



# Trade Facts

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## **Free Trade with Panama: Summary of the United States - Panama Trade Promotion Agreement**

The United States concluded free trade negotiations with Panama on December 19, 2006. This comprehensive trade agreement, which reflects the bipartisan consensus on trade of May 10, 2007, will eliminate tariffs and other barriers to goods and services, promote economic growth, and enhance trade between the United States and Panama.

### **New Market Access for U.S. Consumer and Industrial Products**

- Over 88 percent of U.S. exports of consumer and industrial products to Panama will be duty-free immediately upon entry into force of the agreement, and an additional four percent will be duty-free within five years. All remaining tariffs will be eliminated within ten years.
- Many products in key U.S. export sectors, such as agriculture and construction equipment, aircraft and parts, fertilizers, information technology equipment, medical and scientific equipment, and pharmaceuticals will gain immediate duty-free access to Panama.
- Panama agreed to allow trade in remanufactured goods under the agreement. This will provide significant export and investment opportunities for U.S. firms involved in remanufactured products such as machinery, computers, cellular telephones, and other devices.
- Under the Caribbean Basin Initiative (CBI) and Caribbean Basin Trade Partnership Act (CBTPA), many goods from Panama already enter the United States duty-free. The agreement will make duty-free treatment of Panamanian goods permanent, thereby providing certainty for businesses and investors. This agreement will make duty-free treatment a two-way street between the United States and Panama for the first time.
- Panama is a growing market for U.S. products. U.S. goods exports in 2005 were \$2.2 billion, an increase of over 22 percent from 2004.

### **New Opportunities for U.S. Farmers and Ranchers**

#### **Agricultural Market Access**

- More than half of current U.S. farm exports to Panama will receive immediate duty-free treatment, including high quality beef, mechanically de-boned chicken, frozen whole turkeys and turkey breast, pork variety meats, whey, soybeans and soybean meal, crude vegetable oils, cotton, wheat, barley,

most fresh fruits (including apples, pears, and cherries), almonds, walnuts, many processed food products (including soups and chocolate confectionary), distilled spirits, wine, and pet food.

- U.S. farm products that will benefit from expanded market access opportunities through tariff-rate quotas include the following: pork, chicken leg quarters, dairy products, corn, rice, refined corn oil, dried beans, frozen french fries, and tomato products. Tariffs on most remaining U.S. farm products will be phased out within 15 years.

### **Agricultural Regulatory Issues**

- The United States and Panama signed a far reaching bilateral agreement on sanitary and phytosanitary measures and technical standards. Under this agreement, Panama will recognize the equivalence of the U.S. food safety inspection system for meat and poultry, and the U.S. regulatory system for processed food products.
- In addition, Panama will provide access for all U.S. beef and beef products (including pet food) and poultry and poultry products, consistent with international standards.
- Finally, the agreement streamlines import documentation requirements for U.S. processed foods and ensures Panama's continued recognition of the U.S. beef grading system and cuts nomenclature.

### **Textiles and Apparel – Promoting Cooperation and Benefits**

- The Parties agreed to a “yarn forward” rule, meaning that, generally, apparel using yarn and fabric from the United States and Panama qualifies for duty-free benefits.
- The Parties will provide reciprocal duty-free access immediately for all textile and apparel goods.
- The agreement contains strict customs enforcement provisions. U.S. and Panamanian customs authorities may conduct surprise site visits to Panamanian producers and the United States is authorized to undertake a variety of enforcement actions (up to and including denying entry for suspect goods).
- This is one of the few free trade agreements with any country without tariff preference levels (TPLs).
- Agreed to a single transformation rule of origin for "Guayabera-style" shirts and dresses.
- Maintained duty-free treatment of socks meeting the CBTPA rule of origin with a 10-year phase-out of duties on all other socks.
- The pockets in garments receiving duty-free treatment will be made of fabric from one of the Parties.
- The agreement contains a special textile safeguard, allowing the United States to impose tariffs on certain goods should injury occur due to import surges.

- The agreement requires thread and narrow elastic fabrics to originate in the United States or Panama. As in past free trade agreements, there is a provision to ensure visible linings originate in the United States or Panama.
- The agreement contains a new short supply process, identical to CAFTA-DR.

### **Important New Protections for U.S. Investors**

- The agreement will establish a stable legal framework for U.S. investors operating in Panama. All forms of investment will be protected under the agreement, including enterprises, debt, concessions and similar contracts, and intellectual property. With very few exceptions, U.S. investors will be treated as well as Panamanian investors (or investors of any other country) in the establishment, acquisition, and operation of investments in Panama.
- Pursuant to U.S. Trade Promotion Authority (TPA), the agreement draws from U.S. legal principles and practices to provide U.S. investors in Panama substantive and procedural protections that foreign investors currently enjoy under the U.S. legal system. These include due process protections and the right to receive fair market value for property in the event of an expropriation.
- The investor protections are backed by a transparent, binding international arbitration mechanism, under which investors may, at their own initiative, bring claims against a government for an alleged breach of the chapter. Submissions to investor-state arbitral tribunals will be made public, and hearings will generally be open to the public. Tribunals will also be authorized to accept *amicus* submissions from non-disputing parties.
- In the preamble, the Parties agree that “foreign investors are not hereby accorded greater substantive rights with respect to investment protections than domestic investors under domestic law where, as in the United States, protections of investor rights under domestic law equal or exceed those set forth in this Agreement.” This provision reflects one of the negotiating objectives of the Trade Act of 2002 to ensure “that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States.”
- This preambular language does not impose any obligations on the United States or Panama beyond those set forth in the substantive provisions of the agreement.

### **Open Services Markets**

- Panama will accord substantial market access across its entire services regimes, subject to very few exceptions, using the so-called "negative list" approach.
- Panama agreed to exceed commitments made in the WTO, and to dismantle significant services and investment barriers, such as lifting restrictions on investment in retail trade, ensuring access to contracts related to the Panama Canal, and providing new access in professional services that previously had been reserved exclusively to Panamanian nationals.

- These commitments and improvements in Panama's services regime will allow U.S. firms to take full advantage of the benefits of the agreement across all sectors, including, but not limited to express delivery, logistics, energy, audiovisual, computer, construction, wholesaling, health, education, and environmental services.
- U.S. financial service suppliers have full rights to establish subsidiaries or branches for banks and insurance companies.
- Portfolio managers in the U.S. will be able to provide portfolio management services to both mutual funds and pension funds in Panama.

### **Greater Protection for Intellectual Property Rights**

- The agreement provides for improved standards for the protection and enforcement of a broad range of intellectual property rights, which are consistent with both U.S. standards of protection and enforcement, and with emerging international standards.
- Such improvements include state-of-the-art protections for digital products such as U.S. software, music, text, and videos and; stronger protection for patents, trademarks and test data, including an electronic system for the registration and maintenance of trademarks.

### **Patents & Trade Secrets: Stronger Protections**

- Limits the grounds for revoking a patent, thus protecting against arbitrary revocation.
- Clarifies that test data and trade secrets submitted to a government for the purpose of product approval will normally be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals. If Panama relies on U.S. FDA approval of a given drug, and meets certain conditions for expeditious approval of that drug in Panama, the period of data protection will be concurrent with the term of protection provided in the United States.
- Requires the establishment of procedures and remedies to prevent the marketing of pharmaceutical products that infringe patents.
- Provides protection for newly developed plant varieties.
- The Parties expressed their understanding that the intellectual property chapter does not and should not prevent the Parties from taking measures to protect public health by promoting access to medicines for all, particularly in circumstances of extreme urgency or national emergency. The Parties also reaffirm their shared commitment to the 2001 Doha Declaration on the TRIPS Agreement and Public Health.

## **The Digital Age**

- The United States and Panama agreed to provisions on e-commerce that commit each Party to non-discriminatory treatment of digital products.
- The Parties agreed not to impose customs duties on digital products transmitted electronically and reaffirm the importance of cooperation in numerous policy areas related to e-commerce. Additionally, the agreement requires procedures for resolving disputes about trademarks used in Internet domain names.

## **Protection and Promotion of Worker Rights**

- The Parties reaffirm their obligations as members of the International Labor Organization (ILO.)
- The Parties agree to adopt and maintain in their laws and practice the core internationally-recognized labor rights, as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and including a prohibition on the worst forms of child labor. Neither Party may waive or otherwise derogate from the laws that implement this obligation in a manner affecting trade or investment between the Parties.
- The Parties also agree to effectively enforce labor laws related to the fundamental rights, plus acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.
- All obligations in the Chapter are subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other Chapters of the Agreement.
- Procedural guarantees in the agreement will ensure that workers and employers will have fair, equitable, and transparent access to labor tribunals or courts.
- The agreement includes a cooperative mechanism to promote respect for the principles embodied in the 1998 ILO Declaration, and compliance with ILO Convention 182 on the Worst Forms of Child Labor. Cooperative activities include:
  - Law and practice related to the principles and rights of the ILO Declaration ;
  - Compliance with ILO Convention 182 on the Worst Forms of Child Labor;
  - Methods to improve labor administration and enforcement of labor laws;
  - Social Dialogue and Alternative Dispute Resolution;
  - Occupational Safety and Health compliance; and
  - Mechanisms and best practices to protect and promote the rights of migrant workers.

## **Commitments and Cooperation to Protect the Environment**

- Agreement commits the Parties to effectively enforce their own domestic environmental laws and adopt, maintain and implement laws and all other measures to fulfill obligations under covered multilateral environmental agreements (MEAs).

- Both parties commit to pursue high levels of environmental protection, and to not weaken or reduce environmental laws to attract trade and investment.
- Agreement also promotes a comprehensive approach to environmental protection. Procedural guarantees that ensure fair, equitable and transparent proceedings for the administration and enforcement of environmental laws are complemented by provisions that promote voluntary, market-based mechanisms to protect the environment.
- Agreement calls for a public submissions process with an independent secretariat for environmental matters to ensure that views of civil society are appropriately considered.
- All obligations in the Chapter are subject to the same dispute settlement procedures and enforcement mechanisms as obligations in other Chapters of the Agreement.

### **Trade Capacity Building: Development and Trade Together**

- The agreement creates a Trade Capacity Building Committee, which will help Panama strengthen its capacity to implement the obligations of the agreement and to benefit more broadly from the opportunities the agreement creates.
- The U.S. Government provided a total of approximately \$5 million in trade capacity building assistance to Panama over the past three fiscal years. This assistance has helped Panamanians in the public and private sectors to promote exports, extend trade-related business services and training, improve border security and strengthen labor standards.
- The provision for a Trade Capacity Building Committee in the Panama agreement follows in the footsteps of similar committees established in recent free trade agreements with Central America and the Dominican Republic, Colombia and Peru. The creation of this committee responds to Panama's interest in coordinating its trade capacity building programs with donors, multilateral institutions, nongovernmental organizations and the private sector.
- Multilateral lenders such as the Inter-American Development Bank and the World Bank provide additional trade-related assistance to Panama.

### **New Access to Government Procurement Contracts**

- U.S. suppliers are granted non-discriminatory rights to bid on purchases of Panamanian government ministries and other entities. Low-value purchases are excluded.
- Clarifies that government agencies may include provisions in their procurements to promote environmental protection and requirements that suppliers must comply with core labor laws in the country where they make a product or perform a service.

- The agreement covers the purchases of Panama's ministries and other entities, as well as its legislature and courts. U.S. firms will also be assured access to the purchases of a number of Panama's government enterprises, including the Panama Canal Authority.
- The \$5.25 billion expansion of the Panama Canal will offer significant opportunities for U.S. businesses in goods, services, and construction services. The expansion, which is expected to begin in 2008 and conclude in 2014 will widen the Canal to allow larger ships easier access between the Atlantic and Pacific Oceans. In an October 2006 referendum, Panamanians approved the expansion of the Canal.
- In addition, the agreement includes the purchases of all of Panama's first-tier sub-central entities (comparable to U.S. states); and requires fair and transparent procurement procedures, including advance notice of purchases, and timely and effective bid review procedures.

### **An Open and Competitive Telecommunications Market**

- The Parties commit to guarantee users of Panamanian telecom networks reasonable and nondiscriminatory access to those networks.
- U.S. telecommunications companies are ensured the right to interconnect with Panamanian dominant carriers' fixed networks at nondiscriminatory and cost-based rates.
- Under the agreement, Panama agreed to a pro-competitive regulatory framework that builds upon the WTO Basic Telecommunications Reference Paper.

### **Increased Transparency**

- The agreement's dispute settlement mechanisms provide for open public hearings, public access to documents, and the opportunity for third parties to submit views.
- Transparency in customs operations will aid express delivery shipments, and will require more open and public processes for customs rulings and administration.
- For custom procedures, Panama committed to publish laws and regulations on the Internet and, to the extent possible, will publish proposed regulations in advance and allow interested parties an opportunity to comment on the proposals.

### **Strengthened Protection against Technical Barriers to Trade**

- The Parties affirm their obligations under the WTO Agreement on Technical Barriers to Trade (TBT) and build on those to enhance transparency in the development and application of technical regulations and testing and certification.

- Both Parties have committed to provide national treatment when recognizing conformity assessment bodies. Oversight and further cooperation will occur through the work of the TBT Committee.

### **Dispute Settlement**

- Core obligations, including labor and environment provisions, are subject to the dispute settlement mechanism of the agreement.
- Dispute panel procedures set high standards of openness and transparency through:
  - Open public hearings
  - Public release of legal submissions by parties
  - Special labor or environment expertise for disputes in these areas
  - Opportunities for interested third parties to submit views
- Emphasis is on promoting compliance through consultation and trade-enhancing remedies.

### **A Gateway to Significant Markets**

- In 2006, bilateral goods trade between the United States and Panama totaled \$3.1 billion, with U.S. exports accounting for \$2.7 billion of that amount. U.S. goods exports to Panama increased 25 percent from 2005 to 2006.
- Nearly half of Panama's total imports come from the United States. U.S. foreign direct investment in Panama was roughly \$5.2 billion in 2005. Panama currently enjoys broad access to the U.S. markets through preference programs like the Caribbean Basin Initiative (CBI) and the Generalized System of Preferences (GSP). In 2006, more than 96 percent of Panama's goods exports to the United States entered duty-free.