

U.S.-Panama Trade Promotion Agreement

INTELLECTUAL PROPERTY RIGHTS

The U.S.-Panama TPA requires high levels of intellectual property protection, consistent with U.S. standards of protection, and will support the growth of trade in valuable digital and other intellectual property-based products.

Although Panama has made great strides modernizing intellectual property laws, gaps remain in existing domestic legislation and in adherence to the full range of international treaties. Effective enforcement of its intellectual property laws continues to be a challenge. U.S. industry is particularly concerned with the levels of pirated and counterfeit goods that are transshipped through the Colon Free Zone to other parts of the world. Panama's decision to modernize the Colon Free Zone's record keeping by adopting an electronic system was an important, positive effort to improve intellectual property protection. Implementation of the commitments made under the U.S.-Panama TPA will reinforce Panama's national efforts to strengthen intellectual property law enforcement. Like our other free trade agreements, this Agreement takes into account significant legal and technological developments that have taken place since the TRIPS Agreement and the NAFTA were negotiated. The Industry Trade Advisory Committee on Intellectual Property Rights' report to the U.S. Trade Representative on the U.S.-Panama TPA notes, "...the fact that Panama found it in its own interest to significantly increase its levels of IPR protection beyond that required by TRIPS is testament to the principle that high levels of protection benefit indigenous creators and inventors in the same manner as they do in developed countries."

Copyright

The U.S.-Panama TPA includes many important provisions for combating piracy, benefiting U.S. copyright industries. One of the most important provisions is the prohibition on the circumvention of technological protection measures (TPMs) that authors, performers, and producers of phonograms use in the exercise of their rights to prohibit or restrict unauthorized acts (e.g., unauthorized access to a work or illegal copying). Defined and limited exceptions to

Key Intellectual Property Facts

Protection for copyrighted works

Copyright-based industries are among the fastest growing and most productive of any sector of the U.S. economy. They employ new workers in higher-paying jobs at over three times the rate of the rest of the economy; create new revenue at over two times that rate; and contribute close to \$90 billion to the U.S. economy each year through foreign sales and exports. The industries' principal barrier to trade is the lack of effective protection and enforcement of intellectual property rights.

Stronger protections for patents & trade secrets

Innovation has historically been a driving force in U.S. industry. Competitive advantage based on innovation needs to be protected and defended. U.S. companies need access to legal tools in all markets across the globe.

Tough penalties for piracy and counterfeiting

The high level of enforcement required by the U.S.-Panama TPA will benefit industry and set a precedent throughout the region.

the circumvention of TPMs will provide further certainty by bolstering its effective implementation. This prohibition on circumvention of TPMs is an important tool for addressing the challenges presented in the digital environment.

The protection of encrypted program-carrying satellite signals was included as a direct response to the concerns of U.S. broadcasters and content providers. Panama has also committed to mandating that government agencies use computer software only as authorized by the right holder and to actively regulate the acquisition and management of the software, a high priority for the U.S. software industry. In addition to the needs addressed by the industry-specific challenges, an extension in the term of protection for copyrighted works by 20 years (a 40 percent increase) will allow a broad range of right holders to continue to benefit from their intellectual property.

Patent and Data Protection

Panama committed to limit the grounds on which patents may be revoked and to extend patent protection to new plant varieties. Panama has also agreed to restore patent rights for the term of protection lost due to unreasonable delays in issuing patents with respect to most products, ensuring that patent rights are not diminished by bureaucratic delays. While this patent term restoration obligation is more flexible with respect to pharmaceutical products, Panama commits to making best efforts to expeditiously processing patent and marketing approval applications for drugs. Recognizing the significant investments made by pharmaceutical and agro-chemical companies in compiling test data submitted in connection with marketing approval, Panama has agreed to protect such data from use by third parties. Agricultural chemical test data will be protected for a period of ten years; for pharmaceuticals, the period of protection will normally be five years, though this period may be shorter if Panama relies on the U.S. Food and Drug Administration's approval of a given drug and certain other conditions are met. Additionally, Panama has committed to putting in place procedures and remedies intended to prevent the marketing of patent-infringing pharmaceuticals.

Improved Transparency and Reduced Corruption

As in other recent free trade agreements, the U.S.-Panama TPA contains an obligation to publicize information on efforts to provide effective enforcement of intellectual property rights. Final judicial decisions or administrative rulings of general applicability pertaining to the enforcement of intellectual property rights must be in writing and must state any relevant findings of fact and the reasoning or the legal basis on which the decisions or rulings are based.

Enforcement

The U.S.-Panama TPA includes measures that should facilitate enforcement of these enhanced intellectual property protections, improving the enforcement environment in Panama and responding to industry concerns regarding the transshipment of pirated and counterfeit goods through the Colon Free Zone. The agreement establishes a framework for determining damages and establishes a system of statutory or "pre-established" damages, offering the right-holder to elect between statutory damages and the often-difficult task of proving actual damages. The

Agreement also mandates that courts must have the authority to order the infringer and third parties to identify accomplices, suppliers and others involved in the infringement at the risk of sanctions for failure to do so.