

April 25, 2007

The Honorable Susan Schwab  
United States Trade Representative  
Executive Office of the President  
600 17<sup>th</sup> Street, NW  
Washington, DC 20508

Dear Ambassador Schwab:

Pursuant to Section 2104 (e) of the Trade Act of 2002 and Section 135 (e) of the Trade Act of 1974, as amended, we are pleased to transmit the report of the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) on the U.S.-Panama Trade Promotion Agreement. This report reflects the consensus opinion of ITAC 8 members on the proposed Agreement.

Sincerely,

Steven W. Stewart  
Chair, ITAC 8

# **The U.S.-Panama Trade Promotion Agreement**

Report of the  
Industry Trade Advisory Committee for Information and  
Communications Technologies, Services and Electronic  
Commerce (ITAC 8)

April 25, 2007

April 25, 2007

**Industry Trade Advisory Committee for Information and Communications  
Technologies, Services and Electronic Commerce (ITAC 8)**

**Report to the President, the Congress and the United States Trade Representative  
on the U.S.-Panama Trade Promotion Agreement**

**I. Purpose of the Committee Report**

Section 2104 (e) of the Trade Act of 2002 requires that advisory committees provide the President, the U.S. Trade Representative, and Congress with reports required under Section 135 (e)(1) of the Trade Act of 1974, as amended, not later than 30 days after the President notifies Congress of his intent to enter into an agreement.

Under Section 135 (e) of the Trade Act of 1974, as amended, the report of the Advisory Committee for Trade Policy and Negotiations and each appropriate policy advisory committee must include an advisory opinion as to whether and to what extent the agreement promotes the economic interests of the United States and achieves the applicable overall and principle negotiating objectives set forth in the Trade Act of 2002.

The report of the appropriate sectoral or functional committee must also include an advisory opinion as to whether the agreement provides for equity and reciprocity within the sectoral or functional area.

Pursuant to these requirements, the Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) hereby submits the following report.

**II. Executive Summary of the Committee Report**

ITAC 8 views the provisions of the U.S.-Panama Trade Promotion Agreement (TPA) (“the Agreement”) that fall under the scope of the Industry Trade Advisory Committee as consistent with the negotiating objectives the committee has established for U.S. trade agreements. ITAC 8 believes the relevant provisions contained in this agreement promote the economic interests of the United States and provide equity and reciprocity for information and communications technology and services firms, and electronic commerce firms.

The U.S.-Panama Trade Promotion Agreement achieves services liberalization beyond that to which Panama is committed in the WTO General Agreement on Trade in Services (GATS) by adopting a comprehensive negative list approach where all sectors are covered except where specific exceptions are made.

The Telecommunications Chapter includes important commitments that will ensure nondiscriminatory access for U.S. companies to Panama's public telecommunications network. It also includes strong "WTO-plus" obligations for all suppliers of public telecommunications services, including interconnection, resale, number portability and dialing parity. In another sector of interest to ITAC 8 members, computer and related services, Panama has made only partial commitments in the WTO, so Panama's commitments for full market access and national treatment in this Agreement provide an advantage for U.S. information technology service providers.

In the area of electronic commerce, ITAC 8 supports the USTR's continued emphasis on the concept of digital products in terms of trade. Our assessment of the e-commerce provisions in the Agreement indicates that they meet our negotiating objectives.

The Government Procurement Chapter reflects strong commitments, which is especially important since Panama is not yet a member of the WTO Government Procurement Agreement. In many countries, particularly developing countries, the government is a key purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Panama.

In an area of growing concern for the U.S. high-tech industry, the Technical Barriers to Trade Chapter of the Agreement contains provisions that emphasize the importance of the WTO Agreement on Technical Barriers to Trade (TBT) and consistently reinforces the TBT provisions.

Tariff elimination for information technology products and medical and scientific equipment remains a top priority for this Committee. Panama has agreed to become a full participant in the WTO Information Technology Agreement (ITA), so customs duties on many IT products will be set to zero in Panama as a result of this Agreement. In addition, Panama committed to eliminate many other tariffs immediately upon entry into force of the Agreement, phasing out other tariffs, with all products gaining duty-free access to Panama over a period of ten years.

The Intellectual Property Rights Chapter is virtually identical to the corresponding chapters in the Peru and Colombia TPAs. This chapter meets most of the negotiating goals and objectives of the Committee.

### III. **Brief Description of the Mandate of the ITAC 8**

The Industry Trade Advisory Committee for Information and Communications Technologies, Services and Electronic Commerce (ITAC 8) was established as part of a restructuring of the industry trade advisory committee system by the U.S. Department of Commerce and the United States Trade Representative (USTR). The restructuring was

undertaken in order to better reflect today's U.S. economy and to better position industry to provide the private sector and civil society the opportunity to advise the Administration on trade issues and objectives.

ITAC 8 performs such functions and duties and prepares reports, as required by Section 135 of the Trade Act of 1974, as amended, with respect to information and communications technologies, services, electronic commerce and medical equipment. ITAC 8 provides detailed policy and technical advice, information, and recommendations to the Secretary of Commerce and the U.S. Trade Representative regarding trade barriers and implementation of trade agreements.

#### IV. **Negotiating Objectives and Priorities of the ITAC 8**

ITAC 8 supports an ambitious trade agenda that addresses the following issues through all available trade negotiating forums, including multilateral (WTO), regional (e.g., FTAA), plurilateral (e.g., CAFTA) and bilateral agreements. ITAC 8 also emphasizes the need for prompt implementation and effective enforcement of free trade obligations once agreements are concluded.

##### **A. Goods Issues**

1. Eliminate tariffs on all information technology products (hardware and software) and components, infrastructure equipment, medical equipment and scientific instruments.
  - Within the WTO, seek to gain new signatories to the Information Technology Agreement (ITA), expedite the phaseout of tariffs under the ITA, ensure that as products covered by the ITA evolve technologically they retain zero duty treatment, and seek to expand the product coverage under the ITA.
  - Alternatively, as part of the Doha Round Non-Agricultural Market Access (NAMA) negotiations, countries should agree on sectoral tariff elimination that would apply to IT products, including those products not currently covered by the ITA.
2. Eliminate discriminatory taxes that create barriers to trade.
3. Support global, market-led, voluntary standards developed through an open and transparent process. Ensure that standards do not create unnecessary barriers to trade.
4. Reduce technical barriers to trade. Ensure that product testing, licensing and certification requirements, certificate of origin mandates and customs procedures

are fair, transparent and streamlined. Eliminate those procedures that are duplicative, increase costs to users and delay the availability of products to market.

5. Where product regulations are deemed necessary they must be nondiscriminatory, based on sound and widely accepted scientific principles and available technical information, and should not impede the effective functioning of the market. Consistent with existing WTO rules, regulations should be the least trade restrictive possible.

## **B. Services Issues**

1. Increase the number of countries with obligations in telecommunication services, and increase the range of services covered in country schedules. Ensure that telecommunication services are liberalized on a technology-neutral basis. Promote independent regulatory authorities and transparency in the regulatory process. Ensure nondiscriminatory access to, and use of, public telecommunication networks and services.
2. Obtain full market access and national treatment for computer and related services. Ensure that technologically evolving IT services, including those that are delivered electronically, continue to be covered by trade agreements and that barriers to these services do not develop.
3. Maximize the liberalization of all services that can be delivered electronically.

## **C. E-Commerce Issues**

1. Electronically delivered goods and services should receive no less favorable treatment under trade rules and commitments than like products delivered in physical form. Trade classification should ensure the most liberal treatment possible. Software and other digital products should be duty free.
2. Make permanent the WTO moratorium on customs duties on electronic transmissions.
3. Support a moratorium on Internet taxes.
4. Monitor other e-commerce issues and take action as required: data privacy, security, consumer protection, spam, and digital signatures.

## **D. Intellectual Property Issues**

1. Seek full implementation of existing TRIPs commitments and encourage ratification of WIPO Copyright Treaties.
2. Combat global software piracy and technology product counterfeiting.

3. Oppose Digital Rights Management legislation calling for government-mandated technological standards to protect digital content. Promote the development and adoption of market-led best practices to protect intellectual property.
4. Oppose the application of levies on information technology products as a way to compensate copyright holders for copying.

#### **E. Government Procurement Issues**

1. Seek market access and transparency in government procurement.
  - Seek to expand the membership of the WTO Government Procurement Agreement.
  - Seek a WTO Agreement on Transparency in Government Procurement.
2. Promote global use of electronic publication of procurement information, including notices of procurement opportunities.

#### **F. Other Issues**

1. Ensure that all countries comply with their obligations under their free trade agreements.
2. Enable global operations of U.S.-based companies by opening markets abroad and avoiding restrictions in the U.S. on worldwide sourcing.
3. Ensure U.S. trade laws are not weakened to the detriment of U.S. companies.

#### **V. Advisory Committee Opinion on Agreement**

ITAC 8 reviewed the chapters on Market Access, Government Procurement, Telecommunications, Cross Border Trade in Services, Electronic Commerce, Technical Barriers to Trade, Investment and Intellectual Property Rights. For these chapters, ITAC 8 believes the provisions of the agreement meet our objectives, promote the economic interests of the United States and provide equity and reciprocity for our sectors.

#### **Market Access Chapter**

The Agreement calls for the elimination of tariffs and other barriers on a significant basket of high-technology, telecommunications and consumer electronic goods. Taking into account Panama's status as a Generalized System of Preferences and Caribbean Basin Initiative beneficiary country, the United States currently offers Panama far more liberal market access for these goods than Panama does in return. The Agreement goes a

long way to rectify this imbalance, providing reciprocal trade benefits and enhanced market access opportunities for U.S. high-tech exporters.

In particular, the Agreement would result in the immediate elimination of Panama's duties on more than 80 percent of the tariff lines covered by Harmonized Tariff System (HTS) chapters 84, 85 and 90. Other Panamanian duties in these chapters will be eliminated over five- and ten-year phase-out periods. While it would have been preferable if all U.S. high-technology, telecommunications, medical equipment and consumer electronic exports could enter Panama duty-free upon the effective date of the Agreement, the Agreement nonetheless makes great strides in this regard. ITAC 8 observes that USTR has indicated that *all* of Panama's duties on consumer and industrial products will be duty free within ten years.

Additionally, a major success for the industry is Panama's commitment to join the World Trade Organization Information Technology Agreement (ITA). The ITAC hopes that all U.S. trading partners will join the ITA – which requires signatory governments to eliminate duties on a wide variety of information technology products – and participate in its future expansion.

Though Panama is not currently a major export destination for U.S. high-technology, communications, and consumer electronic products, its purchase of these products has been growing markedly. In 2005, total trade between Panama and the United States was \$2.5 billion, up 22 percent from the previous year. During the same two-year period, trade in HTS chapters 84, 85 and 90 increased by 28, 34, and 41 percent, respectively, according to data from the U.S. Department of Commerce and the U.S. International Trade Commission. For electronic goods specifically, exports totaled nearly \$20 million to Panama in 2006, an approximate increase of 34 percent from 2005. As these figures show, and as the bilateral relationship strengthens through the ratification of the Agreement, demand in the Panamanian market for U.S. high-technology, communications, and consumer electronic products will likely continue to increase significantly.

## **Government Procurement Chapter**

The Government Procurement Chapter reflects strong commitments, which is especially important since Panama is not yet a member of the WTO Government Procurement Agreement. In many countries, particularly developing countries, government is a key purchaser of IT and communications products and services. Therefore, this Committee views the Government Procurement Chapter as critically important to ensuring access to the government procurement market in Panama.

The Agreement provides for greater certainty relating to government procurement of digital products. Specifically, the Chapter clarifies that government procurement includes the procurement of digital products as defined in the Electronic Commerce Chapter. This is a welcome clarification and ITAC 8 recommends that a similar clarification be included in all future free trade and government procurement agreements.



## **Telecommunications Chapter**

The Telecommunications Chapter includes a number of very important commitments that should foster a more open and liberalized telecommunications market in Panama. The Chapter ensures that U.S. providers will have access to and use of the public telecommunications network, including leased circuits, on reasonable and nondiscriminatory terms and conditions. The Chapter also includes strong “WTO-plus” obligations for all suppliers of public telecommunications services, including interconnection, resale, number portability, and dialing parity. The Chapter includes appropriately more rigorous commitments for major suppliers, including competitive safeguards, resale, and cost-oriented interconnection. While the Chapter exempts suppliers of commercial mobile services from some of these obligations, it clarifies that a Party may impose such requirements on suppliers of commercial mobile services.

Importantly, the Chapter commits Panama to ensure that its regulatory body is separate from, and not accountable to, any supplier of public telecommunications services and that the regulatory body does not hold a financial interest or operating role in any supplier. The Chapter provides for enforcement authority, guarantees recourse to regulatory bodies, and specifies an appellate process for resolution of domestic telecommunications disputes, all of which are important to providing effective market access for U.S. providers. The Chapter also includes an annex that clarifies the commitments for rural telephone suppliers. This annex provides definitions for rural suppliers and specific terms for exempting suppliers of public telecommunications services from several elements of the Telecommunications Chapter.

## **Cross Border Trade in Services Chapter**

The Agreement ensures full market access and national treatment for most services by adopting a “negative list” approach and by including limited reservations. With regard to computer and related services, Panama made only partial commitments in this sector in the WTO General Agreement on Trade in Services (GATS). Therefore, this Agreement is an important new guarantee for the U.S. information technology industry. The Agreement covers cross-border delivery, including by electronic means such as the Internet, for computer and related services, management consulting and other services. Importantly, the negative list approach also ensures that rapidly evolving computer services, driven by continual advances in technology, will be covered by commitments contained in the Agreement. Without some agreement that these evolving services are covered, computer and related services definitions and commitments could quickly become obsolete as new ways of delivering these services are introduced.

The commitments for computer and related services are complemented by the commitments contained in the Electronic Commerce Chapter. By employing a negative list approach, the Agreement also ensures full market access and national treatment for a

broad range of services that can be delivered electronically, further enhancing its value with respect to electronic commerce.

### **Electronic Commerce Chapter**

The U.S.-Panama Trade Promotion Agreement contains an Electronic Commerce Chapter, which essentially continues the concept of “digital products” in terms of trade as defined in previous agreements. The Chapter affirms the importance of avoiding e-commerce barriers and the applicability of WTO rules. The Chapter assures the non-discriminatory treatment of digital products and addresses the valuation of physically delivered digital products.

In the Panama TPA, the parties agreed not to impose customs duties, fees or other charges on digital products transmitted electronically. This provision is similar to the WTO Moratorium on Customs Duties on Electronic Transmissions. ITAC 8 seeks to make the Moratorium permanent and values the inclusion of the customs duties provision in this TPA. The E-Commerce Chapter reflects digital product development in the last two decades and the need for predictability in how digital products are treated in terms of trade.

Panama agreed to non-discriminatory treatment of digital products, providing a broad national treatment and most-favored nation provision. This is a step forward in securing liberal trade treatment of digital products. ITAC 8 appreciates the importance of this provision and believes it is consistent with our objective to ensure the most liberal treatment possible of electronically delivered goods and services.

With respect to the physical delivery of digital products, Panama agreed to apply customs duties on the basis of the value of the carrier medium alone. Presently countries use different methods to apply customs duties. ITAC 8 prefers valuation on the basis of the physical medium and supports the inclusion of this provision in the Agreement.

The Agreement also promotes e-commerce by encouraging cooperation between the Parties in overcoming obstacles to e-commerce, sharing information on e-commerce programs, maintaining cross-border data flows, and encouraging private sector self regulation.

### **Technical Barriers to Trade Chapter**

Technical barriers to trade worldwide are a longstanding and increasingly serious, concern of the U.S. high technology industry because they play a significant role in limiting the sale of U.S. high-tech products. As ITAC 8 noted in our review of the Peru TPA, increasingly, the IT sector is experiencing more complicated and difficult technical barriers worldwide, including unique encryption standards, unique wireless standards, data privacy barriers, software preference mandates, and chemical content requirements

for IT products, among others. Strong enforcement of the WTO Agreement on Technical Barriers to Trade (TBT) and reinforcement of its principles through FTAs are therefore critically important. Against this backdrop we have considered whether the Agreement promotes the economic interests of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002, and have concluded that it does.

In reaching this conclusion we have looked in particular at several key provisions of the WTO Technical Barriers to Trade Agreement (TBT), which we note is mutually and reciprocally reaffirmed by Panama and the United States in Article 7.1 of the Agreement. As a party to the TBT, Panama has agreed to apply internationally accepted principles in the development and application of technical regulations, standards and conformity assessment procedures. Among key TBT principles are national treatment for foreign products, prohibition of unnecessary trade restrictions, use of international standards where possible, and transparency to permit foreign stakeholders the opportunity to comment on proposed measures. More specifically, TBT Articles 2.9 and 2.12 call for signatories to provide adequate time for interested parties to review and comment on technical regulations and to adapt their products and methods of production to the new requirements. Article 5 of the TBT sets similar requirements for conformity assessment procedures. Article 5.1.2 states that conformity assessment procedures should not create “unnecessary obstacles to international trade” and should not be “applied more strictly than necessary to give...adequate confidence that products conform with applicable technical regulations...” Article 5.2.1 states that conformity assessment procedures should be “completed as expeditiously as possible and in a no less favorable order...than for like [domestic] products.”

We believe the Panama TPA recognizes and reinforces these key TBT provisions and, in so doing, provides for equity and reciprocity within the ITAC 8 sectoral area, including high-tech products and services. Reciprocal National Treatment is accorded by Article 3.2 of the Agreement. Article 3.8 reciprocally prohibits adopting or maintaining specified Non-Tariff Measures. Article 7.3 provides for the use of international standards. Mutual and reciprocal transparency is provided for in Article 7.7, requiring that each party “shall allow” the other to participate in development of standards, technical regulations and conformity assessment procedures, and complying with TBT Article 2.9 by requiring a sixty-day notice period for comment. And we believe the Conformity Assessment provisions of Article 7.5 are sufficient to meet the Article 5 TBT requirements; that Article allows for Supplier’s Declaration of Conformity and for mutual voluntary accreditation and recognition of testing results. Finally, we note that the Agreement calls for creation of a joint Committee on Technical Barriers to Trade, which we are encouraged to see.

We therefore believe that the Agreement promotes the economic interest of the United States and achieves the applicable overall and principal negotiating objectives set forth in the Trade Act of 2002. We are of the opinion that the Panama TPA provides for equity and reciprocity within the ITAC 8 sectoral area.

## **Investment Chapter**

The Agreement's investment chapter includes generally strong protections for U.S. investors and investment in Panama, including with respect to national and most-favored-nation treatment, compensation for expropriation, restrictions on performance requirements, fair and equitable treatment, full protection and security, and the free transfer of capital. Very importantly, the Agreement includes an investor-state dispute settlement mechanism, which applies to breaches of the core investment protections and breaches of an investment agreement or authorization. Investor-state dispute settlement for breaches of investment agreements existing on the date of entry into force of the Agreement will continue to be provided by the existing U.S.-Panama Bilateral Investment Treaty (BIT). For other claims that arise under the existing BIT, investors will have 10 years to submit such claims, after which claims will need to be brought under the Trade Promotion Agreement.

## **Intellectual Property Rights Chapter**

While the Panama TPA falls short of the three Free Trade Agreements signed by the U.S. with the Middle Eastern countries (the U.S.-Morocco FTA, which entered into force on January 1, 2006; the U.S.-Bahrain FTA, which entered into force on August 1, 2006; and the U.S.-Oman FTA, which was signed by both parties on January 19, 2006, and has yet to enter into force), the provisions are virtually identical to the U.S.-Peru TPA and U.S.-Colombia TPA. ITAC 8 believes the Agreement, as currently drafted, meets most of the negotiating goals and objectives contained in the Trade Act of 2002 and those of the U.S. intellectual property-based industries, creators and innovators.

ITAC 8 takes note of the discussions currently underway between the Administration and the Congress on certain provisions in the sections of the Agreement on Patents and Measures Related to Certain Regulated Products and that, as a result of these discussions, a number of provisions in those sections of the intellectual property chapter may change after the deadline for submission of this report. These substantive changes could go beyond the changes that have been negotiated in some past FTAs and TPAs during the "legal scrub process." The changes in the Agreement, should they occur, could be significant enough for some members of ITAC 8 to reconsider their current support for the intellectual property chapter of the Agreement. In this regard, ITAC 8 understands that an opportunity will be provided to all ITACs to file addenda to their reports in which they will be able to comment on any changes made to the text of the Agreement after expiration of the thirty day advisory committee comment period.

## **VI. Membership of the Committee**

1. Mr. Steven W. Stewart (Chairman) IBM Corporation
2. Ms. B. Anne Craib (Vice-Chairman) Semiconductor Industry Association
3. Mr. Robert J. Mulligan (Vice-Chairman) American Electronics Association
4. Mr. Arun K. Bhumitra Arjay Telecommunications
5. Mr. Mark F. Bohannon, Esq. Software and Information Industry Association
6. Mr. Anthony Caldwell XSelData
7. Ms. Susan D. Chapman General Motors Corporation
8. Mr. Calman J. Cohen Emergency Committee for American Trade
9. Mr. Tod H. Cohen, Esq. eBay Inc.
10. Ms. Holly A. Evans, Esq. Advanced Micro Devices
11. Mr. Mark E. Foster, Esq. Transaction Network Services, Inc.
12. Ms. Meredith L. Golemon-Anderson Oracle Corporation
13. Mr. John P. Goyer Coalition of Service Industries
14. Mr. Christopher G. Hankin Sun Microsystems, Inc.
15. Ms. Tania W. Hanna Harris Corporation
16. Mr. Christopher J. Hirth Intuit, Inc.
17. Ms. Elizabeth A. Hyman, Esq. Consumer Electronics Association
18. Mr. John D. Kania IPC - Association Connecting Electronics Industries
19. Mr. David M. Leifer, Esq. American Council of Life Insurers
20. Mr. Charles B. O'Hara Procter and Gamble Company
21. Ms. Wendy E. Owens AbleMedia, LLC
22. Mr. Daniel J. Peterson Cook Group, Inc.
23. Mr. David K. Rensin Reality Mobile LLC
24. Ms. Jacquelynn Ruff, Esq. Verizon Communications, Inc.
25. Ms. Laura S. Sallstrom Dell, Inc.
26. Ms. Loretta Schmitzer The Boeing Company