, Technology and Innovation, the Technical Council for Engineering and Architecture, the National Metrology Centre AIP, the University of Panama, the Technological University of Panama, the INEC, the Office of the Comptroller-General of the Republic with the right to speak, and the National Energy Secretariat.

<sup>38</sup> Law No. 69 of 12 October 2012 and Executive Decree No. 398 of 19 June 2013.

<sup>39</sup> ASEP (2012a).

a consumption of up to 300 kWh in 2016. The FACE is made up of State funds for compensating the electricity distributors for the amounts foregone, through tariff updating, due to Government commitments or as a result of the total transfer of the extra costs to the electricity generators with mixed share capital not having been permitted.<sup>40</sup>

### 4.3.2 Hydrocarbons

4.50. Panama imports 100% of its hydrocarbon consumption in the form of finished derivatives.

4.51. Hydrocarbon-related activities are governed by Law No. 8 of 16 June 1987, as amended by the following three laws: (1) Law No. 27 of 12 July 2006 enabling the State to establish companies to provide hydrocarbon exploration, development, transport, storage, marketing, industrialization, import, export and refining services; (2) Law No. 39 of 14 August 2007, which promotes and regulates the exploration and development of petroleum deposits, declares these activities to be of public utility and social interest and exempts companies that conclude contracts from the payment of import taxes on machinery, grants a special depreciation regime and creates free zones for fuel; and (3) Law No. 53 of 9 September 2013, which amends the conditions of oil and gas exploration and development permits and contracts. In approving these laws Panama seeks to promote exploration and prepare the way for the commercial development of confirmed deposits in its territory. However, in December 2013, no development activity had yet begun.<sup>41</sup>

4.52. The importation and sale of fuels and petroleum products are subject to a consumption tax (ICCDP). Moreover, Law No. 76 of 21 October 2013 imposes an import tax on fuels blended with bio-ethanol of foreign provenance (section 3.2.5). The State regulates the maximum retail price of petrol (91 and 95 octane) and low-sulphur diesel, in accordance with the trends in international prices, and adjusts it every fortnight.<sup>42</sup>

### 4.4 Manufacturing

4.53. Manufacturing in Panama focuses on just a few activities, namely, food and beverages, publishing and printing, non-metallic mineral products, textiles, leather tanning and dressing and footwear, wood and wood products, paper and paper products, chemical and plastics products, metals and metal products, machinery and vehicles. Over 70% of production consists of consumer goods.<sup>43</sup>

4.54. Between 2007 and 2013 the manufacturing industry's share of GDP fell from 7.2% to an estimated 5.1%. Nevertheless, in 2012 the sector's gross aggregate value grew by 3.6%, mainly due to increases in the production of meat and meat products (5.3%), the manufacture of cement, lime and gypsum (25.2%), the preparation of non-alcoholic beverages (5.9%), and the production of dairy products (10.6%). On the other hand, there were declines in the processing and preservation of fish and fish products, the manufacture of milling industry products, the production of fertilizers and nitrogen compounds, and the manufacture of pharmaceutical products, chemicals for medicinal purposes and botanical products, *inter alia*.<sup>44</sup> In terms of employment, in 2013 the manufacturing sector employed 7.7% of the total labour force. According to the Chamber of Commerce, Industry and Agriculture of Panama, the manufacturing industry lost workers between 2011 and 2012, recording a fall of 1.3%.<sup>45</sup>

4.55. In 2012, the principal manufactured products in terms of output value were the preparation and preservation of fish, fruit, vegetables, oils and fats (19.7%), the preparation of beverages (17.2%), the manufacture of non-metallic mineral products (10.4%), the preparation of other food products (7.5%), publishing, printing and the reproduction of recordings (7.4%),

<sup>40</sup> Cabinet Resolutions No. 174 of 8 November 2011 and No. 64 of 26 June 2012.

<sup>41</sup> SNE (2013).

<sup>42</sup> Online information from the SNE, viewed at: <http://www.energja.gob.pa/Precios-Paridad-Importacion.html>.

<sup>43</sup> National Competitiveness Centre (2013).

<sup>44</sup> Comptroller-General of the Republic (2014) and INEC.

<sup>45</sup> National Competitiveness Centre (2011) and Chamber of Commerce, Industry and Agriculture of Panama (2013).

and the manufacture of metal products for use in building (7.5%).<sup>46</sup> In September 2013, the indicators reflecting the volume and value of manufacturing output were higher by 3.6% and 12.1%, respectively, relative to the same period in the previous year. The activities with the strongest growth were publishing, printing and the reproduction of recordings, non-metallic mineral products (due to the good performance of the construction sector) and vehicle manufacturing. The biggest falls were recorded in leather tanning and dressing and footwear and the manufacture of textile and paper products.<sup>47</sup>

4.56. Panama offers manufacturers the opportunity to take advantage of several incentives programmes (section 3.4.1). Some were introduced during the review period for the purpose of improving productivity and competitiveness, for example, the Industrial Promotion Certificate (CFI), a tax credit granted to companies which make investments in certain activities<sup>48</sup> and the Trust Fund for the Financing of Competitiveness and Productivity. The authorities have noted that the impact of these measures on the performance of the manufacturing industry has not been measured.

4.57. In 2013, Panama applied an average MFN tariff of 6.4% to non-agricultural products (WTO definition). When Chapters 25 to 97 of the Harmonized System (HS) are taken as the basis, the average is 6.2% (Table 3.2). Between 2007 and 2012, imports of manufactured goods, based on HS Chapters 25 to 97, fell from 89.3% to 88.8% of total imports and exports rose from 16.6% to 43.8% of total exports. In 2012, the main imports were mineral fuels, mineral oils and their distillation products; bituminous substances; mineral waxes (22.5%), nuclear reactors, boilers, machinery and mechanical appliances; parts thereof (11.2%); and motor vehicles, tractors, bicycles and other land vehicles; their parts and accessories (9.1%). Panama's exportable range of manufactured products included pearls (natural or cultured), precious and semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coins (15.7%), cast iron and steel (7.2%); wood and wood products (3.0%), paper and paper pulp (3.0%); and aluminium and articles thereof (2.8%) (Tables A1.1 and A1.2). It is estimated that Panama exports 22% of its manufacturing output.<sup>49</sup>

## 4.5 Services

### 4.5.1 General features and specific commitments under the GATS

4.58. Panama is essentially a services economy. In 2013, services contributed 70% of GDP (at 2007 prices), together with two thirds of employment (Table 1.1) and about 36% of total exports (goods and services). Between 2007 and 2013, the services sector grew at a real annual rate of 7.4%. Exports of services (including those from the Colón Free Zone) were particularly dynamic, increasing in value by 121% during the same period to reach US\$9,767 million in 2013, while imports amounted to US\$4,715 million (Tables A1.1 and A1.2).<sup>50</sup>

4.59. Panama's Schedule of Specific Commitments under the General Agreement on Trade in Services (GATS) was negotiated within the context of its accession to the WTO in 1997. The horizontal commitments concerning market access include the presence of natural persons working temporarily in Panama in the following categories: sellers of services, managers, administrators and specialists. Panama did not bind any horizontal commitments relating to national treatment.

4.60. Panama adopted specific commitments relating to market access and national treatment in 11 of the 12 sectors defined in the GATS, the exception being the "other services" sector. The commitments in the telecommunications and transport sectors are limited; in the latter sector, they cover only the repair of aircraft. In telecommunications, Panama adopted commitments only

<sup>46</sup> Online information from INEC (Table 12), viewed at:

<http://www.contraloria.gob.pa/inec/archivos/P5531Cuadro%2012.pdf>.

<sup>47</sup> Online information from INEC, "*Según división industrial: Índices resumen de volumen, precios y valor de la industria manufacturera*", viewed at:

[http://www.contraloria.gob.pa/inec/Avance/Avance.aspx?ID\\_CATEGORIA=1&ID\\_CIFRAS=5&ID\\_IDIOMA=1](http://www.contraloria.gob.pa/inec/Avance/Avance.aspx?ID_CATEGORIA=1&ID_CIFRAS=5&ID_IDIOMA=1).

<sup>48</sup> These activities are: R&D, management and quality assurance and environmental management systems, investment or reinvestment of profits, human resource training and coaching, and increase in production-related employment.

<sup>49</sup> National Competitiveness Centre (2013).

<sup>50</sup> Estimates for 2013.

with respect to value-added services, undertaking to liberalize them in two stages: (i) one year after its accession to the WTO, foreign companies would be allowed to provide such services in association with the dominant local company; and (ii) five years after accession, foreign companies would be allowed to provide the services directly.

4.61. In financial services, the commitments are broader. Panama bound cross-border supply (mode 1), consumption abroad (mode 2) and commercial presence (mode 3) in respect of: lending and deposit taking; financial leasing with the option to purchase (movables only); bank guarantees and commitments; payment and money transmission services (excluding local transmission services); trading for own or customers' account; money market instruments and foreign exchange; derivatives; transferable securities; participation in issues of securities; money broking; asset management and advisory services, *inter alia*.<sup>51</sup>

4.62. In the insurance sector, Panama bound commercial presence without limitations, but did not bind cross-border supply, consumption abroad or the physical presence of persons for life, accident and health insurance activities or for non-life insurance. In the specific case of transportation insurance, Panama did not impose any limitation on the cross-border supply of insurance with respect to goods exported from Panama, from the moment they are outside Panamanian territory. For reinsurance and retrocession services, Panama bound modes of supply 1, 2 and 3 without limitations on national treatment, as well as modes 2 and 3 for market access, imposing a limitation on fire insurance for which insurance companies may not cede premiums for reinsurance abroad in an amount exceeding 50% of the total premiums for risks covered in Panama.

4.63. As it acceded to the WTO in 1997, Panama did not take part in the extended negotiations on financial services and telecommunications under the GATS and has not accepted the Fourth and Fifth Protocols annexed to the GATS. In the context of the services negotiations under the Doha Round, Panama submitted an initial offer in 2003.

## 4.5.2 Telecommunications

### 4.5.2.1 Features of the market

4.64. The telecommunications sector is one of the most dynamic in the Panamanian economy. During the review period, its contribution to GDP (at 1996 prices) increased, rising from 6.06% in 2007 to 9.15% in 2012<sup>52</sup>, and generated gross income of US\$2,359.9 million (1,035.4 million in 2007).<sup>53</sup> Mobile telephone and broadband services are those which experienced the most growth in recent years. In 2012, the telecommunications sector employed 5,162 people.<sup>54</sup>

4.65. Panama's telecommunications market was privatized in 1997 and opened up to competition in January 2003, when the exclusive concession to provide basic telephony services enjoyed by the company Cable & Wireless Panama, S.A. was terminated.

4.66. In Panama, fixed telephony teledensity is low by regional standards, although it increased during the review period thanks to the presence of alternative operators that use fixed mobile or coaxial cable networks to offer the service (Table 4.3). At the end of 2013, eight basic local telephony companies were operating (two of which were foreign), together with seven domestic long-distance (LD) operators (including two foreign) and nine international LD operators (including five foreign). Cable & Wireless Panama, S.A. is maintaining its dominant position in the basic telephony market with around 70% of fixed lines.

<sup>51</sup> WTO document GATS/SC/124 of 1 October 1997.

<sup>52</sup> Information provided by the National Public Service Authority (ASEP) based on INEC data.

<sup>53</sup> Information provided by ASEP. The income figures relate to regulated gross income.

<sup>54</sup> Information provided by ASEP.

**Table 4.3 Telecommunications sector indicators, 2007-2013**

	2007	2008	2009	2010	2011	2012	2013 <sup>a</sup>
Fixed telephone lines in operation	495,250	523,999	537,356	540,317	560,184	569,880	586,298
Fixed lines per 100 inhabitants	14.25	14.81	14.93	14.76	15.04	15.05	15.23
Cellular mobile lines	3,010,635	3,915,246	6,066,683	6,715,098	6,735,429	6,213,564	6,297,604
Cellular mobiles per 100 inhabitants	86.6	110.7	168.5	183.4	180.9	164.1	163.5
Internet users	913,711	1,148,159	1,351,105	1,397,173	1,522,353	1,583,644	1,598,183
Internet users per 100 inhabitants	26.3	32.5	37.5	38.2	40.9	41.8	41.5

a Estimated.

Source: National Public Service Authority (ASEP). Online information viewed at: <http://www.asep.gob.pa/default.asp>.

4.67. Cellular telephony<sup>55</sup> has boomed in recent years, achieving a penetration of 163.5% in 2013, far above the figure recorded in 2007 and the regional average. The expansion is partly due to the market entry, at the beginning of 2009, of two new operators (Claro Panamá, S.A. and Digicel Panamá, S.A.) after having obtained concessions to operate two cellular telephony bands through competitive bidding. This broke the duopoly of the companies Cable & Wireless Panamá, S.A. and Telefónica Móviles Panamá, S.A., which now together hold about two thirds of the market. Over 90% of active mobile phone lines are prepaid.

4.68. The Internet sector has also enjoyed rapid growth, achieving a penetration of 41.5% in 2013 (26.3% in 2007). In the broadband segment, Cable & Wireless Panamá, S.A. has a virtual monopoly on the provision of ADSL access. However, several companies are competing to provide Internet service using other technologies such as cable modem and WiMAX. At the end of 2013, there were 21 public-use Internet service concession holders in operation. Internet penetration is expected to keep growing thanks to increasing demand and the implementation of the government project known as National Internet Network, which is intended to eradicate the digital divide and offer basic Internet access for the entire population.

4.69. In general terms, greater competition in the telecommunications market has contributed to a reduction in prices, improvements in quality and diversification of the services offered. Domestic and international long-distance tariffs had already fallen substantially in the first years of liberalization.<sup>56</sup> The domestic LD service is being maintained at a basic price of B 0.05 per minute; the international LD service has an average price of B 0.05 per minute for calls to the United States and B 0.25 per minute for calls to the rest of the world. Thanks to the entry of new operators, mobile phone tariffs have been reduced substantially since 2009 and are among the most competitive in the region, at an average of B 0.09 per minute. For their part, the prices of Internet access services are less competitive, being on average B 18.00 per mbps per month.<sup>57</sup>

#### 4.5.2.2 Legal framework

4.70. Responsibility for formulating telecommunications sector policy lies with the Executive, through the Cabinet Council. The National Public Service Authority (ASEP)<sup>58</sup>, through the National Telecommunications Directorate, is responsible for regulating, inspecting and monitoring the sector's activities. Its functions include granting concessions for the provision of telecommunications services, allocating radio frequencies, establishing and overseeing the observance of service quality standards, promoting competition in the market, imposing sanctions on infringers and arbitrating in disputes.

4.71. The telecommunications sector is governed by Law No. 31 of 8 February 1996, as amended by Law No. 24 of 30 June 1999, and by its implementing regulations introduced by Executive Decree No. 73 of 9 April 1997. Other important pieces of legislation include Executive Decree No. 21 of 12 January 1996, which regulates the mobile telephony service, and Resolution

<sup>55</sup> Cellular telephony includes the mobile telephone service and personal communication services.

<sup>56</sup> 66% and 94%, respectively between 2002 and 2006. WTO (2007).

<sup>57</sup> Information provided by the ASEP.

<sup>58</sup> ASEP was established by Decree Law No. 10 of 22 February 2006.



No. JD-2802 of 11 June 2001 on the adoption of rules for the supply of basic telecommunications services<sup>59</sup> as from 2 January 2003. There are also numerous ASEP regulations and resolutions<sup>60</sup>, as well as a National Technical Telecommunications Plan.<sup>61</sup>

4.72. The main pieces of legislation adopted during the review period include Law No. 44 of 31 October 2007 creating the Single Emergency Management System and establishing a tax of 1% on the invoicing of some telecommunications services to finance that service; Executive Decree No. 58 of 12 May 2008, which extends to new personal communications service concessionaires the same rules as apply to mobile telephony service providers; the Law on Universal Service and Access (Law No. 59 of 11 August 2008); Law No. 51 of 18 September 2009 on the retention, protection and supply of telecommunications services user data; and Law No. 15 of 26 April 2012, which established a tax to cover the costs of the project to bury telecommunications services cabling and infrastructure. Another change was the adoption of the Number Portability Regulations (Resolution AN-3064 Telco of 11 November 2009) and Law No. 70 of 9 November 2009, which authorized the ASEP to establish a tax to cover the operating costs of the body responsible for administering portability.

4.73. The telecommunications legislation does not provide for the regulation of VoIP services. However, duly authorized concessionaires may use VoIP within their networks to communicate with their users through the SIP protocol, while always maintaining the means to translate SIP into SS7 signalling protocol<sup>62</sup>, in the event that the destination of a call is a network that does not handle SIP or VoIP protocol. ASEP is working on establishing rules to regulate convergent networks and the use of SIP protocol as a means of interconnection in addition to SS7.

4.74. The Telecommunications Law authorizes majority foreign participation in the capital of companies providing public telecommunications services, with the exception of foreign companies which another State controls or in which it has a majority holding. To operate in Panama, foreign companies must set up a subsidiary with a local presence.

4.75. To provide any telecommunications service it is necessary to obtain a concession. There are two types of concessions: Type A and Type B<sup>63</sup>; both are for a term of 20 years, renewable for a further period of the same length. The provision of mobile telephony services requires a Type A concession granted by the State, subject to assessment by the ASEP. Type A concessions are granted under an open tendering procedure with prequalification and are subject to a regime that restricts the number of operators in the market. The concession is awarded to the prequalified company which submits the highest bid for the right. In 2008, two concessions to operate cellular mobile telephony bands were awarded in this way, to the companies Claro Panamá, S.A. and Digicel Panama, S.A.

4.76. Type B concessions are needed to provide the remaining telecommunications services, that is: basic telephony (local, domestic and international), Internet for public use, data transmission, satellite transmission, private networks and resale services, *inter alia*. Type B concessions are granted by the ASEP without a public invitation to tender. If the service does not require the use of the radio-frequency spectrum, the ASEP must grant the concession within 30 working days. Otherwise the interested party must follow the procedures for requesting the allocation of frequencies set out in the Telecommunications Regulations.<sup>64</sup> Type B concessionaires who use frequencies must pay the corresponding annual fee.<sup>65</sup>

4.77. According to ASEP data, in November 2012 a total of 352 companies had valid concessions to provide telecommunications services, but only 166 (one third of the total) were operating

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<sup>59</sup> These include local telephony, domestic and international long distance, and public and semi-public terminals.

<sup>60</sup> The legislation can be viewed on the ASEP website at: <http://www.asep.gob.pa>.

<sup>61</sup> Resolution No. JD-106 of 30 September 1997.

<sup>62</sup> The Interconnection Agreements treat the SS7 Signalling Protocol as an essential element for interconnection between operators.

<sup>63</sup> Under Law No. 31 of 1996, Type A concessions are required for mobile telephony services that operate in the numerical restriction regime; Type B concessions are for the remaining services and are classified in Resolution No. JD-025 of 1996 and amendments thereto.

<sup>64</sup> Title IV, Chapter 2 of Executive Decree No. 73 of 9 April 1997.

<sup>65</sup> This fee is established in accordance with the technical parameters of the wireless systems and the National Frequency Allocation Plan.

the concession.<sup>66</sup> Many of these concessionaires are foreign-owned companies that provide telecommunications services in more than one segment. Call-centre services, telecommunications transmission services and Internet for public use are the segments in which the number of concessionaires recorded in recent years has been greatest.

4.78. The rules on interconnection<sup>67</sup> oblige concessionaires to interconnect their networks with those of other concessionaires that so request and install network elements, functions and capacities on the basis of the principles of neutrality, non-discrimination and equality of access. Concessionaires are free to negotiate interconnection agreements with each other<sup>68</sup>, but must register them with ASEP. If no agreement is reached within 120 calendar days of receipt of the request, either of the parties may ask ASEP to mediate. If after a brief period of mediation, there is still disagreement, ASEP must, within 90 calendar days, issue a mandatory interconnection order with retroactive effect, which may include interconnection charges and other terms. The authorities have noted that during the period 2007-2013, ASEP intervened in less than 10% of interconnection agreements. The regulations stipulate that interconnection and access charges must reflect at least the long-run incremental costs.<sup>69</sup>

4.79. Together with its amendments, Resolution No. JD-107 of 30 September 1997, which contains the National Frequency Allocation Plan, regulates the design of the wireless subscriber loop. In Resolution No. JD-5880 of 23 February 2006, ASEP issued instructions for the unbundling of the loop in wireless networks. At the time, it was reported that the company with a dominant position had obstructed the unbundling of its local network, maintaining a virtual monopoly in the provision of the ADSL Internet access service. According to an ECLAC study, the refusal of the company with a dominant position to unbundle its network constituted a bottleneck at the start of the liberalization of the Panamanian telecommunications market.<sup>70</sup>

4.80. In Resolution AN No. 566-Telco of 16 January 2007, ASEP classified the concessionaires with a dominant position for 16 public telecommunications services; Cable & Wireless Panamá, S.A. was identified as the operator in a dominant position for nine of these services. At the end of 2013, ASEP was in process of updating this information.

4.81. In 2008, ASEP decided that number portability would be mandatory for fixed and mobile networks within a period of two years.<sup>71</sup> In 2009, the number portability regulations (Resolution AN-3064 of 11 November 2009) were adopted and Law No. 70 of 9 November 2009 establishing a tax to cover the costs of implementing them was approved. Number portability for mobile telephony was implemented as from December 2011. Between December 2011 and February 2014 around 240,000 mobile network numbers and another 28,000 fixed network numbers were transferred.<sup>72</sup> Portability has brought increased competition among operators to maintain their customer portfolios through attractive plans and products.

4.82. The Law on Telecommunications stipulates that the charges for telecommunications services offered under competitive conditions are to be determined by the concessionaires. However, ASEP can impose a tariff regime if: (i) there is only one concessionaire to provide a specific service; (ii) a service is subsidized from the profits of another service; or (iii) there are practices that restrict competition, in which case it can also take corrective measures. The authorities have pointed out that during the review period, ASEP did not impose any tariff regime as none of these conditions was satisfied. If concessionaires decide to increase their prices, they must publish the new prices 30 days before they come into effect. The legislation does not allow cross-subsidies between different services and requires concessionaires to publish separate accounts for each service provided.<sup>73</sup> Despite the fact that mobile telephony is subject to a regime of legally restricted competition, the tariffs for this service are freely established by the concessionaires.

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<sup>66</sup> ASEP (2012b).

<sup>67</sup> Title V of Executive Decree No. 73 of 9 April 1997.

<sup>68</sup> Resolution No. JD-3264 of 27 March 2002 establishes a model interconnection contract.

<sup>69</sup> Article 216 of Executive Decree No. 73 of 9 April 1997.

<sup>70</sup> ECLAC (2007).

<sup>71</sup> Resolution AN No. 1668-Telco of 30 April 2008.

<sup>72</sup> Online information from ASEP, viewed at: <http://www.portabilidad.gob.pa>.

<sup>73</sup> Article 86 et seq. of Executive Decree No. 73 of 9 April 1997.

4.83. ASEP promotes and supervises competition in the telecommunications market, with the participation of ACODECO, which investigates monopolistic practices and mergers (section 3.4.2). ASEP's functions in this area include: assisting ACODECO with the requirements relating to the investigation of monopolistic, anti-competitive and discriminatory practices on the part of telecommunications companies; forwarding to ACODECO a detailed report on any act or behaviour of the regulated companies that could affect free and fair competition so that an investigation may be promptly initiated; recommending to ACODECO that it request the competent courts to adopt precautionary measures in connection with the investigations. In addition, ASEP seeks ACODECO's favourable opinion on resolutions and regulations it intends to issue in order to maintain competition in the telecommunications market. During the review period, ACODECO investigated several cases of anti-competitive practices in telecommunications (relating to interconnection), but without finding any breach of the law.

4.84. Universal service and access to telecommunications is governed by Law No. 58 of 11 August 2008, as amended by Law No. 70 of 9 November 2009 and Law No. 62 of 5 October 2012. Law No. 58 established the Fund for the Development of Universal Service and Access Projects, to finance projects approved by an Advisory Council which promote the universal service and universal access to telecommunications services throughout the country. The Presidential Secretariat for Government Innovation is responsible for the implementation of Law No. 59 of 2008.

4.85. The Fund is financed from up to 1% of the taxable income of the operating companies engaged in the commercial exploitation of the paid information and telecommunications services defined in Law No. 59.<sup>74</sup> The taxable income includes the income from the termination of inbound international calls terminated in local networks under any procedure. The amendment made by Law No. 62 of October 2012 eliminated the provision which made the termination of inbound international calls more expensive for foreign correspondents. From 1 January 2013, all telecommunications companies operating in Panama must contribute to the Fund at the same rate. In April 2014, the Fund amounted to about US\$50 million.

4.86. The authorities have launched the National Network for Universal Internet Access project, which seeks to promote equality of opportunity for all citizens. Under this project hundreds of free wireless Internet access sites have been established in 22 Panamanian towns and cities, covering 80% of the population. This is turning Panama into one of the world's leading countries in the provision of free wireless Internet access at national level. It should be pointed out, however, that the speed of the Internet is limited and there is therefore a need to expand the capacity of the broadband network. Another of the objectives of Law No. 59 of 2008 is to provide a public telephone service and other services to meet the needs of the population in disadvantaged areas.

4.87. Telecommunications services are subject to ITBMS at a rate of 7%, except for fixed telephony and residential Internet access services, which are exempt. In addition, post-paid mobile telephony and cable television services are subject to payment of the ISC (5%).

4.88. Panama has made commitments in the area of telecommunications services in the free trade agreements it has concluded. In the Panama-United States Trade Promotion Agreement, the parties adopted a regulatory framework for promoting competition in the telecommunications sector which builds on the disciplines of the WTO's Basic Telecommunications Reference Paper.

### 4.5.3 Financial services

#### 4.5.3.1 General features

4.89. Financial intermediation continues to be a dynamic sector, having grown at an average annual rate of 6.0% between 2007 and 2013 (at 2007 prices). It is considered to be one of the fundamental sectors for economic growth in the Government's Strategic Plan 2010-2014. The sector contributed an average of 8% to real GDP over the period 2007-2013 and accounted for 2.5% of total employment in 2013 (Table 1.1).

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<sup>74</sup> Local, national and international basic telephony services; personal communications services; cellular mobile telephony; telecommunications transport and public-use Internet service.

4.90. Panama's financial services sector comprises the banks (including development banks), cooperatives and savings and loan associations, finance companies, insurers, pension funds, leasing companies, securities companies and remittance companies. The banks account for more than three quarters of financial sector assets (Table 4.4).

**Table 4.4 Structure of the Panamanian financial system, December 2012**

Financial entity	Number	Assets (US\$ million)	%	Supervisory body
<b>Banks</b>	92	89,772	76.6	Panamanian Banking Supervisory Authority (SBP)
General licence	49	72,937		SBP
International licence	29	16,835		SBP
Agency licence	14	N/A		SBP
<b>Cooperatives</b>	595	1,823	1.6	Panamanian Autonomous Cooperative Institute
<b>Savings and loan associations<sup>a</sup></b>	4	n.a.		National Mortgage Bank
<b>Insurers</b>	31	1,881	1.6	Insurance Supervisory Authority
<b>Pension funds</b>		644	0.6	Securities Market Supervisory Authority
<b>Development banks</b>	2	593	0.5	
National Mortgage Bank	1	234		National Mortgage Bank
Agricultural Development Banks	1	359		Agricultural Development Bank
<b>Finance companies<sup>a</sup></b>	161	830	0.7	Ministry of Trade and Industry (MICI)
<b>Leasing companies<sup>a</sup></b>	118	322	0.3	MICI
<b>Securities companies</b>	81	21,329	18.2	Securities Market Supervisory Authority
<b>Remitters<sup>b</sup></b>	15	n.a.	n.a.	MICI
<b>Pawnbrokers<sup>b</sup></b>	280	n.a.	n.a.	MICI

n.a. Not available.

N/A Not applicable.

a Information for June 2012.

b Information for March 2012.

Source: Information provided by the SBP.

#### 4.5.3.2 Banks and other financial institutions

##### 4.5.3.2.1 Features of the market

4.91. Panama has a sound and diversified banking sector with high levels of capitalization and liquidity. During the review period the sector continued to expand and at the end of 2013 had assets totaling US\$97,928 million, an increase of 9.1% as compared with 2012<sup>75</sup> and more than twice the value at the end of 2007 (47,600 million).<sup>76</sup> Banking accounts for about 7% of national GDP and employs about 30,000 people.

4.92. On 31 December 2013, the Panamanian banking sector (known as the International Banking Centre or CBI) comprised 92 banks: 51 with a general licence, 27 with an international licence, and 14 with an agency licence. Of the banks with a general licence, two were official banks (the National Bank of Panama and the Savings Bank), 18 were banks with Panamanian private capital and 31 had foreign capital. All the banks with an international licence were foreign banks.<sup>77</sup>

4.93. The Panamanian banking system weathered the global financial and economic crisis (2007-2009) without serious consequences and today has high solvency, liquidity and profitability indicators (Table 4.5). In December 2013, the equity/risk-weighted assets ratio (capital adequacy) was 14.8%, higher than the 8% required by law. Likewise, monthly average liquidity was 60.4%, above the 30% required by law. Asset quality is good, since the ratio of non-performing

<sup>75</sup> Panamanian Banking Supervisory Authority (2013).

<sup>76</sup> WTO (2007).

<sup>77</sup> Online information from the SBP. Viewed at: [http://www.superbancos.gob.pa/es/reportes\\_estadisticos](http://www.superbancos.gob.pa/es/reportes_estadisticos).

and past-due loans to the total loan portfolio is low and has fallen substantially since 2009. Profitability indicators are reasonable: at the end of 2012 the return on average assets (ROAA) was 1.5% and the return on equity (ROE) 13.8%.

**Table 4.5 Panama's banking system: liquidity, capital adequacy and profitability indicators, 2007-2013**

(%)

Indicator	Dec. 2007	Dec. 2008	Dec. 2009	Dec. 2010	Dec. 2011	Dec. 2012	Dec. 2013
Liquidity ratio (monthly average)	n.a.	62.9	69.5	65.7	66.0	65.5	60.4
Capital adequacy ratio	13.8	14.5	16.4	16.3	15.6	16.2	14.8
Return on average assets (ROAA)	1.9	2.0	1.41	1.7	1.7	1.8	1.5
Return on equity (ROE)	15.2	15.9	11.8	13.6	14.1	15.5	13.8
Non-performing + past-due portfolio/Total domestic portfolio	3.5	3.9	4.2	3.4	2.7	2.6	2.4

n.a. Not available.

Source: Panamanian Banking Supervisory Authority, Statistical Reports, various years; online information viewed at: [http://www.superbancos.gob.pa/es/reportes\\_estadisticos\\_hist](http://www.superbancos.gob.pa/es/reportes_estadisticos_hist).

4.94. In recent years, there has been a significant expansion of the banks' loan portfolio, reflecting the dynamism of the Panamanian economy. Total domestic credit granted to the private sector by the banks with a general licence (which make up the National Banking System or SBN) amounted to US\$35,240 million in December 2013, an increase of 10.4% as compared with the close of 2012. The sectors with the largest share of the total credit granted were the commercial, mortgage and personal consumption sectors, which accounted for 78% of total SBN domestic credit. Lending to the construction sector was particularly dynamic, rising by 24% as compared with 2012. The loan portfolio for the whole of the CBI (banks with general and banks with international licences) reached US\$60,614 million at the end of 2013, which represented an increase of 8.2% relative to the close of 2012. For their part, at the end of 2013, total CBI deposits amounted to US\$70,149 million, of which 59,525 million corresponded to the SBN.<sup>78</sup>

#### 4.5.3.2.2 Legal framework

4.95. During the review period, Panama made changes in the banking sector's legal framework to align it on international regulatory standards, increase transparency, prevent tax evasion, build the capacity of the supervisory authority and protect bank customers. Panama does not have a Central Bank and uses the United States dollar as legal currency. The Panamanian Banking Supervisory Authority (SBP), established in 1998, is the banking sector's regulator and supervisor; its powers include issuing licences, ensuring that the banks maintain appropriate solvency and liquidity ratios, developing banking regulations, imposing sanctions and supervising bank liquidation proceedings.

4.96. Panama aspires to become a regional banking and financial centre. To this end, the SBP has launched the Strategic Plan 2012-2014, whose main pillars are: strengthening bank supervision by means of a regulatory framework that ensures proper risk management; developing and applying a corporate governance system based on best banking practices; meeting international standards on money laundering and the financing of terrorism; strengthening the international reach of the Panamanian financial market; and negotiating agreements with foreign regulators that enable consolidated supervision.

4.97. The banking regime is fairly open. The main legal instrument is Decree Law No. 2 of 22 February 2008, as amended and consolidated into a single text by Executive Decree No. 52 of 30 April 2008 (Banking Law). The latter was, in its turn, amended by Law No. 67 of 1 September 2011. Moreover, the SBP periodically issues decisions, regulations and circulars which develop and implement the Banking Law. During the review period, the SBP issued decisions on various aspects of banking, including rules for corporate governance, for measuring

<sup>78</sup> Panamanian Banking Supervisory Authority (2013).

the financial impact of various kinds of operating risks, and for improving the security of online banking transactions, and updated the regulations on credit risk. At present, the SBP is working on the regulation of consolidated supervision for financial conglomerates.

4.98. The changes introduced by Executive Decree No. 52 of 2008 include the following: the powers of the SBP were reinforced by consolidating its supervision of all bank operations, including those of subsidiaries and branches and foreign operations, and financial conglomerates were placed under its supervision. Among other things, the mechanisms for the voluntary liquidation of failed banks were improved, the powers of the SBP to apply corrective measures in the case of banks in difficulty were extended, and it was granted new powers to reorganize or liquidate banking institutions not in compliance with the law. In addition, it was established that the minimum capital requirements had to be calculated on a risk-weighted basis and the capital adequacy and liquidity requirements were extended to the banks with an international licence under the home supervision of the SBP. Other important changes were the creation of the professional career of banking supervisor, the introduction of institutional protection (*amparo*) to cover the expenses and costs of the members of the Board of Directors of the SBP if they become the subject of judgments or complaints deriving from acts adopted in conformity with the Banking Law in the exercise of their powers, and provisions enabling the SBP to oversee and protect the rights of the bank customer.

4.99. One of the main reforms introduced by Law No. 67 of 1 September 2011 was the creation of the Securities Market Supervisory Authority (SMV) in place of the National Securities Commission, with broad powers to regulate the activities of the capital market, together with the establishment of the Financial Coordination Council (CCF) with a mandate to improve coordination and cooperation between the country's financial regulators in order to harmonize the regulations and ensure the effective supervision of the financial market.<sup>79</sup> In addition, the concept of "cross directors" was introduced, according to which out of the seven directors on the Board of Directors of the SBP, one must be nominated by the SMV and another by the Insurance and Reinsurance Supervisory Authority.

4.100. Under the legislation, to engage in banking activities within or from Panama it is necessary to obtain a licence from the SBP. There are three types of licence:

- a. general licence: allows banking in Panama and transactions that are completed, conducted or have effect abroad; may be granted to Panamanian banks and to foreign banks established in Panama through subsidiaries or branches; the minimum capital requirement is B 10 million;
- b. international licence: allows transactions completed, conducted or having effect abroad to be managed from an office in Panama; granted to banks with a parent company in another country that have a physical presence in Panama but does not allow them to carry out transactions in the Panamanian market, although they may purchase Panamanian domestic public debt through the Panamanian securities market; the minimum capital requirement is B 3 million, of which B 250,000 must be held as security in one of the two official banks; and
- c. agency licence: allows foreign banks to set up a representative office but does not authorize them to carry out any banking operations in Panama; there is no minimum capital requirement.

4.101. To engage in banking activities within or from Panama or open a representative office, foreign banks must first have obtained authorization from their supervisory body abroad. Banks with a general or international licence can set up as subsidiaries or branches. Branches in Panama and establishments abroad may be opened without a licence, but only after the SBP has been notified and has given its approval. There are no restrictions on the number of branches that can operate.

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<sup>79</sup> The CCF is composed of the SBP's supervisors, the Insurance and Reinsurance Supervisory Authority, the SMV, the Executive Director of the Panamanian Autonomous Cooperative Institute (IPACOOOP), the MICI's National Director for Financial Companies and the Executive Director of the Civil Servants Savings and Pensions Capitalization System (CICAP). Online information viewed at: <http://www.ccf.gob.pa>.

4.102. In addition to meeting the requirements concerning minimum capital, whose origin must be clearly determinable, in applying for a licence it is necessary to submit the bank's corporate governance policies and a business plan that demonstrates its viability.<sup>80</sup> SPB Decision No. 3-2001 (5 September 2001), as amended by Decision 2-2006, establishes the criteria and requirements for applying for a banking licence. These requirements vary depending on whether the legal person in question is to be organized in accordance with the Panamanian or foreign legislation. The authorities have noted that the application approval process lasts between six months and a year, depending on the type of licence requested; a general licence involves more requirements.

4.103. As regards capital adequacy, the law stipulates that any bank with a general or international licence under the home supervision of the SBP must maintain capital funds equivalent to at least 8% of the risk-weighted total of all its assets and off-balance sheet operations.<sup>81</sup> Moreover, both general-licence and international-licence banks must maintain a minimum liquid assets balance equivalent to a percentage of their total gross deposits in Panama or abroad; the SBP is authorized to fix this percentage periodically, on condition that it never exceeds 35%.<sup>82</sup> General-licence banks must maintain assets in Panama equivalent to a percentage of their local deposits determined by the SBP. This percentage must be the same for all the banks and may not exceed 100%.<sup>83</sup> In April 2014, the percentage was 85%. A bank's capital reserves cannot be reduced without the prior authorization of the SBP.

4.104. By law, banks are prohibited from using their shares as security for the loans they grant. They are also prohibited from giving a loan to a single natural or legal person if the value of the loan exceeds 25% of their capital, or 30% where loans to another bank are concerned. Moreover, a bank may not own shares or holdings in non-banking or finance-related companies whose value exceeds 25% of the bank's capital funds. Restrictions are also applied to prevent the concentration of loans in related parties.<sup>84</sup> Banks with an international licence for which the SBP is the home supervisor are subject to the same restrictions.

4.105. Foreign banks are accorded national treatment with regard to the activities in which they can engage in Panama, in accordance with the type of licence they have been granted. There are no restrictions on the participation of foreign capital in banks established in Panama, neither are there any nationality requirements or restrictions applicable to the board members or directors of a bank. However, the Banking Law stipulates that branches of foreign banks must appoint at least two general agents resident in Panama, at least one of whom must be a Panamanian national.

4.106. The great majority of the rules laid down in the Banking Law and in the decisions of the SBP are based on the principles and recommendations of the Basel Committee on Banking Supervision. Within the framework of the Strategic Plan 2012-2014, the SBP is working on the gradual implementation of the Basel II recommendations (including the drafting of regulations for financial conglomerates, market risk and derivatives, among other aspects). The SBP is authorized to request information on the operations of the banks, their assets and their compliance with the technical, operating and institutional regulations. The SBP can also investigate the transactions of a depositor, without his consent, within the context of a judicial inquiry. Moreover, under the law, foreign supervisory bodies may investigate operations carried out in Panama by a foreign bank if the parent company of that bank is subject to the jurisdiction of the foreign supervisory body.

4.107. There is no bank deposit insurance in Panama. However, the Banking Law stipulates that preference will be given to the payment of deposits of up to B 10,000 per person in cases of compulsory liquidation.<sup>85</sup> In June 2013, 92% of the deposits in SBN banks were recording balances of less than B 10,000.

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<sup>80</sup> Article 48 of Executive Decree No. 52 of 30 April 2008.

<sup>81</sup> Article 70 of Executive Decree No. 52 of 30 April 2008.

<sup>82</sup> Article 73 of Executive Decree No. 52 of 30 April 2008 and SPB Decision No. 9 of 2006.

<sup>83</sup> Article 78 of Executive Decree No. 52 of 30 April 2008.

<sup>84</sup> Articles 95, 99 and 96, respectively, of Executive Decree No. 52 of 30 April 2008.

<sup>85</sup> Articles 161 and 167 of Executive Decree No. 52 of 30 April 2008.

4.108. Panama has a broad range of non-bank financial intermediaries which, taken together, account for about 23% of the total assets of the financial system. In its 2013 report on Panama relating to the Article IV consultation, the International Monetary Fund recommended the strengthening of the supervision and the prudential requirements with respect to these financial entities, in particular the cooperatives.<sup>86</sup>

4.109. In recent years, Panama has concluded a number of double taxation treaties that conform with international standards as regards transparency and the exchange of financial information (section 2.1).

4.110. Since 2006, Panama has been applying a tax on personal and business loans with a value of more than B 5,000 granted by local banks and financial entities. The tax is equivalent to 1% per annum on the amount of the loan used as the basis for calculating the interest.<sup>87</sup> Of the sum collected, 50% goes to the National Treasury for payment of the preferential tranches of the mortgage financing referred to in Law No. 29 of 2008, 12.5% to the Agricultural Development Bank, 12.5% to the Ministry of Agricultural Development, and the remaining 25% to the Special Interest Compensation Fund (FECI), for financing loans on preferential terms for the agricultural sector, in the form of a discount on the interest rates agreed with the banks or other financial intermediaries.<sup>88</sup> The SBP is responsible for administering the FECI and, from January to December 2013, reimbursed a total of B 41 million to banks that had applied the discount to agricultural sector loans qualifying during that period.

4.111. Since there is no government entity in Panama that acts as a lender of last resort, and given the need to minimize the vulnerability of the financial system to a shortage of liquidity that could put the system at risk, the authorities are studying the possibility of establishing a liquidity fund initially financed with resources from the National Bank of Panama.<sup>89</sup>

#### 4.5.3.3 Insurance

##### 4.5.3.3.1 Features of the market

4.112. Panama's insurance sector accounts for 0.35% of Panamanian GDP and employs some 3,100 people (2012).<sup>90</sup> The market is made up of 32 insurance companies<sup>91</sup>, of which 12 were set up with Panamanian capital, 18 with foreign capital, and two as branches of foreign companies. There are also eight reinsurance companies; eight reinsurance brokerages, 11 captive insurers; seven managers of captive insurers; 29 insurance adjusters; and two insurance brokers' portfolio managers. In April 2014, 2,521 insurance brokers' licences had been granted to natural persons and 357 to legal persons. The market is led by two Panamanian-owned companies which together hold 33.7% of the market; these are followed by two foreign-owned companies and a branch of a foreign company; together these five companies control 63.4% of the market.<sup>92</sup>

4.113. The total value of the insurance premiums written in 2012 was B 1,138 million. By branch of insurance, the largest portfolios are those for motor vehicles and health, which together account for one third of total premiums (Table 4.6).

<sup>86</sup> IMF (2013).

<sup>87</sup> Law No. 22 of 27 June 2006.

<sup>88</sup> The FECI was established by Law No. 4 of 14 May 1994, as implemented by Executive Decree No. 29 of 8 August 1996.

<sup>89</sup> IMF (2013).

<sup>90</sup> Information provided by the Panamanian Insurance and Reinsurance Supervisory Authority (SSRP).

<sup>91</sup> Of the 32 insurance companies, 15 also have a reinsurance licence.

<sup>92</sup> Information provided by the SSRP.



**Table 4.6 Value of insurance premiums written, by branch, 2007-2012**

(B million)

Branch	Premiums written											
	2007		2008		2009		2010		2011		2012	
	Total	%	Total	%	Total	%	Total	%	Total	%	Total	%
Individual insurance	86.0	14.19	108.1	13.98	119.9	14.15	107.6	11.74	106.1	10.07	119.7	10.52
Personal accident	11.1	1.84	12.6	1.62	13.0	1.55	13.6	1.49	18.6	1.77	16.2	1.43
Health	96.0	15.83	118.8	15.35	136.0	16.00	143.28	15.64	159.0	15.07	181.3	15.93
Group life	96.2	15.86	114.00	14.70	119.1	14.06	125.00	13.64	128.00	12.13	136.00	11.92
Fire and related lines	45.3	7.48	57.2	7.41	67.4	7.97	70.3	7.68	81.2	7.72	97.00	8.51
Multi-risk	3.3	0.56	4.4	0.57	6.4	0.76	7.3	0.81	8.3	0.79	9.8	0.86
Freight transport	23.6	3.88	24.5	3.17	20.2	2.38	20.7	2.27	24.5	2.33	27.3	2.40
Hull	11.6	1.93	13.9	1.80	17.4	2.05	13.6	1.48	20.7	1.98	23.6	2.07
Motor vehicle	110.8	18.27	152.1	19.66	157.3	18.57	161.2	17.60	180.9	17.19	199.3	17.50
Technical branches	21.0	3.47	20.2	2.61	17.5	2.07	22.1	2.41	27.1	2.58	33.1	2.91
Public liability	21.3	3.52	31.4	4.07	35.7	4.22	38.4	4.19	52.3	4.97	66.7	5.86
Theft	7.5	1.21	16.8	2.18	15.0	1.78	16.3	1.81	12.8	1.21	14.3	1.26
Bonds	40.5	6.67	51.8	6.71	59.0	6.97	87.9	9.60	114.8	10.90	102.2	8.98
Other	32.1	5.30	47.7	6.17	63.1	7.46	88.3	9.65	118.5	11.26	112.0	9.84

Source: Compiled by the WTO Secretariat from information provided by the SSRP.

4.114. In 2012, insurance company assets totalled B 1,899.2 million, while liabilities amounted to B 1,142.8 million, which gave a general solvency ratio of 1.66 (higher than the ratios of 1.51 and 1.58 achieved in 2010 and 2011). Insurance generated a net profit of B 91.7 million in 2012.<sup>93</sup>

#### 4.5.3.3.2 Legal framework

4.115. The Panamanian Insurance and Reinsurance Supervisory Authority (SSRP) is an autonomous public body responsible for the regulation, supervision, monitoring and oversight of companies, entities and individuals engaged in insurance and reinsurance in Panama. Its objectives include promoting an inclusive insurance market, protecting the consumer and strengthening oversight.

4.116. During the review period, Panama updated the regulatory framework of the insurance sector for the purpose of encouraging its development, incorporating new technological tools and tightening the control and supervision of the industry. This involved the enactment of Law No. 12 of 3 April 2012, which repealed the old Insurance Law No. 59 of 29 July 1996 and other provisions. The main legal framework for the insurance business is supplemented by the Reinsurance Law (Law No. 63 of 19 September 1996<sup>94</sup>) and the Captive Insurers Law (Law No. 60 of 29 July 1996). Insurance is also governed by the decisions issued by the recently created Board of Directors of the SSRP on aspects such as the pricing, auditing rules for insurance companies, procedures for dealing with complaints, registration of foreign reinsurers not established in Panama, administrative sanctions, and regulation of the profession of insurance broker and of brokerage companies.

4.117. The main changes introduced by Law No. 12 include the following: the SSRP is endowed with autonomy and the structure, legal powers and resources necessary to perform its regulatory and supervisory functions; the Board of Directors is established as the SSRP's senior and advisory body<sup>95</sup>; the career of insurance supervisor is created within the SSRP; the requirements and guarantees for setting up insurance companies are clarified; and the rules relating to the minimum capital, solvency, reserves and investments of insurers and reinsurers are updated. In addition, insurance sales agents and agencies and insurance account executives are brought within the orbit of supervision; the requirements for exercising the profession

<sup>93</sup> Panamanian Insurance and Reinsurance Supervisory Authority, *Boletín Estadístico al año 2012*. Online information viewed at: <http://www.superseguros.gob.pa/imagenes/seguros/DOCS/122459.pdf>.

<sup>94</sup> Article 11 of Law No. 63 of 19 September 1996 was repealed by Law No. 12 of 3 April 2012.

<sup>95</sup> The Board of Directors is composed of five independent directors, one director from the SBP and one from the SNV, who must not have links with the insurance business. Under the Law of 2012, the representatives of the industry, who previously participated in the decision-making through the Insurance Technical Council and the former National Reinsurance Commission, no longer form part of the Board of Directors.

of insurance broker are strengthened; new distribution channels through Panamanian financial institutions and commercial companies are permitted; and liquidation and regularization mechanisms are introduced.

4.118. To operate as an insurer in Panama it is necessary to obtain a licence from the Board of Directors of the SSRP. The law recognizes three branches of insurance, for each of which a licence is required, namely: personal insurance (life, accident, health, etc.), general insurance (motor vehicle, fire, transport, etc.) and bond insurance (contract performance, payment and other bonds). Moreover, authorization is required for opening and closing branches in Panama and branches or agencies abroad.

4.119. Insurers may set up as limited companies formed in Panama, or as branches of foreign companies. There are no restrictions on the participation of foreign capital in insurance companies established in Panama, or on the number of foreign insurers or branches of foreign companies that can operate in the country. Article 40 of Law No. 12 of 3 April 2012 lays down the requirements for an insurer wishing to become established in Panama. Once all the necessary documents have been submitted, the approval of a licence takes between six and eight months.

4.120. In the case of branches of foreign companies, in addition to the documents that must accompany any licence application, it is necessary to submit:

- a. the document authorizing the constitution of the branch in the Republic of Panama, authenticated by the Panamanian diplomatic or consular official in the country of origin (translated by an authorized public translator, if not in Spanish);
- b. a certificate from the supervisory authority in the country of origin showing that the parent company has been duly established in that country and has operated there in a state of total solvency for a minimum of five years. Authorization to operate a branch in Panama is restricted to those areas of activity in which the company is engaged in its country of origin.

4.121. Companies applying for a licence to operate as insurers must put up a minimum amount of capital, in cash, the amount of which was raised by Law No. 12 (Article 41) from B 2 million to B 5 million as from April 2012.<sup>96</sup> Moreover, insurance companies must set aside in their liabilities technical reserves which must at all times be backed by eligible assets that vary with the type of risk. They must also keep contingency reserves for statistical deviations and for disaster risks. In addition, they must establish and maintain in Panama a legal reserve with the equivalent of 20% of their net profits until that reserve reaches B 2 million and thereafter with 10% until it reaches 50% of the paid-up capital.<sup>97</sup>

4.122. Law No. 12 made changes in the rules that govern insurers' investments with a view to safeguarding their solvency and liquidity against future claims and making their financial operations more transparent. At least 50% of technical reserves and capital must be invested in Panama in eligible assets: *inter alia*, in bonds issued or guaranteed by the State, in credit instruments issued by banks authorized by the SBP, or in credit and capital instruments issued by companies registered with the SMV, and within the limits laid down for each type of asset. The remaining 50% of the reserves can be invested in international capital markets in instruments with at least a BBB- international investment rating granted by a rating agency recognized by the SSRP.<sup>98</sup>

4.123. Individuals and companies domiciled in Panama may only take out insurance on persons and goods situated in Panama with insurers authorized to operate in Panama. This requirement does not apply if: (i) it is contrary to international agreements or treaties to which Panama is party; (ii) the insurance is not available in Panama or, (iii) the insurance has been refused by the insurers authorized to operate in Panama. If it is not possible to obtain the insurance in Panama, the SSRP may give permission for it to be taken out abroad.<sup>99</sup> Insurance and

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<sup>96</sup> Insurers which were operating in Panama before this law entered into force have a maximum of three years to comply with this requirement.

<sup>97</sup> Articles 206, 207, 208 and 2013 of Law No. 12 of 3 April 2012.

<sup>98</sup> For more details, see Article 217 of Law No. 12 of 3 April 2012.

<sup>99</sup> Article 153 of Law No. 12 of 3 April 2012.

reinsurance companies established in Panama may place or accept reinsurance with other insurers or reinsurers domiciled in Panama or abroad.

4.124. Model policies and bonds must be authorized by the SSRP before being marketed to the public. Premium tariffs are set out in a Technical Note, which must accompany any policy submitted to the SSRP for authorization, and are approved after validation by the actuarial department of the SSRP. The Supervisory Authority is empowered to check, at any time, that the principles of equity, efficiency and non-discrimination are not being violated and, if necessary, may order the tariffs to be changed.

4.125. Insurance companies must pay a tax of 2% on the gross premiums received under policies issued in Panama covering risks situated in Panama and a tax of 5% on gross premiums under fire insurance policies issued in Panama to cover risks situated in Panama. In addition, insurance premiums are subject to a consumption tax of 5%, except those for fire insurance, life insurance with surrender values and agricultural insurance.<sup>100</sup>

4.126. The Supervisor of the SSRP issues licences for exercising other supervised activities such as those of insurance brokers, insurance managers, and insurance sales agents and agencies. To qualify for an insurance broker's licence it is necessary to be a Panamanian citizen domiciled in Panama or a foreigner who meets the requirements of Article 293 of the Political Constitution.<sup>101</sup> At least 49% of the shares of a legal person with an insurance brokerage licence must be in the hands of Panamanian insurance brokers.<sup>102</sup> The profession of insurance sales agent is reserved for Panamanian citizens.<sup>103</sup> The shares of legal persons must initially belong to qualified insurance brokers. There can be a shift in control of the shares to persons who are not insurance brokers, provided that a trade agreement signed by Panama so permits.

4.127. With a view to stimulating and diversifying the insurance market, Law No. 12 of 2012 allowed insurers to use alternative marketing channels to offer their products, through banks, finance companies and trading companies. To this end, minimum parameters were established for marketing contracts, together with the risk categories that can be marketed through these alternative channels.<sup>104</sup>

4.128. Reinsurance is regulated by the Reinsurance Law (No. 63 of 19 September 1996). At the time this report was being written, the authorities were commencing a consultation process with a view to preparing a draft law aimed at turning Panama into an international reinsurance hub. To attract reinsurers, the draft law provides for incentives similar to those offered by the Law on multinational business headquarters (Law No. 41), which include tax, migration and labour facilities (section 3.4.1.3).

4.129. The SSRP is responsible for the regulation and supervision of reinsurance. The Board of Directors of the SSRP issues licences for reinsurance companies to operate in Panama (a function previously performed by the old National Reinsurance Commission). Reinsurers can set up as limited companies or as branches of foreign companies. Where foreign companies are concerned, they must produce the document authorizing the establishment of the branch in Panama and a certificate from the supervisory authority of the country of origin, stating that the foreign company is duly established in that country and has operated there in a state of total solvency for a minimum of five years.<sup>105</sup>

4.130. Law No. 63 establishes that companies authorized to engage in reinsurance activities must appoint at least two general agents, both resident in Panama and of whom one must be a Panamanian national. Companies that apply for authorization to operate must put up a minimum capital of B 1 million, in cash, in Panama and, once authorized, must maintain

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<sup>100</sup> Article 63 of Law No. 12 of 3 April 2012.

<sup>101</sup> Article 166 of Law No. 12 of 3 April 2012. Article 293 of the Constitution allows naturalized Panamanians to be insurance brokers provided that they are married to a Panamanian national, or have a child with a Panamanian national, and three years after obtaining their naturalization papers apply for a licence to work as an insurance broker.

<sup>102</sup> Article 181 of Law No. 12 of 3 April 2012.

<sup>103</sup> Article 56 of Law No. 12 of 3 April 2012.

<sup>104</sup> Articles 52 and 53 of Law No. 12 of 3 April 2012.

<sup>105</sup> Article 18 (paragraphs 2 and 10) of Law No. 63 of 19 September 1996.

technical reserves equivalent to at least 35% of the net premiums written. Of these reserves 65% must be invested in Panama.

4.131. The taxes on reinsurance premiums covering risks situated in Panama are the same as those applied to insurance premiums. Reinsurance premiums covering risks situated abroad are not taxed and neither are the profits derived from the reinsurance of foreign risks. Foreign reinsurance companies can offer reinsurance services to companies domiciled in Panama provided they are enrolled in the Register of Foreign Reinsurers not established in Panama, created by Decision No. 4 of 13 December 2012. The same applies to foreign reinsurance brokerage companies. At the end of 2013, about 100 foreign reinsurers had applied for registration.

4.132. Captive insurers are companies which from an office established in Panama engage exclusively in insuring or reinsuring individual or specific foreign risks previously authorized by the SSRP. Law No. 60 of 29 July 1996 governs the activities of captive insurers and requires them to maintain a physical office in Panama. These insurers can apply for licences to offer their services to Panamanian and foreign companies in general insurance and to cover long-term risks. In the first case, the minimum capital required is B 150,000 and in the second B 250,000. Premiums and profits derived from captive insurers' activities are not subject to tax.

#### 4.5.3.4 Securities market

4.133. At the end of September 2013, the Panamanian securities market was composed of the Panamanian Stock Exchange (BVP), 85 securities companies, 45 investment advisers, 15 investment managers, two private pension and retirement fund managers, one securities exchange and nine credit-rating agencies.<sup>106</sup> The main issuers on the securities market are banks, insurance companies, investment funds and private capital companies. The main securities issued are debt instruments, with shares being issued only to a limited extent. From November 2011 to October 2012, the total value of the securities registered with the Panamanian Securities Market Supervisory Authority (SMV) was US\$2,314.3 million, of which bonds accounted for 88%.<sup>107</sup>

4.134. The Panamanian securities market is governed by Decree Law No. 1 of 8 July 1999 and its amending legislation, including Law No. 67 of 1 September 2011 which created the Securities Market Supervisory Authority (SMV) to replace the National Securities Commission (CNV), gave it stronger regulatory powers and extended the range of securities market activities subject to supervision. Other laws that govern the securities market include Law No. 12 of 3 April 2012, which supplemented and amended several provisions of Decree Law No. 1 of 1999 and Law No. 67 relating to investment funds; Law No. 56 of 2 October 2012, which amended Decree Law No. 1 of 1999 to make possible the transition from the CNV to the SMV; together with various laws intended to prevent money laundering and the financing of terrorism, among other things.

4.135. All securities market participants must obtain a licence from the SMV and are subject to its supervision and control. Ratings agencies are subject to prior registration. The SMV also grants licences and keeps a register of securities brokers, principal directors and investment analysts, who must pass an examination to obtain the corresponding licence. In addition, the SMV is responsible for regulating the activities of the securities market, establishing the capital requirements for investment funds, supervising private pension and retirement schemes and imposing administrative penalties for breaches of the law.

4.136. The public offering of securities issued by private and semi-public companies requires the prior authorization of the SMV. Moreover, all securities listed on the Panamanian Stock Exchange, public offerings of securities by issuers and shares of issuers domiciled in Panama with 50 or more shareholders that are effective owners of at least 10% of the issuer's paid-up capital must be registered with the SMV. Capital gains derived from the disposal of securities as a result of the acceptance of a public offering generate a tax of 10%.

<sup>106</sup> Online information from the Panamanian Securities Market Supervisory Authority. Viewed at: [http://www.supervalores.gob.pa/files/informacion\\_al\\_inversionista/InfoMer\\_Ases\\_Inver.pdf](http://www.supervalores.gob.pa/files/informacion_al_inversionista/InfoMer_Ases_Inver.pdf). [October 2013].

<sup>107</sup> Panamanian Securities Market Supervisory Authority (2012).

4.137. As part of its efforts to improve fiscal transparency, Panama adopted Law No. 47 of 6 August 2013, which establishes a safe-keeping regime for bearer shares. Under this regime, bearer share certificates must be delivered to a custodian (banks, trust companies, securities company or securities exchange established in Panama) together with documents and information which have to be delivered by the issuing company within a period of 20 days; bearer share certificates issued before this law entered into force have to be delivered to an authorized custodian within a period of three years.

4.138. The SMV maintains memoranda of understanding on consultations and technical assistance with various foreign regulatory bodies<sup>108</sup> and a multilateral memorandum between Central America, Panama and the Dominican Republic.

#### 4.5.4 Air transport and airports

##### 4.5.4.1 Features of the market

4.139. Panama has five international airports, of which four are for commercial public use and one (Howard) for private use, and ten domestic airports. The five international airports have immigration control and customs services. Moreover, Panama has some 40 minor airfields and landing strips with runways for smaller aircraft. These runways provide the main air transport infrastructure for rapid communication with remote areas.

4.140. The main airport is Tocumen International Airport, which thanks to its geographical location has become the busiest in Central America. It is the regional hub for several commercial and cargo carriers and connects passengers and moves freight to more than 31 countries and 70 destinations throughout the world. Between 2007 and 2013, the annual average rates of growth in the total number of passengers, passengers in transit and volume of freight and mail amounted to 12.8%, 21.0% and 5.2%, respectively (Table 4.7). In 2013, almost 8 million passengers used Tocumen, of whom about 3.9 million (50.9%) were in direct transit; the freight terminal handled 110,000 tonnes of freight and mail, mostly for transshipment. According to information from the International Air Transport Association (IATA), between 2012 and 2013, global international passenger air traffic grew by 5.4%, whereas in Panama it increased by 11.8%. Moreover, between 2010 and 2013 new international routes were opened and services to 29 cities were authorized to begin.

**Table 4.7 Annual rate of growth of passenger and freight traffic at Tocumen International Airport, 2007-2013**

(%)

Operation	2007-2008	2008-2009	2009-2010	2010-2011	2011-2012	2012-2013
Passengers in transit	25.6	22.0	7.7	24.3	28.3	18.0
Total passengers	19.5	4.4	6.2	15.9	19.1	11.8
Total freight and mail	4.8	-3.1	17.9	12.2	4.85	-5.3

Source: WTO Secretariat, on the basis of Airport Statistical Reports of Tocumen S.A.

4.141. There are 30 scheduled airlines operating from Tocumen International Airport, which is also the site of the headquarters of the airline COPA and the DHL freight terminal. The company COPA Airlines accounts for 70% of the flights offered.

4.142. Faced with increasing numbers of domestic and international passengers, the Government has an expansion plan for several terminals and airports. In 2012 the project to expand the existing terminal at Tocumen International Airport, known as Muelle Norte, was completed, increasing operating capacity by more than 50%. A South Terminal, which will enable the airport to handle between 12 and 14 million passengers a year, is also being built.

4.143. Marcos A. Gelabert Airport is the main domestic service airport and the home of the local company Air Panamá, the only one to operate scheduled commercial domestic transport flights.

<sup>108</sup> In Argentina, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Honduras, Mexico, Puerto Rico, Spain, and Ukraine.

In addition, there are air taxi companies that offer unscheduled domestic passenger flights. Table 4.8 illustrates the trend in domestic passenger traffic at this airport between 2007 and 2013.

**Table 4.8 Number of passengers at Marcos A. Gelabert Airport, 2007-2013**

2007	2008	2009	2010	2011	2012	2013
319,048	320,820	302,768	369,443	389,197	273,244	274,769

Source: Information provided by the Panamanian authorities.

#### 4.5.4.2 Legal framework

4.144. Within the GATS framework, Panama has bound full commitments for aircraft maintenance and repair services for all modes of supply, except for the presence of natural persons, to which the horizontal commitments apply.<sup>109</sup>

4.145. In 2003, Panama adopted several instruments by which this sector is governed. Law No. 21 of 29 January 2003, which regulates civil aviation and replaced Decree Law No. 19 of 1963, stipulates that: traffic rights are State property; the exercise of technical crew functions is reserved for Panamanian citizens, but the temporary hiring of foreign personnel is permitted if it can be shown to be necessary; airports have a public purpose; cabotage traffic is reserved, in principle, for domestic carriers. Law No. 21 also stipulates that operating certificates for the provision of air transport services in Panama are reserved for: nationals with a base of operations in Panama; legal persons with 51% of the subscribed capital in registered shares in the name of Panamanians or 60% where domestic transport is concerned. The concession of commercial aviation rights to foreign airlines is based on reciprocity. In addition, Law No. 89 of 1 December 2010 for promoting the development of commercial aviation sets out the conditions in which domestic airlines can hire foreign pilots as technical crew provided they do not exceed 15% of the total number of their employees in Panama.

4.146. Law No. 22 of 29 January 2003 created the Civil Aviation Authority (AAC) as an autonomous State body responsible for directing and regulating air transport services, regulating and providing air navigation services, and certifying and administering airfields, including their regulation, planning, operation, surveillance and control. The Board of Directors of the AAC, composed of the Minister of the Interior and Justice who acts as chairman, the Minister of the Economy and Finance and the Minister of Trade and Industry, is the body responsible for establishing and administering Panama's major air transport policies. The Director General of the AAC acts as the Board's Executive Secretary with the right to speak and the Comptroller-General of the Republic attends the meetings, also with the right to speak.

4.147. Under Law No. 23 of 29 January 2003, which defines the regulatory framework for the management of Panama's airports and airfields, the State can create companies for providing public airport and airfield management services, which must act in accordance with the principles of efficiency, transparency and equal treatment. These are public limited companies governed by the Law on Public Limited Companies and the Commercial Code. All 100% of the shares are registered, State-owned and in the custody of the Ministry of the Economy and Finance. No debt instrument may be issued in which the control of these public limited companies is or could be compromised. The general manager must be Panamanian. Materials are purchased and works or services procured in accordance with the regulations issued by the Cabinet Council guided by the principles of transparency, efficiency and equal treatment. The Law on Government Procurement has supplementary effect. Law No. 23 also created the Special Fund for the Development of National Aviation Infrastructure, which relies on a minimum annual contribution provided by the company that manages Tocumen International Airport. The Cabinet Council approves this sum.

4.148. The ACC grants foreign companies certificates to operate international passenger and freight traffic in accordance with bilateral agreements. There are no restrictions on the sale and marketing of air transport services or on computer reservation systems. Panama has signed 34 bilateral and two plurilateral agreements (Table 4.9). As this report was being finalized, news was received of the signing of an agreement with Turkey. Panama's relations with El Salvador and Haiti are based on real and effective reciprocity without a written document.

<sup>109</sup> WTO document S/DCS/W/PAN of 24 January 2003.

Table 4.9 Bilateral air services agreements (ASA)

Partner	Date	5th <sup>aa</sup>	7th <sup>ab</sup>	Cabotage <sup>c</sup>	Coop. <sup>d</sup>	Designation <sup>e</sup>	Withholding <sup>f</sup>	Tariffs <sup>g</sup>	Capacity <sup>h</sup>	Stat. <sup>i</sup>	ALI 2011	ALI 2005
Germany	13.12.99	No	No	No	Yes	M	CI	CO	PD	Yes	14	14
Argentina	21.11.06	Yes	No	No	Yes	M	SOEC	CO	PreD	Yes	16	16
Aruba	24.09.87	Yes	No	No	No	M	SOEC	DA	PreD	No	11	11
Barbados	06.07.11	Yes	No	No	Yes	M	PPB	DA	Free	Yes	29	
Belgium	12.01.66	Yes	No	No	No	M	SOEC	DA	BI	Yes	14	14
Bolivia, Plurilateral State of	27.07.77	No	No	No	No	M	SOEC	DA	PreD	Yes	4	4
Brazil	25.05.07	Yes	No	No	No	M	SOEC	CO	PreD	Yes	13	4
Canada	28.11.13	Yes	No	No	Yes	M	SOEC	DD	PreD	Yes	19	
Korea, Rep. of	28.12.79	Yes	No	No	No	S	SOEC	DA	BI	Yes	10	10
Chile	21.10.97	Yes	No	No	Yes	M	SOEC	DD	Free	No	28	
China	30.08.94	No	No	No	No	M	SOEC	CO	PreD	No	8	
Colombia	18.02.10	Yes	No	No	Yes	M	n.a.	CO	Free	Yes	24	
Costa Rica	16.10.81	No	No	No	No	S	n.d.	n.d.	PreD	No	1	1
Cuba	05.11.07	Yes	No	No	Yes	M	PPB	DD	BI	Yes	31	0
Ecuador	12.01.95	Yes	No	No	No	M	n.a.	CO	PreD	No	14	14
United Arab Emirates	23.09.11	Yes	No	No	No	M	SOEC	DD	Free	Yes	24	
Spain	07.08.01	Yes	No	No	Yes	M	PPB	DD	PreD	Yes	27	27
United States	08.05.97	Yes	No	No	Yes	M	SOEC	DD	Free	No	28	28
Russian Federation	03.02.93	No	No	No	No	M	SOEC	CO	PreD	No	8	
Guatemala	26.11.98	Yes	No	No	No	M	n.a.	DA	PreD	No	11	21
Honduras	15.10.87	No	No	No	No	M	SOEC	DA	PreD	No	5	5
Jamaica	25.08.99	Yes	No	No	Yes	M	SOEC	DD	BI	Yes	23	23
Mexico	04.08.11	Yes	No	No	Yes	M	SOEC	DA	PreD	No	14	
Nicaragua	08.01.98	Yes	No	No	No	S	SOEC	DA	PreD	No	7	
Netherlands	05.07.96	Yes	No	No	No	S	SOEC	DA	PreD	No	7	15
Netherlands Curacao	20.03.12	Yes	No	No	Yes	M	PO	DD	Free	Yes	35	
Paraguay	20.06.05	Yes	No	No	Yes	M	PPB	DD	Free	Yes	35	
Peru	08.09.03	No	No	No	Yes	M	n.a.	PO	O	Yes	10	
United Kingdom	29.10.97	No	No	No	No	M	SOEC	DD	BI	Yes	14	14
Venezuela, Bolivarian Rep. of	08.07.13	Yes	No	No	Yes	M	SOEC	DA	PreD	Yes	13	
Dominican Republic	22.08.08	Yes	No	No	Yes	M	PPB	DD	O	Yes	27	
Switzerland	21.04.64	Yes	No	No	No	M	SOEC	DA	BI	Yes	14	14
Trinidad and Tobago	25.11.05	Yes	No	No	Yes	M	SOEC	DA	Free	Yes	21	
Uruguay	18.02.98	Yes	No	No	Yes	M	n.a.	DA	PreD	No	14	

n.a. Not available.

a "Yes" indicates that fifth freedom rights are granted, even though they may be limited.

b "Yes" indicates that seventh freedom rights are granted, even though they may be limited.

c "Yes" indicates that cabotage rights are granted, even though they may be limited.

d "Yes" indicates that there are clauses permitting cooperation between airlines, such as code-sharing.

e "S" indicates that the designation is single, "M" that it is multiple.

f Type of withholding clause: substantive ownership and effective control "SOEC", principal place of business "PPB" or community of interest "CI".

g Type of tariffs clause: double approval "DA", double disapproval "DD", country of origin (CO), zone pricing "ZP", free pricing "FP".

h Type of capacity clause: predetermination "PreD", Bermuda I "BI", free determination "Free", other "O".

i "Yes" indicates that the agreement provides for an exchange of statistics.

Source: WTO Secretariat.

4.149. In 2005, Panama's air liberalization index (ALI) recorded in QUASAR (Quantitative Air Services Agreements Review) was 19.2 units on a range from 0 to 28. Since 2005, the agreements signed, amended or entered into force have meant that Panama's ILA has risen by more than 12 units. Two thirds of these new agreements are with countries of Central and South America. Panama's most recent bilateral agreements are much more liberal than those in its QUASAR-2005 profile.<sup>110</sup> As can be seen from Table 4.9, the ALIs of the agreements lie

<sup>110</sup> WTO document S/C/W/270/Add.1 of 30 November 2006.

within a range of from 1 to 35 units. The ALIs of most of the agreements signed since 2005 are equal to or greater than 16 and four of them are equal to 24 or higher. In short, since 2005 the levels of openness have increased thanks to the fact that agreements concluded by Panama contain clauses on cooperation and code-sharing, a multiple designation clause and country of origin and double disapproval provisions in relation to tariffs, typical of the latest agreements. Moreover, all the agreements signed since 2005 contain the fifth freedom.

#### 4.5.5 Maritime transport, including the Panama Canal

##### 4.5.5.1 General features

4.150. Panama has made no commitments on maritime transport under the GATS.

4.151. In 2012, the maritime transport sector's contribution to Panama's GDP was 2.3%.

4.152. Panama has an extensive network of ports and a wide range of services for ships, for cargo, whether containerized, bulk, liquid or general, and for passengers in the various cruise ship terminals. The ports in the National Port System are divided into State ports and private ports. The Panamanian Maritime Authority (AMP) manages 23 of the 42 ports, the other 19 being managed by private operators under concessions.<sup>111</sup> The ports on the Atlantic mainly serve the east coasts of North and South America and the Caribbean. On the Pacific coast, until recently, the port of Balboa was the only terminal providing container handling services. Now, a Government of Singapore public enterprise has completed the first phase of construction of a new port terminal, PSA Panama International Terminal (PSA Panama). The terminal began operating at the end of 2010 when it received steel and other supplies for Canal expansion, while its container operations officially commenced in 2012. This infrastructure is intended to attract new cargo from Asia to the west coast of America, with Panama serving as a transshipment centre.

4.153. The Port of Colón on the Atlantic is the biggest port in Panama and the second largest in Latin America, after Santos in Brazil. In 2012, the Port of Colón moved approximately 51.8% of containers, followed by Balboa on the Pacific with 48.3%. In 2012, cargo movements in the national port system amounted to 76.5 million tonnes, of which 143,000 tonnes passed through the State-managed ports. Container traffic amounted to 6.8 million TEU. Of this traffic 86.6% involved transshipment and 12.4% corresponded to containers bound for Panama and the free zone.<sup>112</sup> In 2013, imports and exports accounted for 97.2% of the cargo handled in Panamanian ports and cabotage for 2.8%. Panama's foreign trade relies mainly on maritime transport.<sup>113</sup>

4.154. Since many of the vessels that arrive at Panamanian ports take on fuel this business continues to be an important part of the maritime conglomerate. The cruise sector is also important, although the data for 2012 show that 223 cruise ships with a total of 413,796 passengers were recorded, which represents a decrease of 18% and 36%, respectively, as compared with 2011. The preliminary figures for 2013 indicate that 239 cruise ships carrying 529,042 passengers were recorded, which corresponds to an increase of 6.7% and 21.8%, respectively, as compared with 2012.<sup>114</sup>

4.155. According to *Lloyd's Register*, on 30 June 2013, Panama occupied first place among the countries of registration of vessels of the world merchant fleet, with 8,221 ships and a tonnage of 223,293,304 GRT.<sup>115</sup>

4.156. Cabinet Resolution No. 79 of 24 June 2009 approved the updating of the National Maritime Strategy, while rescinding Cabinet Resolution No. 3 of 28 January 2004. The Strategy seeks to turn Panama into an integrated centre of excellence for competitive maritime and logistical services by developing activities that generate value added within a legal framework that promotes

<sup>111</sup> Information provided by the AMP.

<sup>112</sup> Panamanian Maritime Authority (2012).

<sup>113</sup> INEC. Statistics Department, Directorate-General of Ports and Auxiliary Maritime Industries, AMP.

<sup>114</sup> Online information from the AMP. Statistics viewed at:

[http://www.amp.gob.pa/newsite/spanish/home\\_mirror.html](http://www.amp.gob.pa/newsite/spanish/home_mirror.html).

<sup>115</sup> Port Maritime Statistical Bulletin. January-December-2013. Viewed at: <http://www.amp.gob.pa>.



and guarantees free enterprise, legal certainty, a competitive market structure and sustainable development. The strategy has six objectives: (i) to strengthen the logistical maritime conglomerate and its constituent economic activities; (ii) to consolidate Panama's position as the main maritime and logistical platform in the Americas for global trade; (iii) to guarantee processes based on excellence and effective communication between the private and public components of the maritime and logistical conglomerate; (iv) to develop human resources; (v) to promote secure trade through intelligence systems and compliance with international rules and inter-institutional protection and security agreements; and (vi) to guarantee environmental sustainability in the development of maritime, logistical and supply chain activities. To this end, Resolution JD No. 055-2008 of 18 September 2008 created the Inter-Institutional Advisory Commission of the National Maritime Strategy (CICEMN) with the AMP as coordinator and an Executive Secretariat that includes the AMP, the ACP, the MICI, the SENACYT and representatives of the Standing Executive Committee, the Expanded Executive Committee and the Maritime Chamber of Panama. The Commission is not meeting at present.<sup>116</sup>

#### 4.5.5.2 Maritime transport services

4.157. Law No. 57 of 6 August 2008 as amended by Law No. 41 of 14 June 2013 (General Law on the Merchant Marine) governs Panama's maritime transport.<sup>117</sup> The AMP, headed by a Board of Directors<sup>118</sup> and an Administrator appointed by the Executive, is an autonomous State body with its own legal personality, its own assets and the capacity to manage them. It is empowered to grant concessions and/or operating licences, as well as to receive, keep safe, allocate and invest its financial resources. The AMP is entrusted with administering, promoting and implementing the strategies and rules relating to the operation and development of the maritime transport sector and for administering the ship register. It is also responsible for the organization of the port system and its administration, planning and supervision. It is subject only to the policies, guidance and inspection of the relevant agencies of the Executive branch and the supervision of the Office of the Comptroller. It also has a reimbursable Emergency Fund to handle, through single tendering, the costs of maritime investigations, detentions, spillages, etc. Law No. 57 also grants the AMP the authority to hire the services of independent auditors and companies in order to outsource invoicing services.

4.158. Law No. 57 creates the Panamanian Shipowners Association as a non-profit legal person to represent and coordinate with the State institutions the interests of the domestic and international ship-owners that use the Panamanian register. The Merchant Marine is composed of international service and domestic service vessels. International service vessels can apply to switch to domestic service and vice versa. The Directorate-General for the Merchant Marine can authorize vessels for both services, subject to fulfilment of the additional requirements of the service to which they desire to obtain access. Any person, natural or legal, irrespective of nationality or domicile, may register one or more vessels owned by that person in the Merchant Marine. The registration application for an international service vessel must be accompanied by the instrument of appointment of a resident agent.<sup>119</sup> The income from the international maritime trade of domestic merchant vessels legally registered in Panama does not give rise to income tax, even if the transport contracts are concluded in Panama, nor is tax levied on the rent from the leasing of foreign service merchant vessels engaged in trade in international waters. Activities carried out in Panamanian territorial waters do incur income tax.

4.159. Panama is seeking to rejuvenate the fleet and, in this connection, Law No. 57 establishes discounts on the registration fee, annual tax and annual consular fee, for new-built ships and ships enrolled in the Merchant Marine, within five years of the date on which the keel was laid.

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<sup>116</sup> For the composition of the CICEMN, see Table No. 1 of Resolution JD No. 055<sup>a</sup>-2008, Official Journal No. 26319.

<sup>117</sup> Law No. 57 of 6 August 2008 amends Articles 1, 10, 15, 16, 17, 19, 20, 21, 22, 23, 24, 27 and 30 of Law No. 7 creating the Panamanian Maritime Authority and consolidating the maritime functions of government; it also repeals Law No. 8 of 12 January 1925 and Law No. 25 of 3 June 2002.

<sup>118</sup> The Board of Directors of the AMP is composed of: the Presidential Minister, the Minister for Canal Affairs, the Minister of the Economy and Finance, four Members appointed by the President of the Republic, with more than seven years of involvement in the maritime sector. The Manager of the AMP serves as secretary with the right to speak and the Comptroller-General of the Republic and the Directors-General of the AMP participate, also with the right to speak. The members of the Board have a five-year term of office.

<sup>119</sup> Resident agent: a qualified attorney or law firm appointed in writing by the shipowner to deal with the Directorate-General of the Merchant Marine.

The percentages of these discounts vary with the tonnage and are applied on a tapering basis over a period of three years. The AMP's Administrator, at the request of the Directorate-General for the Merchant Marine, can vary the percentages with an eye to the competitiveness of the Register. Moreover, with the prior approval of the Administrator, the Board of Directors can establish special tariffs for vessels enrolled in the National Merchant Marine which take on board officers undergoing training or other categories of personnel of Panamanian nationality. The Law also provides for discounts of 20% on registration fees, annual tax and annual consular fees for new vessels registered by economic groups that keep five to 15 vessels registered, discounts of 35% for 16 to 50 vessels, and discounts of 60% for 51 vessels or more. In addition, there are discounts for the enrolment of groups of three or more vessels which vary with the tonnage and are applied if the vessels are not entitled to any other discount. Resolution No. 106-136-DGMM of 10 September 2013 grants exemptions additional to the discounts envisaged in Law No. 57 for maintaining and improving Panama's competitiveness when its competitors reduce the costs of registration under their flags. Furthermore, a discount of 15% of the annual tax and the annual consular fee, applicable to the following year, is granted to vessels already enrolled in the Merchant Marine if they can show that they have not been detained for a port State inspection for 24 months and are not receiving any other discount under Law No. 57.

4.160. The owner of domestic service vessels must register them with the Directorate-General for the Merchant Marine (DGMM) or other AMP department authorized for that purpose, without the need for an attorney. The DGMM must establish the requirements for operating vessels that provide services in Panamanian territorial waters.

4.161. Law No. 41 restricts investment in domestic service vessels which are going to be used to supply the auxiliary maritime services of lighterage, provisioning and transport of fuel for bunkering. If the owner or bare-boat charterer of such vessels is a legal person, he must show that 75% of the holders or beneficiaries of the shares are Panamanian and, if a natural person, must be a Panamanian national; however, companies building vessels in Panama in accordance with the AMP's specifications for the auxiliary maritime services envisaged in this Law are exempt.<sup>120</sup>

4.162. Panama grants tax incentives to cabotage vessels built in Panama consisting of exemption from tax: (i) on the transfer of movable tangible property and the provision of services in the shipbuilding services subsector; (ii) on the introduction of materials and equipment for shipbuilding; and (iii) on income for vessels built wholly in Panama. For this purpose, a vessel built in Panama is deemed to be one built in a shipyard inside Panamanian territory.

4.163. Panama is a member of the International Maritime Organization and is party to 23 international maritime transport conventions, including the Maritime Labour Convention (2006) and the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (2002). There are also agreements on recognizing the measurement of ships' tonnage with the United States, the Russian Federation and Ukraine and on trade and navigation with Spain, France and Italy.

4.164. Law No. 4 of 24 February 1983, as amended by Law No. 19 of 3 August 1992 and Decree Law No. 17 of 26 October 1989, establishes the tax regime applicable to foreign service vessels.

#### 4.5.5.3 Port services

4.165. Law No. 56 of 6 August 2008, as amended by Law No. 41 of 14 June 2013 and Resolution ADM-016-09 of 9 February 2009, and its regulations<sup>121</sup>, known as the General Panamanian Ports Law, establishes the rules governing port activities and maritime installations,

<sup>120</sup> In accordance with Law No. 41, auxiliary maritime services are supplementary maritime transport services provided in connection with the cargo, the vessel, the crew, the passengers or maritime or port installations.

<sup>121</sup> Resolution J.D. No. 027-2008 of 21 January 2008, approving the regulations for granting operating licences for auxiliary maritime services and Resolution J.D. No. 026 of 21 January 2008, amending Articles 8, 27 and 43 of the concession regulations approved by Executive Committee Decision No. 9-76 of 24 March 1996.

the use of property granted on concession and the provision of maritime services, whether public or private. Port services are public and must be supplied free of discriminatory practices with regard to the ships, cargo or passengers to which they must be provided. The Law also stipulates that the port development plan must be directed towards the promotion of private investment in port activities.

4.166. The AMP authorizes the granting of concessions for the development, use and operation of State goods and services, namely, the construction and operation of maritime and port installations, as well as the issuing of operating licences to parties interested in carrying out commercial activities in port precincts or areas within the jurisdiction of the AMP. Concessions are granted under contract and operating licences by administrative resolution, subject to payment of the inspection fee. The State retains the ownership of the property on concession and the concessionaire is unable to claim or obtain title to built improvements.

4.167. Concession contracts can be amended, assigned, extended and renewed at the request of the interested party, subject to the express authorization of the AMP and the approval of the Comptroller-General of the Republic. Concession contracts for the construction of maritime or port terminals can also be raised to the status of a "contract law" (*contrato ley*) if justified by the amount of the investment guaranteed and the impact it could have on the economy. Concessions are granted for a maximum period of up to 20 years, which can be extended at the request of the concessionaire for a period equal to that specified in the original contract, although the conditions may be amended. The request for an extension must be submitted during the last fifth of the original period and, at the latest, one year before the expiration of the contract. The concessionaire must give permission for cargo to enter or leave the country to anyone who needs to use the port installations, without commercial discrimination. The port access channels and the turning basins are for public use. Concessionaires are required to carry out capital and maintenance dredging works in the port access channels at their own expense, unless the State has accepted responsibility for carrying out capital dredging works in those channels in the concession contract. In this case, the AMP selects among the companies specialized in the field the one with the most advantageous proposal for carrying out the work. Law No. 56 created the Special Dredging Commission which is responsible for assessing the technical and financial aspects of each bid. Concession contracts are governed exclusively by Panamanian law. Only if expressly agreed will disputes concerning the interpretation or application of the contract be subjected to arbitration in law, in accordance with the Panamanian legislation.

4.168. Operating licences are issued for a period of up to ten years and can be renewed for the same period of time with the same rights, on condition that the provider has fulfilled all his obligations and has paid the State the corresponding fees. Operating licences are non-transferable. Law No. 41 establishes limits on the participation of foreign capital in companies which offer auxiliary maritime services in the areas of lighthouse, provisioning, fuel transport and the supplying of ships with those items that are required to operate a vessel. If the owner or bare-boat charterer of such ships is a legal person, he must show that 75% of the holders or beneficiaries of the shares are Panamanians and, if he is a natural person, must be of Panamanian nationality. Likewise, 90% of the crew of vessels that provide auxiliary maritime services must be Panamanian nationals. An applicant for an operating licence for providing these services who is not the owner or bare-boat charterer must also show that he belongs to the same business group as the proprietor or owner of the vessel in question. Natural or legal persons who hold a valid operating licence at the time of entry into force of Law No. 41 must meet the requirements established in accordance with that law whenever they wish to incorporate new vessels into their licence.

4.169. The AMP establishes the tariffs for granting concessions and operating licences and fixed or variable tariffs for the right to use the concession and the right to use port installation facilities and operating licences. The Law establishes the method of invoicing tariffs, whose amounts may be reviewed and adjusted at five-yearly intervals, with account for the tariffs charged for providing the same services at other ports in the region. Any increase is applied equally to all concessionaires and auxiliary service providers according to the type of activity. Concessionaires and service providers are required to pay the municipal taxes applicable to them for the activities they carry out. Port operators pay the National Treasury a uniform tariff by way of income tax on each local cargo movement. Port operators may not adopt discriminatory measures or tariffs. In the event of discrimination, the AMP will regulate any increase in tariffs.

A percentage of the tariffs charged per movement is earmarked for the development and maintenance of State wharves and ports. Finally, companies engaged in the construction, development, management and operation of port terminals for handling containers and bulk cargo must comply with the requirements of Law No. 45 of 2007 on consumer protection and the defence of competition and any relevant provisions adopted in the future. The authorities have noted that shipping company tariffs are not subject to government approval and that the prices of port services and related services are also unregulated.

#### 4.5.5.4 Panama Canal

4.170. The Constitution states that the Panama Canal is the inalienable heritage of the Panamanian nation. Law No. 19 of 11 June 1997 stipulates that the Canal may not be sold, assigned or mortgaged. The Panama Canal Authority (ACP) is a Panamanian Government entity created under Title XIV of the National Constitution. It has exclusive responsibility for the operation, administration, functioning, preservation, maintenance, improvement and modernization of the Canal and for its related activities and services, in accordance with existing constitutional law, in order to ensure that the Canal functions safely, continuously, efficiently and profitably. Law No. 19 authorizes the ACP to delegate the performance of certain works or services, in full or in part. The ACP has its own system of public procurement.

4.171. An 11-member Board of Directors<sup>122</sup> determines the policies for the functioning, improvement and modernization of the Canal and supervises its administration. Its decisions and resolutions are adopted by absolute majority voting. The Board is responsible for appointing the administrator (senior executive official and legal representative of the Authority)<sup>123</sup>, the deputy administrator and the inspector general and for establishing the ships' tonnage system. Subject to the approval of the Cabinet Council, the Board sets the tolls, taxes and duties charged for using the Canal and its related services. The Administrator is tasked with implementing the policies adopted by the Board of Directors and has responsibility for the daily functioning of the Canal and the authority to discharge that responsibility. Although the ACP draws up its budget independently, it is then submitted to the Cabinet Council and subsequently to the National Assembly for approval. The ACP may engage the services of third parties, offer them to the State and, subject to authorization by the Cabinet Council, contract loans or any other type of credit commitment. The law establishes a maximum term of 20 years or, exceptionally, 40 years for concession contracts and leases.

4.172. Each year, the ACP must pay to the National Treasury fees per net tonne, or equivalent, collected from ships subject to tolls for passing through the Canal and, moreover, hand over the surplus once the operating, investment, modernization and enlargement costs have been met and the reserves for which the Law provides have been constituted.

4.173. In 2012, the Canal contributed 3.2% of Panama's GDP. The ACP's contribution to the current account of the balance of payments in the same year was B 2,280.2 million or 7% of GDP.<sup>124</sup> From 2007 to 2013, the Canal's total contributions to the National Treasury amounted to B 6,200.2 million. The corresponding direct contribution for 2013 amounted to B 981.8 million.<sup>125</sup> In accordance with Law No. 38 of 5 June 2012, the Canal Authority's contributions to the National Treasury which exceed 3.5% of nominal GDP for the current year will become contributions to the Panama Savings Fund, as from budget year 2015.

4.174. In fiscal year 2013, the ACP's total income amounted to B 2,411.3 million, of which B 1,849.7 million was in tolls. The recorded number of transits through the Canal was 13,548, representing 209,878,270 tonnes of cargo. Approximately 2.3% to 3% of world maritime trade transits through the Panama Canal. In continuation of the pricing policy begun in 2002, in 2007 the ACP adjusted its tolls and its tonnage rules to align them on the value offered by the route,

<sup>122</sup> The President of the Republic appoints a director, who chairs the Board and has the rank of Minister of State. The Legislature nominates a director whom it is free to appoint and remove. The other nine directors are appointed by the President of the Republic with the agreement of the Cabinet Council and subject to ratification by an absolute majority of the members of the Legislative Assembly. The directors remain in office for a period of nine years.

<sup>123</sup> The administrator is appointed for seven years with the possibility of re-election for an additional period.

<sup>124</sup> Information obtained from INEC, Office of the Comptroller-General of the Republic of Panama.

<sup>125</sup> ACP (2013).

to maintain the value of the tolls over time, to maintain the competitiveness of the route and to maintain a profitability consonant with the levels of risk and the investment, in such a way that the contributions to the National Treasury increase. For example, in the case of passenger ships, the toll is calculated on the basis of the maximum passenger capacity. In mid-2007, the average increase in tolls was 10% per tonne of cargo, in May 2008 it was 11.3% and in May 2009 7.4%. The recorded increases per container were 10% in 2007, 16.7% in 2008 and 14.3% in 2011. In 2011, the method of calculating the toll for container ships was changed, as were the tolls for certain segments, such as dry and liquid bulk carriers, vehicle carriers, and refrigerator ships, among others. In 2012 and 2013, the ACP introduced changes in the toll structure for tankers carrying petroleum and petroleum products, chemical tankers and gas carriers, redefined the vehicle carrier segment by incorporating Ro-ro vessels, and adjusted the tolls for smaller vessels, which had not changed since 1998. As a result of the changes begun in 2002, the ACP's pricing policy has gone from being a system based on cost recovery to a structure that reflects the requirements and mode of operation of the various segments of the market.<sup>126</sup>

4.175. The comprehensive programme for expanding the capacity of the Canal was adopted as a result of the passage of Law No. 28 of 17 July 2006. The project, which has an estimated cost of B 5,250 million, consists of the following components: (i) the construction of two lock complexes, one on the Atlantic and one on the Pacific with re-use water reservoirs; (ii) the excavation of access channels and the widening of the existing navigation channels; and (iii) the deepening of the navigation channels and the raising of the maximum level of operation of Lake Gatún. On 22 October 2006, the expansion of the Canal was approved by national referendum and the ACP was given responsibility for carrying out the works. Under Law No. 28, the funds generated by the operation of the Canal and by increased tolls must cover the costs of expansion. During the construction of the project, the Canal's contributions to the National Treasury in the form of surpluses may not be less than those for fiscal year 2005 and the transfers in the form of fees per net tonne may not be less than those for fiscal year 2006. The project's financing will be neither backed nor guaranteed by the State.

4.176. Fieldwork under the Expansion Programme began in September 2007. The programme provides for the participation of the National Environment Authority, the preservation of archaeological finds and wildlife rescue work. Several companies of different nationalities are participating in the project. The first contract for construction works was awarded to a Panamanian company in a tendering procedure based on the lowest bid. In 2009, the main contract for B 3,221.6 million was awarded to the Grupo Unidos por el Canal S.A. (GUPCSA) for the design and construction of the new lock complexes.

4.177. At the end of 2012, GUPCSA had drawn up a schedule which envisaged the completion of the works in April 2015, that is, six months after the contractual completion date, but problems arose in connection with the financing of the additional costs incurred. In February 2014, the negotiations conducted in order to resolve these problems within the contractual framework resulted in a framework agreement aimed at completing the construction of the third set of locks in December 2015.<sup>127</sup>

#### 4.5.6 Tourism

4.178. Tourism is one of the four sectors considered fundamental for economic growth in the Government's Strategic Plan for 2010-2014, together with agriculture, financial services and logistics. In 2013, tourism's contribution to GDP was around 11.9% (Table 4.10). The tourism indicators for the ten years preceding 2012 revealed steady growth (average annual rate of 11%)<sup>128</sup>, which generated substantial income, new jobs and investment. Tourism is the leading source of foreign currency earnings, with US\$5,077.9 million in 2013 (including international transport). According to information provided by the Panamanian authorities, between 2007 and 2012, the contribution of income from tourism to exports of goods and services was maintained at around 13.5%, with a slowdown to 12.6% in 2011.

<sup>126</sup> Information provided by the ACP. The maritime tariffs can be found at: <http://www.pancanal.com>.

<sup>127</sup> There is detailed information on the progress of the Panama Canal Expansion project in the ACP's Quarterly and Annual Reports, which can be viewed at: <http://www.pancanal.com>.

<sup>128</sup> ATP, Estadísticas 2011.

**Table 4.10 Tourism indicators, 2007-2013**

	2007	2008	2009	2010	2011	2012	2013
Contribution of tourist spending to GDP (%)	9.1	9.6	9.4	9.5	9.5	12.6	11.9
Income from tourism (US\$ million)	1,799.2	2,216.6	2,269.0	2,552.5	2,916.7	4,575.7	5,077.9
Total employment in tourism	118,993	127,631	128,384	129,771	130,710	131,983	133,033
Private investment (US\$ million)	62.2	25.5	64.3	141.2	452.8	382.8	200.5
Number of visitors	1,428,395	1,575,051	1,562,884	1,725,956	2,004,015	2,086,007	2,201,854
Average spending per stay (US\$)	1,260	1,407	1,452	1,479	1,455	2,194	2,306
Hotel rooms	16,560	16,843	17,975	19,412	21,067	23,367	24,171
Hotel occupancy (%)	65.7	67.2	57.3	66.9	64.7	58.8	56.8
Panama City							

Source: Online information from the ATP, viewed at: <http://www.atp.gob.pa/estad%C3%ADsticas-de-turismo-en-panam%C3%A1-2012> ; and information provided by the Panamanian authorities.

4.179. During the review period, private investment in the tourism sector shot up, rising from US\$62.2 million in 2007 to 452.8 million in 2011, 382.8 million in 2012 and 200.5 million in 2013, of which Panama City accounted for 95.7%.<sup>129</sup> The sharpest increase was in 2011.

4.180. Since 2007 Panama has classified tourism activities in accordance with the Standard International Classification of Tourism Activities (SICTA) and, in 2008, published its first Tourism Satellite Account (TSA).<sup>130</sup> Both tools make it possible to improve the analysis of tourism statistics and to determine their impact on the economy with greater precision.

4.181. Tourism policy is based on the Master Plan for Tourism 2007-2020, which highlights 26 tourist destinations with the greatest potential for strengthening and diversifying the range of tourism products on offer. Panama would like to establish itself as a destination for business and conventions (40% of the people who visit Panama already do so for this reason) and to develop its potential as a cruise ship destination. It is also investing in other tourism products for which it has resources but for which demand is still weak, for example, adventure, cultural and eco-tourism. Thus, between 2007 and the beginning of 2013 the Panamanian Tourism Authority invested US\$2.6 million in projects to improve, for example, the signposting of tourist areas and basic infrastructure.<sup>131</sup> The 2013 tourism competitiveness index classification of the World Economic Forum ranks Panama fourth in America.

4.182. Since 2007 there have been some important legal and institutional changes. The approval of Decree Law No. 4 of 27 February 2008, as implemented by Executive Decree No. 82 of 23 December 2008, led to the creation of the Panamanian Tourism Authority (ATP)<sup>132</sup>, subject to the policies and guidance of the Executive through the MICI, together with the National Tourism Council (CONATUR), the Tourism Advisory Councils and the National Tourism Fund (FONATUR).

4.183. The task of the ATP is to formulate and develop tourism policy, draw up and implement master plans and regulate tourism activities. CONATUR, which has nine members<sup>133</sup>, approves the general guidelines, goals and objectives for the efficient functioning of the Authority, in accordance with the directives and principles laid down by the Executive for tourism master plans. The Tourism Advisory Councils coordinate tourism development at provincial level

<sup>129</sup> Online information from the *Oxford Business Group*, viewed at: [http://www.oxfordbusinessgroup.com/economic\\_updates/panam%C3%A1-inversi%C3%B3n-en-turismo](http://www.oxfordbusinessgroup.com/economic_updates/panam%C3%A1-inversi%C3%B3n-en-turismo).

<sup>130</sup> The CST can be viewed at: [http://www.contraloria.gob.pa/inec/Publicaciones/Publicaciones.aspx?ID\\_SUBCATEGORIA=26&ID\\_PUBLICACION=12&ID\\_IDIOMA=1&ID\\_CATEGORIA=4](http://www.contraloria.gob.pa/inec/Publicaciones/Publicaciones.aspx?ID_SUBCATEGORIA=26&ID_PUBLICACION=12&ID_IDIOMA=1&ID_CATEGORIA=4).

<sup>131</sup> *La Prensa* of 21 March 2013. Online information viewed at: <http://www.prensa.com/impreso/economia/26-millones-en-71-proyectos-turisticos/164751>.

<sup>132</sup> The ATP replaces the Panamanian Tourism Institute (IPAT).

<sup>133</sup> The Ministers of Industry and Trade, the Economy and Finance, Interior and Justice, Public Works, and Foreign Affairs or their delegates, and four representatives of the Panamanian Chamber of Tourism, chosen from lists submitted by the Chamber to the Executive. The Comptroller-General of the Republic participates in the meetings with the right to speak.

and operate under the supervision of the ATP. CONATUR and the Tourism Advisory Councils are composed of representatives of the public and private sectors.

4.184. The FONATUR is a trust fund made up of public and private funds, domestic and international, for the promotion and development of tourism activities, the financing of promotional campaigns and the implementation of master plan projects. However, according to the authorities, this trust fund is not yet operational. Promotional campaigns must comply with the rules governing government procurement.

4.185. During the review period, Panama opened the tourism sector up further to foreign participation. It lifted the restriction on tour operator activities in 2008 and that on travel agency activities in 2010, no longer classifying them as retail trade activities.<sup>134</sup> Foreigners can also provide tourist guide services if they have been resident in Panama for five years.<sup>135</sup> Moreover, in conformity with Decree Law No. 4 approved in 2008, foreign companies that are wholesale promoters of international tourism can establish offices, provided that they operate in countries whose markets offer some real benefit or potential for Panama, such as the United States, Canadian and European markets.<sup>136</sup> All tourism operators that meet the requirements laid down in the law can carry on activities in Panama regardless of their country of provenance. Tourism service providers must be registered with the ATP's Department of Tourism Enterprises and Activities in order to obtain a licence enabling them to complete the start-up notification formalities for establishing their business on the Internet portal Panamá Empeñe<sup>137</sup> (section 2.4.2).<sup>138</sup> Likewise, to establish a travel agency it is necessary to obtain a licence from the ATP which subsequently makes it possible to complete the start-up notification formalities (section 2.4.2).

4.186. Law No. 80 of 8 November 2012 repeals Laws No. 8 of 14 June 1994 and No. 58 of 28 December 2006 and introduces a new incentives regime. This regime covers a greater number of eligible activities and a greater number of tax incentives. The Law encourages investment throughout the country with aim of developing the coastal areas and the interior. The incentives for tourist accommodation establishments in Panama City have not been in effect since 9 February 2013. In general, the law reduces the period of validity of the tax benefit and includes tourism products and services in the interests of creativity and quality. Investors who have availed themselves of the incentives regime under Laws No. 8 and No. 58 continue to benefit from it until their registration expires. The advantages for tour operator travel agencies include exemption from import tax and the selective consumption tax on certain goods and services, for example, land transport motor vehicles with a minimum capacity of nine passengers. The ATP can also offer support for the organizers of events that attract at least 400 people.

4.187. Incentives are granted in the form of total exemptions from import taxes, property tax, taxes on the use of wharves, on the interest income accruing to creditors, on income derived from the tourist trade and on capital, as well as tax credits or tax-deductible expenditure, for specified periods and in accordance with specific investment thresholds. The thresholds are lowest and the periods longest for investments made outside the district of Panama. The ATP grants the incentives subject to enrolment of the enterprise and the activity in the National Tourism Register. To be eligible for the tax benefits, a natural or legal person must lodge with the Registry details of the project and a performance bond of 1% of the investment. The Authority must reply within a period of 30 days. If the ATP decides in favour of the project, it issues a certificate renewable on an annual basis. Domestic and foreign investors can avail themselves of the incentives regime, as well as of the investment stability regime (section 2.4.1). According to information provided by the authorities, in 2013, following the approval of Law No. 80, investment totalled B 55,681 million while the global cost of the incentives amounted to B 203,866, thus demonstrating the efficiency of the tax incentives, which are much less than the investment declared.

<sup>134</sup> Law No. 5 of 11 January 2007, Article 32.

<sup>135</sup> Executive Decree No. 82 of 23 December 2008, Article 89.

<sup>136</sup> Decree Law No. 4 of 27 February 2008, Article 23.

<sup>137</sup> Online information viewed at: <https://www.panamaemprende.gob.pa>.

<sup>138</sup> Executive Decree No. 82 of 23 December 2008.

4.188. Moreover, since 2011 Panama has offered free medical insurance for a period of 30 days to tourists and Panamanians resident abroad who enter the country through Tocumen International Airport. In 2012, about 1,700 tourists made use of this service, to which the ATP allocates some US\$4 million a year.

4.189. The Ministry of the Economy and Finance grants concessions for investment in tourism in the island and coastal zones and on State-owned land; these concessions are for 40 years and can be extended for another 30. Concessions in tourist areas located in indigenous regions must be approved by the traditional authorities.<sup>139</sup>

#### 4.5.7 Retail trade

4.190. Panama has not adopted any commitments on retail trade under the GATS.<sup>140</sup> The Panamanian Constitution reserves the right to engage in retail trade for Panamanians by birth and naturalized foreigners, three years after having received their final papers. The Constitution defines this activity as selling to consumers or acting as the representative or agent of production or trading enterprises or any other activity which the law classifies as retail trade. There is an exception for those cases in which a farmer or a craftsman sells his own products. Law No. 5 of 11 January 2007 and Executive Decree No. 26 of 12 July 2007 which implements it stipulate that, in the sworn statement that accompanies the start-up notification, natural persons wishing to engage in commercial activities must indicate that they are aware of the limitations and restrictions mentioned in the Constitution and, in the case of legal persons, require an additional sworn statement in which the company gives an assurance that it meets the constitutional requirements. This Law also stipulates that the activities of tour operators and travel agencies are deemed to be wholesale trade as from 1 January 2008 and 2010, respectively, and thus no longer to be regarded as retail trade.

4.191. In 2012, retail trade, as defined by INEC<sup>141</sup>, accounted for 3.8% of GDP.<sup>142</sup> The subsector grew at an average rate of 8.5% between 2007 and 2012, and in 2012 growth was 13.1% due to increased sales of food, fuel, pharmaceutical products, textile products, hardware and paint, new motor vehicles and other consumer goods. On 31 August 2011, the latest date for which data are available, the sector employed 103,291 people, which represented 22.9% of the workforce of the enterprises engaged in non-financial activities.<sup>143</sup>

4.192. Foreign companies have been able to penetrate the retail trade through franchises (section 2.4.2). In Panama, foreign franchises account for 95% of the total number of franchises, the majority of which are of United States origin.<sup>144</sup>

4.193. Within the framework of the Trade Promotion Agreement between Panama and the United States, Panama grants greater openness in the retail trade subsector by establishing that the reservations contained in Panama's schedule do not include multiple service businesses. These are defined as businesses that invest more than US\$3 million in Panama and engage in the sale of goods and the supply of services in a single establishment, including through membership programmes. Panama has not negotiated greater liberalization of the retail trade within the framework of other preferential agreements.

<sup>139</sup> Law No. 2 of 7 January 2006.

<sup>140</sup> WTO document S/DCS/W/PAN of 24 January 2003.

<sup>141</sup> INEC definition: Economic activity dealing with new products and the production of services, based on margins generated by trade, for the sale of products on the retail market. Includes the resale of new or used products by shops, large stores, sales outlets, mail order houses, and consumer cooperatives to the general public for consumption or personal or domestic use. Includes the repair and installation of personal and household goods, whether or not combined with their retail sale.

<sup>142</sup> INEC, table 242-24, online information viewed at:

[http://www.contraloria.gob.pa/inec/Publicaciones/Publicaciones.aspx?ID\\_SUBCATEGORIA=26&ID\\_PUBLICACION=553&ID\\_IDIOMA=1&ID\\_CATEGORIA=4](http://www.contraloria.gob.pa/inec/Publicaciones/Publicaciones.aspx?ID_SUBCATEGORIA=26&ID_PUBLICACION=553&ID_IDIOMA=1&ID_CATEGORIA=4). Figures corresponding to the 1996 base series.

<sup>143</sup> INEC (2012).

<sup>144</sup> US Commercial Service (2010), *US Commercial Opportunities in Panama's Franchise Sector*.

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## 5 APPENDIX TABLES

Table A1. 1 Merchandise exports by HS tariff section, 2007-2012

(US\$ million and %)

Tariff section	2007	2008	2009	2010	2011	2012 <sup>a</sup>
Total (US\$ million)	1,126.8	1,144.0	821.9	727.6	785.0	821.9
	(% of total)					
I. Live animals; animal products	39.7	40.5	48.4	30.7	20.0	19.2
Fish and crustaceans (HS 03)	35.3	36.7	43.8	25.6	14.9	12.7
II. Vegetable products	37.4	36.5	24.1	23.5	20.8	20.8
Edible fruit and nuts (HS 08)	31.8	30.7	21.7	20.5	18.2	18.1
III. Fats and oils	0.5	0.4	0.6	0.6	2.3	3.7
IV. Prepared foodstuffs	5.8	5.9	7.9	10.8	13.4	12.5
Sugars and sugar confectionery (HS 17)	1.6	1.4	1.7	2.7	4.8	4.3
Beverages, spirits and vinegar (HS 22)	1.6	1.2	2.0	3.3	3.8	3.0
V. Mineral products	0.7	0.6	0.9	0.3	0.1	0.1
VI. Products of the chemical or allied industries	2.4	2.5	3.0	4.2	3.0	3.6
VII. Plastics and rubber	0.6	0.5	0.5	0.7	0.6	0.5
VIII. Raw hides and skins, and leather	1.8	0.5	0.5	1.2	1.8	2.2
IX. Wood and articles of wood	0.9	0.6	0.5	1.7	3.2	3.0
X. Pulp of wood, paper	2.7	2.8	2.4	3.2	2.7	3.4
XI. Textiles and textile articles	1.1	0.9	1.0	1.3	1.6	1.2
XII. Footwear and headgear	0.0	0.0	0.0	0.0	0.0	0.0
XIII. Articles of stone	0.1	0.1	0.2	0.2	0.4	0.7
XIV. Precious stones and metals	1.3	2.0	4.4	10.2	15.9	15.7
Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form (HS 7108)	0.3	0.5	1.9	9.7	14.9	14.1
XV. Base metals and articles of base metal	4.7	5.9	5.5	11.2	13.7	12.9
Iron and steel (SA 72)	2.0	3.1	2.5	5.3	7.1	7.2
XVI. Machinery and mechanical appliances	0.1	0.0	0.1	0.0	0.0	0.0
XVII. Vehicles, aircraft, vessels and associated transport equipment	0.0	0.1	0.0	0.0	0.0	0.0
XVIII. Precision instruments	0.0	0.0	0.0	0.0	0.0	0.0
XIX. Arms and ammunition	0.0	0.0	0.0	0.0	0.0	0.0
XX. Miscellaneous manufactured articles	0.2	0.2	0.2	0.2	0.3	0.4
XXI. Works of art, etc.	0.0	0.0	0.0	0.0	0.0	0.0

a Preliminary figures for 2012.

Note: The data does not include exports from the Colón Free Zone or other free zones in Panama to the rest of the world.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

**Table A1. 2 Merchandise imports by HS tariff section, 2007-2012**

(US\$ million and %)

Tariff section	2007	2008	2009	2010	2011	2012 <sup>a</sup>
Total (US\$ million)	6,869.9	9,009.9	7,788.8	9,136.5	11,339.7	12,633.2
	(% of total)					
I. Live animals; animal products	1.1	1.2	1.2	1.3	1.2	1.2
II. Vegetable products	3.0	3.3	2.9	3.2	2.8	2.8
III. Fats and oils	0.5	0.6	0.6	0.5	0.6	0.6
IV. Prepared foodstuffs, etc.	6.1	5.9	7.2	6.8	6.8	6.6
V. Mineral products	19.4	22.2	18.1	19.3	22.3	23.0
Mineral fuels (HS 27)	18.3	21.1	16.9	19.0	22.0	22.5
VI. Products of the chemical or allied industries	9.4	8.7	10.2	9.4	8.5	8.5
VII. Plastics and rubber	4.1	3.8	4.1	4.4	4.2	4.0
VIII. Raw hides and skins, and leather	0.4	0.4	0.5	0.5	0.6	0.6
IX. Wood and articles of wood	0.6	0.6	0.6	0.6	0.5	0.6
X. Pulp of wood, paper	3.4	3.1	3.2	3.0	2.7	2.2
XI. Textiles and textile articles	3.3	3.1	4.4	4.6	4.4	4.8
XII. Footwear and headgear	1.6	1.5	2.0	1.9	1.8	1.9
XIII. Articles of stone	1.8	1.6	1.8	1.8	1.7	1.6
XIV. Precious stones and metals	0.4	0.3	0.4	0.4	0.4	0.3
XV. Base metals and articles of base metal	7.7	9.2	7.7	7.8	7.3	7.6
XVI. Machinery and mechanical appliances	20.6	19.6	19.7	19.8	18.8	18.6
Machinery and mechanical appliances (HS 84)	12.1	11.0	10.7	10.9	11.0	11.2
XVII. Vehicles, aircraft, vessels and associated transport equipment	11.8	10.4	10.2	9.9	10.3	9.6
XVIII. Precision instruments	1.9	1.6	1.8	1.7	1.7	1.7
XIX. Arms and ammunition	0.0	0.0	0.0	0.0	0.0	0.0
XX. Miscellaneous manufactured articles	2.9	3.1	3.5	3.3	3.3	3.7
XXI. Works of art, etc.	0.0	0.0	0.0	0.0	0.0	0.1

a Preliminary figures for 2012.

Note: The data does not include imports from the rest of the world destined primarily for the Colón Free Zone or other free zones established in Panama.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

**Table A1. 3 Merchandise exports by trading partner, 2007-2012**

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012 <sup>a</sup>
Total (US\$ million)	<b>1,126.8</b>	<b>1,144.0</b>	<b>821.9</b>	<b>727.6</b>	<b>785.0</b>	<b>821.9</b>
	(% of total)					
America	52.1	55.6	64.3	60.7	56.4	54.9
USA	35.6	39.2	43.5	29.7	21.4	20.2
Central American Common Market (CACM)	10.3	9.8	11.4	13.2	12.9	12.0
Costa Rica	5.1	5.8	7.4	6.8	6.7	6.6
Nicaragua	1.1	1.2	1.3	2.0	2.4	1.7
Honduras	1.9	1.5	1.4	2.3	2.1	1.6
El Salvador	0.7	0.7	0.7	1.2	1.0	1.3
Guatemala	1.5	0.7	0.7	0.9	0.8	0.8
Other America	6.2	6.5	9.4	17.8	22.1	22.6
Canada	0.2	0.3	1.1	10.4	15.4	14.6
Suriname	0.2	0.4	0.1	0.7	0.6	1.2
Colombia	1.7	1.0	1.9	1.3	1.2	1.0
Chile	0.1	0.2	0.4	0.8	1.2	0.9
Europe	34.1	31.7	24.8	22.3	21.5	22.5
EU(27)	33.7	31.5	24.5	21.7	20.9	21.8
Netherlands	10.2	10.7	6.6	6.9	4.4	5.9
Sweden	5.5	5.4	6.1	6.9	7.0	4.8
Italy	1.6	2.6	2.1	2.0	2.6	4.0
United Kingdom	5.4	5.4	1.5	1.2	1.3	2.1
Spain	5.0	5.0	6.2	2.7	2.1	2.0
Germany	0.3	0.4	0.4	0.6	1.6	1.1
EFTA	0.1	0.1	0.0	0.2	0.2	0.0
Other Europe	0.3	0.1	0.3	0.3	0.4	0.7
Commonwealth of Independent States (CIS)	0.0	0.0	0.0	0.0	0.5	0.1
Africa	0.3	0.2	0.1	0.1	0.2	0.5
Middle East	0.1	0.0	0.0	0.0	0.0	0.1
Asia	11.4	10.7	8.4	14.1	17.5	18.3
China	6.0	4.1	2.5	5.0	4.9	4.1
Japan	0.3	0.4	0.6	0.5	0.5	0.8
Six East Asian traders	4.2	5.3	4.0	6.7	8.2	9.3
Chinese Taipei	3.5	4.3	2.9	5.0	4.4	4.0
Korea, Rep. of	0.2	0.4	0.5	0.7	2.4	3.0
Thailand	0.0	0.3	0.1	0.4	0.7	1.5
Other Asia	0.9	0.9	1.4	2.0	3.9	4.0
India	0.7	0.6	0.6	1.0	2.4	2.7
Viet Nam	0.1	0.2	0.5	0.8	1.1	0.9
Other	2.1	1.8	2.3	2.8	3.9	3.7
Free zones <sup>b</sup>	1.8	1.7	2.2	2.7	3.7	3.6

a Preliminary figures for 2012.

b Merchandise from the rest of Panama which was exported to free zones established in Panama.

Note: The data does not include exports from the Colón Free Zone or other free zones in Panama to the rest of the world.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

**Table A1. 4 Merchandise imports by trading partner, 2007-2012**

(US\$ million and %)

Description	2007	2008	2009	2010	2011	2012 <sup>a</sup>
Total (US\$ million)	<b>6,869.9</b>	<b>9,009.9</b>	<b>7,788.8</b>	<b>9,136.5</b>	<b>11,339.7</b>	<b>12,633.2</b>
	(% of total)					
America	52.9	51.8	52.7	49.7	46.6	44.6
USA	30.9	29.9	29.1	27.6	24.9	23.6
Central American Common Market (CACM)	7.8	8.1	8.8	7.9	7.5	7.7
Costa Rica	4.7	5.1	5.2	4.9	4.5	4.6
Guatemala	1.6	1.6	2.1	1.9	1.7	1.7
El Salvador	1.1	1.0	1.1	0.9	0.9	0.9
Honduras	0.3	0.3	0.2	0.2	0.2	0.3
Nicaragua	0.1	0.1	0.1	0.1	0.1	0.2
Other America	14.3	13.8	14.9	14.1	14.2	13.4
Mexico	3.1	3.5	4.6	4.3	3.9	4.4
Colombia	2.8	2.7	3.3	3.3	4.2	3.4
Brazil	2.0	1.6	1.9	2.7	1.9	1.4
Argentina	1.1	0.4	0.6	0.5	1.1	1.1
Peru	1.0	1.2	0.6	0.5	0.6	0.8
Chile	0.6	0.6	0.6	0.6	0.6	0.6
Canada	0.7	0.8	0.6	0.7	0.8	0.5
Europe	14.5	7.9	7.4	7.5	8.4	9.7
EU(27)	7.0	6.6	6.7	6.6	7.4	8.4
Spain	1.6	1.6	1.5	1.8	2.6	2.5
Germany	1.3	1.4	1.3	1.5	1.5	1.4
Netherlands	0.6	0.4	0.5	0.5	0.5	1.2
Italy	0.6	0.7	0.7	0.6	0.8	0.8
France	0.8	0.4	0.5	0.5	0.5	0.6
EFTA	0.3	0.3	0.4	0.4	0.3	0.3
Other Europe	7.2	1.1	0.4	0.5	0.6	1.1
Turkey	0.0	0.5	0.4	0.5	0.6	1.1
Commonwealth of Independent States (CIS)	0.0	0.0	0.1	0.0	0.2	0.0
Africa	0.0	0.0	0.1	0.0	0.0	0.1
Middle East	0.1	0.1	0.1	0.1	0.1	0.1
Asia	16.0	15.1	13.3	14.7	13.9	14.2
China	5.2	5.0	4.2	5.4	6.1	6.4
Japan	4.8	4.3	3.6	3.2	2.6	2.3
Six East Asian traders	5.3	5.0	4.7	5.5	4.6	4.8
Korea, Rep. of	3.9	2.9	2.6	3.2	2.7	2.8
Thailand	0.4	0.9	1.0	1.0	0.9	1.0
Chinese Taipei	0.5	0.6	0.5	0.5	0.4	0.4
Other Asia	0.7	0.7	0.8	0.7	0.7	0.7
Other	16.4	25.1	26.3	27.9	30.7	31.2
Free zones <sup>b</sup>	15.6	24.5	25.8	27.6	30.3	30.4

a Preliminary figures for 2012.

b Merchandise from free zones established in Panama which was imported into the rest of Panama.

Note: The data does not include imports from the rest of the world destined primarily for the Colón Free Zone or other free zones established in Panama.

Source: National Institute of Statistics and Censuses (INEC), Office of the Comptroller-General of the Republic of Panama.

**Table A2. 1 Notifications by requirement, 2007–2014 [March 2014]**

Agreement	Requirement	Frequency	WTO document (most recent)
<b>Agreement on Agriculture</b>			
Article 18.2 DS:1	Domestic support	On an annual basis	G/AG/N/PAN/28 of 02.10.2013
Article 18.2 MA:2	Market access. Volume of imports under tariff and other quotas	On an annual basis	G/AG/N/PAN/29 of 03.10.2013
Articles 5.7 and 18.2 MA:5	Market access. Special safeguard provisions	On an annual basis	G/AG/N/PAN/21 of 16.07.2010
<b>General Agreement on Trade in Services</b>			
Article III:4 and/or Article IV:2	Enquiry points and contact points	Once only	S/ENQ/78/Rev.12 of 22.12.2010
Article V:7(a)	Economic integration (regional trade agreement)	Ad hoc	S/C/N/692/Rev.1 of 26.04.2013 S/C/N/692 of 23.04.2013 S/C/N/691 of 12.04.2013 S/C/N/680 of 27.02.2013 S/C/N/678 of 26.02.2013 S/C/N/658 of 30.10.2012 S/C/N/642/Rev.1 of 01.05.2012 S/C/N/642 of 24.04.2012 S/C/N/535 of 17.12.2009 S/C/N/501 of 03.08.2009 S/C/N/490 of 17.04.2009 S/C/N/443 of 15.05.2008 S/C/N/392 of 13.04.2007
<b>GATT concessions</b>			
Annex to L/6905	Revision of schedule of commitments HS96	Ad hoc	G/SECRET/HS96/48/Rev.2 of 23.03.2009
<b>General Agreement on Tariffs and Trade 1994 (GATT 1994)</b>			
Article XVII:4(a)	State trading (new and full notification)	On a triennial basis (full notification) On an annual basis (changes)	G/STR/N/11/PAN; G/STR/N/12/PAN; G/STR/N/13/PAN; G/STR/N/14/PAN of 23.04.2012
Article XXIV:7(a)	Free trade areas	Ad hoc	WT/REG336/N/1/Rev.1 of 26.04.2013 WT/REG336/N/1 of 23.04.2013 WT/REG334/N/1 of 12.04.2013 WT/REG332/N/1 of 27.02.2013 WT/REG331/N/1 of 26.02.2013 WT/REG324/N/1 of 30.10.2012 WT/REG313/N/1/Rev.1 of 01.05.2012 WT/REG313/N/1 of 24.04.2012 WT/REG278/N/1 of 17.12.2009 WT/REG268/N/1 of 03.08.2009 WT/REG264/N/1 of 17.04.2009 WT/REG239/N/1 of 15.05.2008 WT/REG227/N/1 of 13.04.2007



Agreement	Requirement	Frequency	WTO document (most recent)
Article XXVIII:5	Modification of schedule	On a triennial basis	G/MA/TAR/RS/304 of 29.04.2013
<b>Agreement on Implementation of Article VI of the GATT 1994 (Anti-Dumping Agreement)</b>			
Article 16.4	Anti-dumping actions (preliminary and final)	Ad hoc	G/ADP/N/218 of 01.09.2011 G/ADP/N/194 of 06.01.2010
Article 16.4	Anti-dumping actions (taken within the preceding six months)	On a semi-annual basis	G/ADP/N/216/PAN of 13.07.2011 G/ADP/N/209/PAN of 20.06.2011 G/ADP/N/202/PAN of 07.10.2010 G/ADP/N/195/PAN of 27.04.2010 G/ADP/N/65/PAN/Rev.1 of 20.02.2008
Article 16.5	Authority competent to initiate and conduct investigation	As appropriate (upon entry into force of the WTO Agreement for the Member concerned)	G/ADP/N/14/Add.30; G/SCM/N/18/Add.30 of 22.10.2010
Article 18.5	Changes to laws/regulations	Full integrated text once upon entry into force of the WTO Agreement for existing laws and regulations; ad hoc as and when a Member establishes such laws and regulations, or makes changes in existing laws and regulations or in the administration thereof	G/ADP/N/1/PAN/2/Suppl.1; G/SCM/N/1/PAN/2/Suppl.1; G/SG/N/1/PAN/2/Suppl.1 of 28.01.2009
<b>Agreement on Import Licensing Procedures</b>			
Article 7.3	Replies to questionnaire	On an annual basis	G/LIC/N/3/PAN/4 of 30.09.2013
<b>Agreement on the Application of Sanitary and Phytosanitary measures</b>			
Article 7, Annex B	Sanitary/phytosanitary regulations, including emergency measures	Ad hoc	G/SPS/N/PAN/58 of 11.03.2014 G/SPS/N/PAN/57 of 11.03.2014 G/SPS/N/PAN/56 of 29.01.2014 G/SPS/N/PAN/55 of 21.06.2012 G/SPS/N/PAN/54 of 13.06.2012 G/SPS/N/PAN/53 of 24.02.2010 G/SPS/N/PAN/52 of 18.01.2010 G/SPS/N/PAN/51 of 19.09.2008 G/SPS/N/PAN/50 of 03.09.2008 G/SPS/N/EQV/PA of 03.09.2007 G/SPS/N/PAN/49 of 19.03.2007
<b>Agreement on Rules of Origin</b>			
Article 5 and Annex II, paragraph 4	Preferential rules of origin in effect	Ad hoc	G/RO/N/102 of 19.09.2013 G/RO/N/95 of 16.05.2013 G/RO/N/93 of 09.04.2013 G/RO/N/92 of 09.04.2013
<b>Agreement on Technical Barriers to Trade</b>			
Article 2.9	Technical regulations	Ad hoc	G/TBT/N/PAN/43 of 12.03.2014 G/TBT/N/PAN/42 of 12.03.2014 G/TBT/N/PAN/41 of 15.08.2013 G/TBT/N/PAN/40 of 03.07.2013 G/TBT/N/PAN/39 of 03.07.2013 G/TBT/N/PAN/37 of 24.05.2007 G/TBT/N/PAN/36 of 17.04.2007
Article 2.10	Urgent technical regulations	Ad hoc	G/TBT/N/PAN/38 of 12.03.2013

Agreement	Requirement	Frequency	WTO document (most recent)
<b>Agreement on Safeguards</b>			
Article 9.1, footnote 2	Non-application of safeguard measures against a product originating in a developing country Member	Ad hoc	G/SG/N/11/PAN/1; G/SG/N/7/PAN/1 of 20.02.2007
Article 12.1(b)	Finding of serious injury or threat thereof	Ad hoc	G/SG/N/10/PAN/1; G/SG/N/8/PAN/1 of 07.06.2007
Article 12.1(c)	Decision to apply/extend a safeguard measure	Ad hoc	G/SG/N/10/PAN/1; G/SG/N/8/PAN/1 of 07.06.2007
Article 12.4	Provisional safeguard measures	Ad hoc	G/SG/N/11/PAN/1; G/SG/N/7/PAN/1 of 20.02.2007
Article 12.6	Laws/regulations and modifications thereto	Full integrated text once upon entry into force of the WTO Agreement for existing laws and regulations; ad hoc as and when a Member establishes such laws and regulations, or makes changes in existing laws and regulations or in the administration thereof	G/ADP/N/1/PAN/2/Suppl.1; G/SCM/N/1/PAN/2/Suppl.1; G/SG/N/1/PAN/2/Suppl.1 of 28.01.2009
<b>Agreement on Subsidies and Countervailing Measures (SCM)</b>			
Article 25.1	Any subsidy as defined in Article 1.1 of the Agreement, which is specific within the meaning of Article 2 of the Agreement, as well as any other subsidy which causes increased exports or decreased imports within the meaning of Article XVI:1 of the GATT 1994	On a triennial basis (full notification) On an annual basis (changes)	G/SCM/N/253/PAN; G/SCM/N/260/PAN of 02.07.2013
Article 25.12	Authorities competent to initiate and conduct investigations	Once upon entry into force of the WTO Agreement for existing authorities and procedures; ad hoc as and when a Member establishes such authorities and procedures	G/ADP/N/14/Add.30; G/SCM/N/18/Add.30 of 22.10.2010
Part VIII, Article 27.4: developing country Members (DCMs)	Special and differential treatment for DCMs: extension of transition period for phasing out export subsidies	No later than 31/12/2001. DCMs seeking to extend the transition period must enter into consultation with the SCM Committee one year before the expiry of this period	G/SCM/N/253/PAN; G/SCM/N/260/PAN of 02.07.2013 G/SCM/N/243/PAN of 22.06.2012 G/SCM/N/226/PAN of 10.10.2011 G/SCM/N/211/PAN of 24.06.2010 G/SCM/N/192/PAN of 09.07.2009 G/SCM/N/177/PAN/Rev.1 of 20.07.2009 G/SCM/N/177/PAN of 03.07.2008 G/SCM/N/163/PAN of 14.09.2007 G/SCM/N/160/PAN of 11.07.2007

Agreement	Requirement	Frequency	WTO document (most recent)
Article 32.6	Laws/regulations and changes thereto	Full integrated text once upon entry into force of the WTO Agreement for existing laws and regulations; ad hoc as and when a Member establishes such laws and regulations, or makes changes in existing laws and regulations or in the administration thereof	G/ADP/N/1/PAN/2/Suppl.1; G/SCM/N/1/PAN/2/Suppl.1; G/SG/N/1/PAN/2/Suppl.1 of 28.01.2009

Source: WTO Secretariat.

Table A3. 1 Applied MFN tariffs higher than bound tariff rates

HS	Description	Applied tariff rate 2013 (%)	Bound tariff rate (%) <sup>a</sup>
01031000	- Pure-bred breeding animals	6	5
03036600	- - Hake ( <i>Merluccius spp.</i> , <i>Urophycis spp.</i> )	15	8
04014020	- - Cream	60	30
12074090	- - Other	10	5
16024119	- - - - Other	40	30
16041290	- - - Other	15	10
18069090	- - Other	15	5
20019070	- - Mixed vegetable preserves	15	10
25010099	- - Other	81	30
29021990	- - - Other	2	0
29037610	- - - Bromochlorodifluoromethane	15	5.5
29037620	- - - Bromotrifluoromethane	15	5.5
29037630	- - - Dibromotetrafluoroethanes	15	5.5
29333300	Alfentanil (INN), anileridine (INN), bezitramide (INN), bromazepam (INN), difenoxin (INN), diphenoxylate (INN), dipipanone (INN), fentanyl (INN), ketobemidone (INN), methylphenidate (INN), pentazocine (INN), pethidine (INN), pethidine (INN) intermediate A, phencyclidine (INN) (PCP), phenoperidine (INN), pipradrol (INN), piritramide (INN), propiram (INN) and trimeperidine (INN); salts thereof	8	0 or 6.5
30051000	- Adhesive dressings and other articles having an adhesive layer	5	0
30059090	- - Other	10	0
32081011	- - - Aerosols	10	6.5
32141011	- - - Of a kind used in building	10	6.5
32141012	- - - Coachbuilders'	10	6.5
32149000	- Other	10	6.5
33030011	- - Of a CIF value of less than B/22.38 per litre	10	6.5
33030021	- - Of a CIF value of less than B/4.43 per litre	10	6.5
33043000	- Manicure or pedicure preparations	10	6.5
33049190	- - - Other	10	6.5
33049919	- - - - Other	10	6.5
33049930	- - - Sunscreen or suntan preparations	10	8
33049990	- - - Other	10	6.5
33051020	- - Liquid, whether or not medicated	10	6.5
33052000	- Preparations for permanent waving or straightening	10	6.5
33053000	- Hair lacquers	10	6.5
33059019	- - - Other	10	6.5
33059020	- - Dyes and bleaches used on the hair	10	6.5
33069010	- - Mouthwashes and dental rinses	10	6.5
33071010	- - Shaving creams and foams	10	6.5
33071021	- - - Based on denatured alcohol (for example, Bay Rum, Menticol and the like)	10	5
33071022	- - - Other lotions and eau de cologne of a CIF value of B/4.43 or more per litre	10	5
33074100	- - "Agarbatti" and other odoriferous preparations which operate by burning	10	6.5
33074990	- - - Other	10	6.5
33079030	- - Depilatories	10	6.5
33079090	- - Other	10	6.5
34053000	- Polishes and similar preparations for coachwork, other than metal polishes	10	6.5
37079091	- - Toner	10	6.5
38089192	- - - - Fly-papers	10	6.5
38089912	- - - - Glue-coated traps, whether or not containing toxic substances	10	6.5

HS	Description	Applied tariff rate 2013 (%)	Bound tariff rate (%) <sup>a</sup>
38089919	- - - - Other	10	6.5
38089999	- - - - Other	10	6.5
38249099	- - - Other	10	6.5
39199090	- - Other	10	6.5
39205990	- - - Other	10	6.5
39249021	- - - Soap dishes, towel rails, toilet paper holders and similar articles, other than articles for building in or permanent fixture	10	6.5
70134900 <sup>b</sup>	- - Other	15	10 or 15
84796000	- Evaporative air coolers	10	5
85086090	- - Other	10	5
85256020	- - For television broadcasting stations	15	0
85284100	- - Of a kind solely or principally used in an automatic data processing system of heading 8471	5	0
85439030	- - Electronic microassemblies	10	0
85489010	- - Electronic microassemblies	10	0
90278010	- - For blood testing	15	0
90278020	- - For determining capillary blood glucose levels	5	0

a Bound tariff rates are based on the HS 2007 of the WTO Consolidated Tariff Schedules (CTS) database.

b The bound tariff rate could be 10%, which is lower than the applied rate.

Source: WTO Secretariat estimates based on data provided by the authorities and in the file transposing Panama's bound tariff schedule from HS2002 to HS2007.

**Table A3. 2 Summary of the preferential tariffs in some of Panama's trade agreements, 2013<sup>a</sup>**

Simple average, %

Product description	MFN	Central American Economic Integration Subsystem											
		Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Canada	USA	Peru	Chinese Taipei	European Union	Chile <sup>b</sup>	Singapore <sup>b</sup>
<b>Total</b>	<b>7.6</b>	<b>1.1</b>	<b>1.9</b>	<b>1.5</b>	<b>2.2</b>	<b>1.4</b>	<b>3.2</b>	<b>2.7</b>	<b>3.9</b>	<b>1.1</b>	<b>4.8</b>	<b>2.2</b>	<b>1.7</b>
<b>By WTO category</b>													
Agricultural products	13.7	4.2	6.3	5.6	6.2	4.7	9.7	6.5	9.2	6.3	10.4	6.7	7.2
Animals and animal products	24.4	15.1	20.4	19.5	18.8	15.3	19.1	17.1	20.2	14.1	20.5	16.4	15.1
Dairy products	36.4	4.4	27.7	14.3	20.6	4.5	34.9	28.7	36.4	32.1	31.5	33.9	36.4
Fruit, vegetables and garden produce	10.6	1.0	0.4	1.4	0.7	1.3	5.8	3.0	4.9	1.7	7.9	2.4	3.5
Coffee and tea	15.9	10.1	9.7	9.7	12.5	9.7	11.7	7.5	10.5	12.4	5.5	5.3	8.0
Cereals and cereal preparations	10.0	3.9	3.2	4.2	5.8	4.6	7.0	5.8	7.4	6.1	8.8	5.2	7.1
Oilseeds, fats and oils and their products	8.1	2.6	2.5	2.7	2.7	3.5	4.6	2.9	4.3	3.5	5.4	3.2	3.6
Sugar and confectionery	23.5	14.5	21.6	13.5	20.8	19.4	19.2	6.7	20.3	15.3	22.6	18.9	13.3
Beverages, alcohol and tobacco	11.1	1.2	3.3	2.3	1.4	1.5	8.0	2.4	7.3	2.9	6.5	3.4	2.5
Cotton	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other agricultural products n.e.s.	7.6	0.0	0.0	0.1	1.0	0.0	3.9	0.0	0.8	0.1	3.2	0.1	0.2
Non-agricultural products (including petroleum)	6.4	0.6	1.0	0.7	1.4	0.8	2.0	1.9	2.8	0.1	3.8	1.4	0.6
Non-agricultural products (excluding petroleum)	6.4	0.6	1.0	0.7	1.4	0.8	2.0	1.9	2.9	0.1	3.8	1.4	0.6
Fish and fish products	12.5	0.0	0.0	0.0	0.0	0.5	0.0	0.0	1.1	0.6	8.7	0.0	0.3
Mineral products and metals	7.6	0.1	0.0	0.3	0.9	0.1	4.6	4.1	4.2	0.1	3.2	1.5	0.6
Chemicals and photographic products	2.5	0.1	0.0	0.1	0.2	0.1	0.7	0.7	1.1	0.0	1.3	0.5	0.2
Wood, wood pulp, paper and furniture	8.1	0.1	0.0	0.2	0.8	0.3	3.4	3.6	5.2	0.0	4.7	1.3	1.0
Textiles	5.0	0.9	3.4	1.0	4.0	1.6	0.4	0.4	1.3	0.0	4.0	1.1	0.4
Clothing	10.7	6.0	10.6	6.2	10.1	9.1	0.1	0.1	4.1	0.4	10.3	4.7	2.5
Leather, rubber, footwear and travel articles	8.7	0.0	0.0	1.6	1.0	0.0	3.6	3.9	5.5	0.0	7.1	2.7	0.8
Non-electrical machinery	4.2	0.1	0.0	0.0	0.1	0.0	0.9	0.8	1.6	0.0	0.8	0.3	0.1
Electrical machinery	5.9	0.0	0.0	0.0	0.0	0.0	1.1	1.1	3.3	0.0	1.8	0.4	0.3
Transport equipment	5.6	1.0	0.2	1.0	0.4	0.6	2.5	2.3	3.0	0.4	3.1	4.4	1.8
Non-agricultural products n.e.s.	9.5	0.1	0.2	0.1	0.5	0.1	2.8	3.0	3.3	0.0	5.6	1.4	0.3
Petroleum	4.2	0.0	0.0	0.2	0.0	0.0	0.5	1.9	2.1	0.0	1.9	1.1	0.0

Product description	MFN	Central American Economic Integration Subsystem											
		Costa Rica	El Salvador	Guatemala	Honduras	Nicaragua	Canada	USA	Peru	Chinese Taipei	European Union	Chile <sup>b</sup>	Singapore <sup>b</sup>
<b>By HS:</b>													
HS 01-24	13.9	3.7	5.5	4.9	5.2	4.1	8.2	5.6	8.1	5.6	10.6	6.4	6.9
HS 25-97	6.2	0.6	1.1	0.7	1.5	0.8	2.1	2.0	2.9	0.1	3.5	1.4	0.6
<b>By HS section</b>													
01 Live animals; animal products	20.0	5.5	10.2	8.0	9.0	6.9	10.7	9.3	11.6	10.1	15.5	12.4	14.0
02 Vegetable products	9.9	2.1	2.0	2.5	2.3	2.3	5.8	3.1	4.1	2.5	6.5	1.9	3.4
03 Fats and oils	8.6	4.4	4.2	4.5	4.6	5.9	6.0	4.9	7.1	5.7	6.2	5.5	6.5
04 Prepared foodstuffs, etc.	12.0	3.0	3.9	3.8	4.2	2.8	8.0	4.2	8.1	3.8	9.8	5.6	4.6
05 Mineral products	6.8	0.5	0.0	0.6	0.9	0.4	1.8	1.9	3.2	0.1	2.4	1.0	1.1
06 Products of the chemical or allied industries	2.4	0.1	0.0	0.1	0.2	0.1	0.7	0.6	1.1	0.0	1.1	0.4	0.2
07 Plastics and rubber	4.2	0.1	0.0	0.1	0.1	0.0	1.8	2.2	2.4	0.0	2.9	1.1	0.1
08 Raw hides and skins, and leather	11.8	0.0	0.0	0.0	0.0	0.0	5.8	4.3	7.5	0.0	9.0	2.4	0.9
09 Wood and articles of wood	7.3	0.0	0.0	0.0	0.5	0.0	2.3	3.4	5.3	0.0	4.7	1.5	0.6
10 Pulp of wood, paper, etc.	7.9	0.2	0.0	0.2	1.1	0.3	3.4	3.0	4.7	0.0	4.1	1.0	1.1
11 Textiles and textile articles	6.9	2.8	6.1	2.9	6.5	4.4	0.2	0.1	2.2	0.1	6.0	2.3	1.2
12 Footwear and headgear	9.8	0.0	0.0	3.5	2.2	0.0	3.5	3.6	4.4	0.0	9.1	3.8	1.0
13 Articles of stone	9.1	0.0	0.0	0.3	1.4	0.0	7.1	6.4	5.5	0.3	6.4	2.5	1.1
14 Precious stones, etc.	7.2	0.0	0.0	0.0	0.0	0.0	4.7	3.9	3.3	0.0	5.6	1.0	0.1
15 Base metals and articles of base metal	7.4	0.0	0.0	0.2	0.8	0.0	4.5	4.0	4.2	0.0	2.3	1.3	0.4
16 Machinery and mechanical appliances	4.8	0.0	0.0	0.0	0.0	0.0	0.9	0.9	2.2	0.0	1.3	0.3	0.1
17 Vehicles, aircraft, vessels and associated transport equipment	5.9	1.1	0.2	1.0	0.4	0.6	2.5	2.3	3.1	0.5	3.3	4.3	1.7
18 Precision instruments	9.0	0.0	0.0	0.0	0.0	0.0	2.1	2.1	1.1	0.0	2.9	1.0	0.0
19 Arms and ammunition	14.6	0.0	0.9	0.0	7.3	0.0	5.6	5.8	3.5	0.0	14.6	3.1	0.1
20 Miscellaneous manufactured articles	10.9	0.1	0.4	0.2	0.3	0.5	3.9	4.9	6.2	0.0	8.5	2.0	1.2
21 Works of art, etc.	6.9	0.0	0.0	0.0	0.0	0.0	3.4	3.0	1.1	0.0	4.8	2.0	0.3

Note: Does not include the preferences granted by Panama within the LAIA framework, or those granted to the Dominican Republic under a partial scope agreement.

a To compare tariff rates, the 2013 applied MFN tariff was used as a basis, except for Chile and Singapore.

b Given that Singapore and Chile's tariff schedules are based on the HS 2002 and the MFN tariff and other agreements are based on the HS 2012, the figures for Singapore and Chile are not strictly comparable with the others.

Source: WTO Secretariat estimates based on data provided by the Panamanian authorities.

Table A3. 3 Types of government procurement

Procedure	Value of contract	Comments
Minor contracting	From B 3,000 up to B 30,000	Allows procurement to be conducted expeditiously subject to compliance with minimum formalities. The invitation to tender may be issued a minimum of two working days beforehand or two hours beforehand for urgent purchases in the event of <i>force majeure</i> , human health emergencies or disasters. For purchases amounting to less than B 3,000, the petty cash fund procedure is followed.
Open tendering	From B 30,000	Open tendering is the contractor selection procedure in which the determining factor is the price. The deadline for the verification committee's report is five days, although it may be extended by up to three days.
Best value tendering	From B 30,000	Used when the goods, works or services to be contracted for have a high degree of complexity. The technical, economic, administrative and financial aspects of the bids are considered and the contract is awarded to the bidder who obtains the most points as a result of applying the weighting method specified in the tender specifications. The price must have a weighting of not less than 30% and not more than 50% of the total points considered in awarding the contract. The evaluation committee has ten days to submit its report, although this period may be extended by up to five days ( <i>previously twice as long</i> ).
Best value tendering with separate evaluation	From B 20,000,000	One contractor meets all work or project requirements. Initially only the technical aspects of the proposals are assessed and a rating is given. The price must receive a rating no lower than 30% and not exceeding 49% of the total rating and must not exceed the estimated price by more than 20%. Financial proposals lower than the percentage of the estimated price may be rejected or submitted to risk assessment. At a later stage, the financial proposals are opened and the contract is awarded to the bidder with the highest rating in accordance with the methodology established in the tender specifications. The evaluation committee has 30 working days to submit its report, although this period may be extended by up to 20 days.
Tendering under a framework agreement	Not specified	One or more bidders are selected and invited to sign a contract for products or services for mass and daily use, called a framework agreement, which establishes specific prices and conditions for a specified period of not more than two years, extendable for one additional year ( <i>previously half of this</i> ). This tendering procedure can only be carried out by the DGCP. Once the framework agreement has been awarded (to several bidders if necessary), the products and services contained in the agreement are included in the Electronic Catalogue of Products and Services. Products and services are purchased directly during the term of the contract, through purchase orders or equivalent documents.
Reverse auction	Not specified	A process of bidding and re-bidding for the purpose of obtaining the best price for goods, services or works, within a specified period. The details must be published at least five working days before the process begins. Bidders compete in real time and online through "PanamaCompra". The contracting authority establishes a maximum reference price, and the lowest price is published in "PanamaCompra" to permit re-bidding at lower prices. Once the auction process has ended, the tendering authority awards the contract to the lowest bidder.



Procedure	Value of contract	Comments
Abbreviated tendering	More than B 30,000	Applies to selection and awarding on the basis of the lowest price or, in the case of best value, on the best weighting, when in response to needs relating to social interest or a state of emergency. Must be announced in "PanamaCompra" and on the entity's bulletin board for a period of three working days for amounts up to B 3,000,000 and five working days for amounts exceeding this. The evaluation committee has a period of five days, extendable by up to three days, to issue its report, which must be published in "PanamaCompra". A printed copy of the report must be submitted to participants on the same day. The evaluation committee has five working days to issue its report, although this period may be extended by up to three days.
Auction of public property	Any amount	Applies to the sale or lease of movable and immovable state property and can be effected by public auction, which can only be arranged by the MEF. Where the actual value is lower than B 300,000, no authorization is required. The authorization of the National Economic Council is required if the actual value is between B 300,000 and B 3,000,000 and that of the Cabinet Council if the actual value exceeds B 3,000,000. The auction must last no longer than three hours. Auctions can be conducted electronically through "PanamaCompra". Bidders must register at least two days before the auction and deposit 10% of the estimated value of the property.
Special procedure	Any amount	Procedure without competition between bidders, which applies if other procedures put at risk the satisfaction of State requirements and interests. This procedure may be used in the following cases: for procuring or leasing goods or services in the event of emergency, in special circumstances subject to a declaration by the Executive, and in the case of contracts awarded on merit for science, technology, innovation and culture through the Ministry of the President's Office, contracts exceeding B 300,000 if they are extensions, contracts for works of art, and contracts concluded by the National Assembly exceeding B 50,000. Contracts of less than B 3,000,000 relating to public, presidential and State security require the authorization of the Minister of the President's Office, while those exceeding this amount require the authorization of the Cabinet Council.

Source: Law No. 22 of 27 June 2006, as amended. Single Text, Official Journal No. 26829.

Table A3. 4 Overview of IPR protection in Panama, 2013

Law/Scope	Term	Comments, limitations and exclusions
<b>Copyright and related rights</b>		
<p>Law No. 64 of 10 October 2012 on copyright and related rights; Decree No. 261 of 1995 regulating Law No. 15 of 1994.</p> <p><b>Scope:</b> The rights of authors and successors in title over all literary, artistic or scientific works, regardless of their type, form of expression, merit or purpose. Related rights are also protected. Protection is recognized independently of the physical medium containing the work. Related rights include the rights of performers, phonogram producers and broadcasting organizations.</p>	<p>Lifetime of author (or last co-author) plus 70 years.</p> <p>Anonymous or pseudonymous works, 70 years from disclosure.</p> <p>Audiovisual works, collective works and computer programs, 70 years from first publication or termination. Where the term of protection is not counted from the death of the author, it will be counted from 1 January of the year following that in which the work was created.</p>	<p>No registration is required for protection; registration is declaratory and does not constitute a right.</p> <p>By the mere fact of creation, the author of a work has the original ownership of the moral and economic rights over the work, as recognized by the Law.</p> <p>Laws, decrees, official regulations, public treaties, judicial decisions and other official acts are not subject to protection, nor are generic expressions of folklore, news, or mere facts and data.</p>
<b>Patents</b>		
<p>Law No. 35 of 10 May 1996, as amended by Law No. 61 of 5 October 2012; Executive Decree No. 7 of 17 February 1998 (Regulations).</p> <p><b>Scope:</b> Inventions, of products or processes, that are new, involve an inventive step and are capable of industrial application. The law provides for the granting of compulsory licences. It does not provide for second-use patents.</p>	<p>20 years from filing of application. DIGERPI can extend non-pharmaceutical patent protection if there are delays in granting the patent.</p>	<p>The following, <i>inter alia</i>, are not considered inventions: theoretical principles, computer programs <i>per se</i>, aesthetic works, methods of surgical, therapeutic or diagnostic treatment applicable to the human body and those relating to animals, the juxtaposition of inventions or the mixing of known products, unless it can be proved that they satisfy the requirements of novelty, inventive step, and industrial application.</p> <p>The following cannot be patented: plants, animals and essentially biological processes for the production of plants or animals other than non-biological or microbiological processes; plant species and animal species and breeds; biological material existing in nature; living tissue that makes up the human body; and plant varieties. Panama recognizes retroactivity in patents only when a priority right is invoked.</p>
<b>Industrial drawings and models (designs)</b>		
<p>Law No. 35 of 10 May 1996, as amended by law No. 61 of 5 October 2012; Executive Decree No. 7 of 17 February 1998.</p> <p><b>Scope:</b>  Model: three-dimensional shape that serves as a model or pattern for the manufacture of an industrial product;  Drawing: combination of shapes, lines or colours incorporated in an industrial product for ornamentation purposes and which give it a specific appearance of its own.</p>	<p>Three years from the date of its first disclosure in Panama.</p> <p>Ten years from filing of application for registration in Panama, extendable for one additional period of five years.</p>	<p>Unregistered industrial designs.</p> <p>Protection through registration. The protection conferred does not include those elements or characteristics of the design which serve only to obtain a technical effect. Possibility of protection cumulated with copyright.</p>

Law/Scope	Term	Comments, limitations and exclusions
<b>Utility models</b>		
<p>Law No. 35 of 10 May 1996, as amended by Law No. 61 of 5 October 2012; Executive Decree No. 7 of 17 February 1998.</p> <p><b>Scope:</b> Any shape, configuration or arrangement of the elements of a device, tool, instrument, mechanism or other object that makes possible an improvement or change in the functioning, use or manufacture of the object in which it is incorporated, or provides it with some utility, advantage or technical effect which it did not have before.</p>	<p>Ten years from date of filing of application, non-extendable.</p>	<p>Protection through registration and a utility model patent. To be eligible for registration, models must be new and have an industrial application. Models that differ only in minor ways from previous models cannot be registered.</p>
<b>Layout-designs of integrated circuits</b>		
<p>Law No. 64 of 10 October 2012 on copyright and related rights; Decree No. 261 of 1995 regulating Law No. 15 of 1994.</p> <p><b>Scope:</b> Original layout-designs.</p>	<p>Life + 70 years</p>	<p>Protection through copyright if the requirements necessary to be treated as a protected work are met.</p>
<b>Product or service marks</b>		
<p>Law No. 35 of 10 May 1996, as amended by Law No. 61 of 5 October 2012; Executive Decree No. 7 of 17 February 1998.</p> <p><b>Scope:</b> Subject to registration, any mark, sign, letter, figure, word (or combination thereof), noise, smell or taste, capable of distinguishing a product or service in trade. Geographical indications may be registered as marks. The right to register a mark is acquired by use. The owner of a mark may grant a licence for use by contract.</p>	<p>Ten years from being granted, indefinitely renewable for ten-year periods.</p>	<p>The following, <i>inter alia</i>, may not be registered: (a) descriptive or generic indications; (b) titles of literary or scientific works; (c) the shape given to products lacking in originality; (d) those which are identical, similar or alike to used marks; (e) national or foreign designations of origin which may give rise to confusion or error in this respect; (f) misleading names. Use of the mark is not compulsory.</p>
<b>Geographical indications</b>		
<p>Law No. 35 of 10 May 1996, as amended by Law No. 61 of 5 October 2012; Executive Decree No. 7 of 17 February 1998.</p> <p><b>Scope:</b> Designations of origin, understood as the geographical designation of a country, region or locality that serves to identify a product originating therein and whose quality or characteristics are exclusively or essentially attributable to the geographical environment; indications of provenance, defined as an expression or sign used to indicate that a product or service comes from a particular country, region or place.</p>	<p>The registration is valid indefinitely.</p>	<p>Protection through registration and certificate issued by DIGERPI. Designations of origin and indications of provenance that do not correspond to the country, locality or region of manufacture may not be used. The following are not subject to the protection provided for in the Law: foreign geographical indications identifying wines or spirits in connection to goods and services, which have been used by nationals or residents in the territory to identify these same goods and services in Panama in the ten years prior to 15 April 1994.</p>
<b>New plant varieties</b>		
<p>Law No. 23 of 15 July 1997, Title V; Law No. 12 of 3 May 1999 (accession of Panama to UPOV) and Law No. 63 amending articles of Law No. 23 of 1997 on standards for the protection of new plant varieties.</p> <p><b>Scope:</b> All plant genera and species.</p>	<p>Right granted to the breeder for 20 years, from the date of granting of the protection title. For trees and vines, including rootstock, the period of protection is 25 years.</p>	<p>Protection through breeder certificates. A variety is considered new if on the date of filing of the application or priority date the reproductive or multiplication material or harvested material of the variety has not been offered for sale or marketed, by the breeder or his successor in title: in Panama, more than one year prior to the filing or priority date; in the territory of any other country, more than four years or, in the case of trees and vines, more than six years prior to that date.</p>

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Law/Scope	Term	Comments, limitations and exclusions
<b>Protection of undisclosed information</b>		
Law No. 35 of 10 May 1996; Executive Decree No. 7 of 17 February 1998 <b>Scope:</b> Article 39.2 of the TRIPS Agreement	Not specified.	Industrial and commercial secrets are protected: information with industrial or commercial applications which means obtaining or maintaining an economic competitive advantage over third parties and with respect to which adequate measures have been taken to maintain its confidentiality and restricted access.

Source: WTO Secretariat.

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