

REPORT ON THE U.S. EMPLOYMENT IMPACT OF THE UNITED STATES–PANAMA TRADE PROMOTION AGREEMENT

Pursuant to section 2102(c)(5) of the Trade Act of 2002, the United States Trade Representative, in consultation with the Secretary of Labor, provides the following Report on the U.S. Employment Impact of the United States–Panama Trade Promotion Agreement. The report was prepared by the U.S. Department of Labor.

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Executive Summary

This employment impact report was prepared pursuant to section 2102(c)(5) of the Trade Act of 2002. Section 2102(c)(5) requires the President to review and report to the Congress on the impact of future trade agreements on U.S. employment and labor markets. This report describes the relevant provisions of the United States–Panama Trade Promotion Agreement (TPA), including a summary of the labor provisions of the TPA, and assesses the potential employment effects of the TPA.

The major finding of this report is that the TPA is not expected to have a measurable effect on employment in the United States. This finding is attributable to: (i) the very small size of Panama’s economy relative to the United States; (ii) the very small volume of bilateral trade between the two countries; (iii) the fact that over 98 percent of all U.S. imports from Panama already enter the United States duty-free; (iv) provisions in the TPA for the gradual removal of U.S. tariffs on import-sensitive goods from Panama over an extended period; and (v) safeguards contained in the TPA to attenuate the effects of certain increases in imports.

I. Introduction: Overview of the U.S. Employment Impact Report

A. Scope, Outline, and Data Sources of the Report

This employment impact report provides background and context for the United States–Panama Trade Promotion Agreement (TPA), including the bilateral economic setting, current barriers to bilateral trade, and the major elements of the TPA (found in Part II). The report then considers the potential employment effects of the TPA on the United States (Part III). Finally, the report briefly describes the Labor Chapter of the TPA (Part IV). All of the referenced data tables appear at the end of this report.

Unless otherwise specified, the value of U.S. imports and exports used in this report are based on compilations of official statistics gathered by the U.S. Department of Commerce. They are extracted from the U.S. International Trade Commission’s (USITC) Interactive Tariff and Trade Dataweb.¹

B. Legislative Mandate

This report on the U.S. employment impact of the TPA is prepared pursuant to section 2102(c)(5) of the Trade Act of 2002 (“Trade Act”) (Pub. L. No. 107-210). Section 2102(c)(5) provides that the President shall review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria. The report is prepared for the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate and is made available to the public.

The President, by Executive Order 13277 (67 Fed. Reg. 70305 (Nov. 21, 2002)), assigned the responsibility for conducting reviews under section 2102(c)(5) to the United States Trade Representative (USTR). USTR delegated its responsibility to the Secretary of Labor with the requirement that reviews be coordinated through the Trade Policy Staff Committee (67 Fed. Reg. 71606 (Dec. 2, 2002)).

The employment impact report is modeled, to the extent appropriate, on the environmental review of trade agreements mandated by Executive Order 13141 (64 Fed. Reg. 63169 (Nov. 18, 1999)). The guidelines developed for the implementation of that order have been adapted for use in this employment impact report.

¹ The USITC Interactive Tariff and Trade Dataweb is available at <http://dataweb.usitc.gov/>. All trade data are in nominal (current dollar) terms. The value of U.S. imports is the customs value (the appraised value of the merchandise, exclusive of import duties, freight, insurance, and other charges incurred in placing the merchandise alongside the carrier at the port of exportation) of U.S. merchandise imports for consumption (the amount that immediately enters U.S. consumption channels, but not bonded warehouses or Foreign Trade Zones). The value of U.S. exports is the free alongside ship (FAS) value of domestic U.S. merchandise exports (goods that are grown, mined, produced, or manufactured in the United States and sent to foreign countries).

C. Public Outreach and Comments

1. Responses to Federal Register Notice

The U.S. Department of Labor (USDOL) and USTR jointly published a notice in the *Federal Register* on April 20, 2004. The notice announced the initiation of the review that resulted in this report. It requested written comments from the public on potentially significant sectoral or regional employment impacts (both positive and negative) of the TPA in the United States. The public was invited to comment also on other likely labor market effects of the TPA.²

Two submissions were received in response to the notice.

- The American Dehydrated Onion and Garlic Association (ADOGA) opposed granting Panama permanent duty-free access to U.S. markets for dehydrated onion and garlic. Panama currently has duty-free access for these products under the Caribbean Basin Economic Recovery Act (CBERA), a unilateral U.S. trade preference program. The ADOGA contends that the U.S. dehydrated onion and garlic industry will be harmed if Panama does not provide these products with immediate duty-free access to its market. Panamanian duties on these products will be eliminated immediately when the TPA enters into force.
- The American Sugar Alliance (ASA) urged that the impact of granting increased market access for sugar from Panama under the TPA be considered in the context of market access commitments made with the Central American countries and the Dominican Republic. The ASA believes that combined these commitments pose a major threat to the U.S. sugar industry and threaten the livelihood of the more than 146,000 workers employed directly or indirectly by the U.S. sugar industry.

2. Reports of the Labor Advisory Committee for Trade Negotiations and Trade Policy and Other Advisory Committees

Section 2104(e) of the Trade Act requires that advisory committees provide the President, USTR, and Congress with reports 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. All of the advisory committee reports were submitted by April 25, 2007, and are available on the USTR Web site.³

The Advisory Committee on Trade Policy and Negotiations (ACTPN) and nearly all of the other trade advisory committees expressed the view that the TPA is in the economic interest of the United States and stated their support for it. The ACTPN found the TPA

² See 69 Fed. Reg. 21177 (Apr. 20, 2004).

³ See <http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/advisory-group-reports-panama-trade-promotion-agre>.

“to be strongly in the best economic interest of the United States” and that it “should be enacted into law as soon as possible.”

The Labor Advisory Committee for Trade Negotiations and Trade Policy (LAC) argued that the agreement would not promote the economic interests of the United States. The LAC also found that it would not protect the fundamental human rights of workers in either country. They asserted that provisions in the TPA represent a step backwards from the unilateral trade preference programs – the Generalized System of Preferences (GSP) and the CBERA – that currently apply to Panama. The LAC expressed concerns that the TPA’s labor provisions only commit the Parties to enforce their own labor laws. The LAC argued that the TPA’s dispute resolution procedures provide for capped penalties lower than those for other violations of the TPA, with little punitive or deterrent effect for violations of the Labor Chapter. Regarding these concerns, it is important to note that the Labor Chapter and dispute resolution procedures were subsequently modified in May 2007.⁴

The LAC also expressed concerns about the TPA’s rules of origin and safeguard provisions, which, in their view, fail to adequately protect workers from import surges that may result. They expressed further concerns that the TPA’s provisions on investment, government procurement, and services could constrain the ability of both governments to regulate in the public interest and to provide public services.

II. Background and Contents of the TPA

A. Bilateral Economic Setting

1. Population and the Economy

Panama’s population in 2009 was 3.5 million, approximately 1.1 percent of that of the United States.⁵ It has a land area slightly smaller than the State of South Carolina. Panama’s GDP was \$24.7 billion in 2009, approximately 0.2 percent that of the U.S. gross domestic product (GDP) of \$14.1 trillion. Panama’s gross national income (GNI) per capita was \$6,570, approximately 14.2 percent that of U.S. per capita GNI of \$46,360. Unlike most Latin American countries, Panama’s economy is predominately based on services. These account for more than three-quarters of its GDP.

⁴ Relative to trade agreements approved prior to May 2007, the obligations of the Labor Chapter have been strengthened in two ways. First, the Parties commit to adopt and maintain, and to enforce in practice, labor laws that protect the fundamental rights stated in the 1998 *International Labor Organization (ILO) Declaration on Fundamental Principles and Rights at Work and its Follow-up*. In trade agreements prior to May 2007, and the Labor Chapter as originally negotiated in the TPA, the obligation was to strive to enforce existing national labor laws and internationally recognized labor rights. Second, disputes arising under the Labor Chapter will be handled according to the same procedures as commercial disputes arising under other chapters, rather than according to procedures specific to labor disputes.

⁵ The data in this section are from the World Bank’s World Development Indicators. The World Development Indicators database is available online at <http://data.worldbank.org/indicator>. GDP figures are in current U.S. dollars. GNI per capita figures are in current U.S. dollars and use the Atlas Method.

2. *Labor Force*

a. U.S. Labor Force

In 2010, the U.S. civilian labor force totaled 153.9 million workers.⁶ The U.S. civilian labor force consists of employed and unemployed persons in the civilian non-institutional population age 16 and older.

A total of 139.1 million workers were employed in the United States in 2010.⁷ Employment was distributed across activities as follows: 1.6 percent in agriculture, 17.2 percent in industry, and 81.2 percent in services.⁸ The unemployment rate in the United States was 9.6 percent. Persons are classified as unemployed if they had no employment during the reference week, had actively looked for work in the prior four weeks, and are currently available for work.

b. Panama's Labor Force

In 2010, Panama's labor force consisted of approximately 1.6 million workers.⁹ The Panamanian labor force consists of employed and unemployed persons in the civilian non-institutional population who are age 15 and older.

A total of 1.5 million were employed in Panama in 2010. Employment was distributed across activities as follows: 17 percent in agriculture, 18 percent in industry, and 64 percent in services.¹⁰ In Panama, the official definition of unemployment is broader than in the United States. The unemployed in Panama include those without work but actively looking (as in the United States), and also those without work who have given up looking for work because they believe no work is available (unlike the United States). By Panama's definition, its unemployment rate was 6.5 percent in 2010. Panama's "open unemployment rate" is defined more similarly to the unemployment rate in the United States. It was 4.7 percent in 2010.

⁶ All data on the U.S. labor force are annual averages based on the Current Population Survey. They are available on the Bureau of Labor Statistics' Web site at <http://www.bls.gov/cps/>.

⁷ Employment and unemployment data refer to the civilian labor force.

⁸ Percent of total employment in agriculture, industry, and services is the terminology used in most databases with cross-country coverage. Industry includes mining, manufacturing, and construction. U.S. employment data broken out by activity (i.e., services, industry, and agriculture) are classified according to the North American Industrial Classification System (NAICS) in the Current Population Survey. Therefore, they are not strictly comparable with other countries' data.

⁹ Unless noted otherwise, the labor force statistics presented in this section come from the Republic of Panama Office of Statistics and Census publication *Situacion Social: Estadisticas del Trabajo Volumen 1: Agosto de 2010*. Available online (in Spanish) at <http://www.contraloria.gob.pa/inec/cuadros.aspx?ID=050331>. Labor force information represents the weekly average of estimates for August 2010.

¹⁰ USDOL's calculation using employment figures reported in *Situacion Social: Estadisticas del Trabajo Volumen 1: Agosto de 2010*.

3. *International Merchandise Trade*

a. Global Merchandise Trade

Based on available statistics from the WTO, total U.S. merchandise trade with the world amounted to \$2.7 trillion (\$1.1 trillion in merchandise exports and \$1.6 trillion in merchandise imports) in 2009.¹¹ The United States was the world's third largest merchandise exporter (behind China and Germany) and the number one merchandise importer. The United States' primary export partners were the European Union, Canada, Mexico, and China. Its primary import partners were China, the European Union, Canada, and Mexico.

Panama's total merchandise trade with the world amounted to \$8.7 billion (\$948 million in merchandise exports and \$7.8 billion in merchandise imports) in 2009. Panama was ranked the 143rd largest merchandise exporter and the 92nd largest merchandise importer in the world. Panama's major exports included bananas, shrimp, sugar, coffee, and clothing. Its major imports included capital goods, foodstuffs, consumer goods, and chemicals.¹² Panama's primary export partners were the United States, the European Union, and Costa Rica. Its primary import partners were the United States, the European Union, Costa Rica, Mexico, and China.

b. Bilateral Merchandise Trade

U.S. bilateral merchandise trade with Panama represents a very small share of total U.S. merchandise trade.¹³ U.S. merchandise exports to Panama amounted to \$5.7 billion in 2010. These accounted for 0.5 percent of all U.S. merchandise exports to the world. Panama ranked as the 36th largest U.S. merchandise export market. U.S. merchandise imports from Panama amounted to \$376.1 million. These accounted for 0.02 percent of all U.S. merchandise imports from the world. Panama ranked as the 93rd largest source for U.S. merchandise imports.

4. *International Trade in Services*

The United States was the world's number one commercial services exporter (\$476.0 billion) and number one commercial services importer (\$334.3 billion) in 2009, based on data from the WTO.¹⁴ By comparison, Panama's exports of commercial services to the

¹¹ Unless otherwise noted, data for this and the next paragraph are from the WTO and are based on total merchandise trade. WTO Trade Profiles (March 2011) by country are available at <http://stat.wto.org/CountryProfile/WSDBCountryPFHome.aspx?Language=E>. Numbers may not add to totals due to rounding.

¹² See CIA World Fact Book profile for Panama. Available online at: <https://www.cia.gov/library/publications/the-world-factbook/geos/pm.html>.

¹³ As noted in section I.A of this report, trade data, unless otherwise noted, are from the USITC Dataweb. All trade data are in nominal (current dollar) terms. Imports are the customs value of imports for consumption. Exports are the FAS value of domestic exports.

¹⁴ WTO statistics and rankings refer to commercial services, which exclude trade in government services not included elsewhere. See WTO Trade Profiles (March 2011).

world amounted to \$5.5 billion (ranked 61st) and its imports of commercial services from the world totaled \$2.1 billion (ranked 91st). Panama's services exports were more than five times larger than their merchandise exports (\$948 million). Most of Panama's total exports consisted of exports of services related to the Panama Canal, in particular, transportation through the Panama Canal.

The United States does not keep statistics on bilateral services trade with Panama.

5. *Foreign Direct Investment*

U.S. foreign direct investment (FDI) in Panama was \$7.8 billion (on a historical-cost basis) in 2009, up from \$6.2 billion in 2008. Panamanian FDI in the United States was \$1.0 billion (on a historical-cost basis) in 2009 up from \$822 million in 2008.¹⁵

In 2009, Panama's inward stock of FDI was estimated to be \$18.7 billion and its outward stock of FDI was estimated to be \$29.2 billion.¹⁶

6. *Summary and Conclusions*

Panama's population, economy, and labor force are substantially smaller than those of the United States. The United States exports significantly more merchandise to Panama than it imports from the country (\$5.7 billion compared to \$376.1 million). Panama ranks 36th as a destination for U.S. exports and 93rd as a source for U.S. merchandise imports. The small size of the Panamanian economy relative to that of the United States and the dominance of other partners in U.S. trade greatly limit the effect that the TPA can have on aggregate levels of U.S. employment.

B. Barriers to Bilateral Trade Prior to the TPA

1. Merchandise Trade

The United States and Panama are members of the WTO. WTO members are obligated to accord "most favored nation/normal trade relations" (MFN/NTR)¹⁷ tariff treatment to the goods of other WTO members. Under MFN, with certain exceptions, if a tariff is applied to a good from one Member country, the same tariff must be applied to the same good from all member countries.¹⁸

¹⁵ Bureau of Economic Analysis, *Survey of Current Business* (Sept. 2010), pp. 70-71 and 105-106. Available online at <http://www.bea.gov/scb/toc/0910cont.htm>. This source defines foreign direct investment position in the United States as the value of foreign direct investors' equity in, and net outstanding loans to, their U.S. affiliates. The position may be viewed as the foreign direct investors' net financial claim on their U.S. affiliates whether in the form of equity or debt.

¹⁶ See United Nations Conference on Trade and Development, *World Investment Report 2010 Country Fact Sheets*. Available online at <http://www.unctad.org/Templates/Page.asp?intItemID=2441&lang=1>.

¹⁷ U.S. law uses the term "normal trade relations" (NTR) instead of the term "most favored nation" (MFN) to describe the principle of nondiscriminatory treatment of trading partners. The WTO uses the term MFN.

¹⁸ Among the allowable exceptions to MFN are bilateral free trade agreements. Any removal of tariffs agreed between the United States and Panama in the TPA does not have to be extended to other countries.

According to the WTO, Panama's simple average MFN applied tariff rate was 7.1 percent for all products in 2009.¹⁹ The average was 13.4 percent for agricultural products (based on the WTO definition) and 6.2 percent for non-agricultural products. In addition to tariffs, many imports are subject to a five percent transfer tax.²⁰ Foods, feeds, pharmaceuticals, goods to be re-exported, and transactions in any free trade zone are exempt from the transfer tax. Special import licenses are required in a select set of circumstances.

The United States maintains a transparent and largely open trade regime, although it maintains some non-tariff barriers to trade. According to the WTO, the United States' simple average MFN applied tariff rate was 3.5 percent for all products in 2009.²¹ The average was 4.7 percent for agricultural products (based on the WTO definition) and 3.3 percent for non-agricultural goods. The WTO Secretariat recently noted that "the U.S. trade and investment regimes are among the most open in the world, and have remained so throughout the period under review."²² Most imports either enter the United States duty-free or at low tariffs, although the United States maintains some relatively high tariffs on sensitive products, including tobacco, certain dairy products, sugar, textiles and apparel, and footwear.²³

2. Trade in Services

In general, Panama maintains an open regulatory environment for services.²⁴ However, access to certain professional services is reserved exclusively to Panamanian nationals. Panama maintains an open investment regime and is generally receptive to foreign investment. Alleged corruption and other issues in the Panamanian judicial system create uncertainty for investors.

The U.S. services and investment regimes are generally open, with some exceptions.²⁵ For example, in the maritime sector, cabotage laws reserve domestic routes to U.S.

See Paul R. Krugman and Maurice Obstfeld, *International Economics* (Boston, MA: Addison-Wesley, 2009), p. 239. See also WTO, *Principles of the Trading System*, available online at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm#nondiscrimination.

¹⁹ Averages are simple averages of MFN applied tariffs. See WTO Tariff Profile for Panama. Available online at <http://stat.wto.org/TariffProfile/WSDBTariffPFHome.aspx?Language=E>.

²⁰ Unless otherwise noted, the discussion on Panama is based upon *2010 National Trade Estimate Report on Foreign Trade Barriers: Panama* (Office of the U.S. Trade Representative, 2010). Available online at http://www.ustr.gov/sites/default/files/uploads/reports/2010/NTE/2010_NTE_Panama_final.pdf

²¹ Averages are simple averages of MFN applied tariffs. See WTO Trade Profile for the United States, available online at <http://stat.wto.org/CountryProfile/WSDBCcountryPFHome.aspx?Language=E>.

²² World Trade Organization, *Trade Policy Review United States, Report by the Secretariat*, WT/TPR/S/235 (Geneva, August 2010), paragraph 1, p. vii. Available online at http://www.wto.org/english/tratop_e/tpr_e/tp335_e.htm.

²³ World Trade Organization, *Trade Policy Review United States, Report by the Secretariat*, WT/TPR/S/235 (Geneva, August 2010), paragraph 32, p. 26.

²⁴ The discussion on Panama is based on *2010 National Trade Estimate Report on Foreign Trade Barriers: Panama* (Office of the U.S. Trade Representative, 2010).

²⁵ See World Trade Organization, *Trade Policy Review United States, Report by the Secretariat*, WT/TPR/S/160 (Geneva, June 2008).

operators and provide government support for U.S.-flag vessels. Similarly, the United States restricts foreign ownership and control of U.S. air transport carriers, and the provision of domestic air service is restricted to U.S. carriers.

C. Major Elements of the TPA

The TPA consists of a Preamble, 22 chapters and associated annexes, and letters. The chapters are: Initial Provisions; General Definitions; National Treatment and Market Access for Goods; Rules of Origin and Origin Procedures; Customs Administration and Trade Facilitation; Sanitary and Phytosanitary Measures; Technical Barriers to Trade; Trade Remedies; Government Procurement; Investment; Cross-Border Trade in Services; Financial Services; Telecommunications; Electronic Commerce; Intellectual Property Rights; Labor; Environment; Transparency; Administration of the Agreement and Trade Capacity Building; Dispute Settlement; Exceptions; and Final Provisions. There are three annexes to the agreement that include non-conforming measures in services, investment, and financial services. The complete text of the TPA is available on USTR's Web site.²⁶

III. Potential Employment Effects of the TPA

The major finding of this report is that the TPA is not expected to have a measurable effect on employment in the United States.

The USITC is required by Congress to report on the potential economic impact of a TPA.²⁷ While its analysis usually includes a quantitative assessment of economy-wide effects, in this case the USITC found that there was not sufficient information to produce meaningful estimates. As such, detailed estimates of impacts on U.S. GDP, output, and employment were not included in their report. Citing factors similar to those presented in this report, the main finding of the USITC report is that the TPA “may have a small, positive impact on the U.S. economy.”²⁸ A search of the broader economic literature failed to reveal any quantitative economic impact assessments or modeling efforts regarding the TPA.

While the potential impacts of the TPA have not been be quantified, the remainder of Part III presents some qualitative observations that suggest minimal impacts on labor markets. One is that nearly all U.S. imports from Panama already enter the United States duty-free. Another is that the price paid by Panamanian consumers for U.S. goods will likely fall more than the price paid by U.S. consumers for Panamanian goods. Finally, should there be adverse short-term impacts, the TPA contains provisions meant to mitigate or correct those impacts over time.

²⁶ See <http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/final-text>.

²⁷ United States International Trade Commission. *U.S. – Panama Trade Promotion Agreement: Potential Economy-wide and Selected Sectoral Effects*. Investigation No.TA-2104-025. September 2007. Available online at <http://www.usitc.gov/publications/332/pub3948.pdf>.

²⁸ USITC, p. xv. The factors cited are “the small size of Panama’s economy relative to that of the United States, Panama’s small share of U.S. trade (about 0.1 percent of total U.S. goods trade in 2006), and the duty-free access that most Panamanian products already receive in the U.S. market.”

A. The Current Volume and Industrial Structure of U.S.–Panama Trade

U.S. merchandise exports to Panama represent a small share of all U.S. merchandise exports. Over the past five years, Panama’s share of total U.S. merchandise exports has increased from 0.3 percent in 2006 to 0.5 percent in 2010. In 2010, U.S. merchandise exports to Panama amounted to \$5.7 billion. They have been concentrated primarily in a few industrial subsectors (based on the North America Industrial Classification System, NAICS), all within the manufacturing sector: petroleum and coal products; transportation equipment; chemicals; machinery, except electrical; and computer and electronic products (see Table III.1).²⁹

U.S. merchandise imports from Panama represent a very small share of all U.S. merchandise imports. Over the past five years, Panama’s small share of all U.S. merchandise imports has remained constant, accounting for just 0.02 percent of all U.S. merchandise imports from the world. In 2010, U.S. merchandise imports from Panama amounted to \$376.1 million. They have been concentrated in the following NAICS-based subsectors: U.S. goods returned and re-imported items; fresh, chilled, or frozen fish and other marine products; waste and scrap; agricultural products; primary metal manufacturing; and food and kindred products (see Table III.2).

Many goods from Panama have long been granted reduced duties or duty-free entry to the United States through MFN treatment or under unilateral U.S. trade preference programs,³⁰ including the Caribbean Basin Initiative (CBI)³¹ and the GSP.³² In 2010, 98.2 percent of all U.S. merchandise imports from Panama entered the United States duty-free, while the remaining 1.8 percent was subject to an average 3.5 percent rate of duty. On a NAICS subsector basis:

²⁹ For the purposes of relating foreign trade statistics to U.S. industrial output and employment, the Bureau of the Census has mapped 10-digit Harmonized Tariff Schedule of the United States (HTS) numbers used for U.S. exports and import statistics to their closest NAICS-based code. Some categories of traded items have no direct domestic counterpart. NAICS-based 91000-99000 categories were created to classify such goods. For example, NAICS 99000—Special Classification Provisions, not otherwise specified or included, contains primarily imports and exports of low-value shipments not specified by kind, exposed film and prerecorded tapes, articles imported for repairs, returned goods, and articles donated to charity.

³⁰ The subsequent list omits the Agreement on Trade in Civil Aircraft. In 2010, \$22,908 of imports from Panama entered duty-free under this Agreement.

³¹ Initially launched in 1983, through the CBERA, and substantially expanded in 2000 through the U.S.–Caribbean Basin Trade Partnership Act (CBTPA), the CBI currently provides beneficiary countries with duty-free access to the U.S. market for most goods. For more information see: <http://www.ustr.gov/trade-topics/trade-development/preference-programs/caribbean-basin-initiative-cbi>.

³² The U.S. GSP is a program designed to promote economic growth in the developing world by providing preferential duty-free entry for about 4,800 products from 131 designated beneficiary countries and territories. The GSP program expired on December 31, 2010. For more information see <http://www.ustr.gov/trade-topics/trade-development/preference-programs/generalized-system-preference-gsp>.

- \$330.6 million of U.S. merchandise imports from Panama entered duty-free under MFN duty-free or under special temporary rate provisions. These accounted for 87.9 percent of all U.S. imports from Panama. Duty-free imports under these provisions consisted primarily of U.S. goods returned and re-imported items (39 percent); fresh, chilled, or frozen fish and other marine products (26 percent); waste and scrap (11 percent); primary metal manufacturing (8 percent); and agricultural products (6 percent).
- \$28.4 million of U.S. merchandise imports from Panama entered duty-free under the provisions of the CBI. These accounted for 7.6 percent of all U.S. imports from Panama. CBI-duty-free imports consisted primarily of food and kindred products (41 percent); agricultural products (37 percent); primary metal manufacturing (8 percent); and beverages and tobacco products (8 percent).
- \$10.2 million of U.S. merchandise imports from Panama entered duty-free under the provisions of the GSP program. These accounted for 2.7 percent of all U.S. imports from Panama. GSP-duty-free imports consisted primarily of food and kindred products (75 percent); agricultural products (8 percent); and wood products (6 percent).

About \$6.9 million – or 1.8 percent – of all U.S. merchandise imports from Panama incurred duties. At the average 3.5 percent ad valorem tariff rate, estimated total duties were \$238,644.

In 2010, U.S. imports from Panama in the following NAICS-based subsectors faced averages of duties of six percent or higher on goods subject to duty (see Table III.3):

- apparel and accessories (average rate of duty on dutiable goods, 15.9 percent);
- leather and allied products (11.2 percent);
- textile mill products (7.1 percent);
- textiles and fabrics (6.1 percent);
- fresh, chilled, or frozen fish and other marine products (6.0 percent); and
- food and kindred products (6.0 percent).

Considering individual goods,³³ the ten leading U.S. merchandise imports accounted for 75.7 percent of all U.S. merchandise imports from Panama. Each of the ten leading imports received duty-free treatment. Eight of the ten leading imports – U.S. goods returned; gold waste and scrap; shrimps and prawns; nonmonetary gold bullion and dore; smelts, cusk, and hake; other fresh or chilled fish, swordfish steaks, and other swordfish; fresh or dried bananas; and frozen fillets of fresh-water fish – received MFN duty-free treatment. One good – raw sugar cane – received duty-free treatment for certain volumes of raw sugar within a tariff rate quota under both the GSP and CBI. The final good – fresh or dried pineapples – received duty-free treatment under the CBI.

³³ This paragraph examines imports on an eight-digit HTS tariff line basis.

B. The Potential Effects of Removing Current Barriers to Trade

The immediate effects of the TPA will come from the removal of tariffs on bilateral merchandise trade and the provision of expanded market access (through preferential tariff rate quotas) on specific sensitive goods (mainly agricultural items).

Recall that in 2009, Panama's average applied import tariff was 7.1 percent. In contrast, the U.S. average applied tariff was just 3.5 percent.³⁴ Tariff rates on specific items are designated at the tariff line level. Prior to the TPA, 37 percent of U.S. tariff lines and 30 percent of Panamanian tariff lines were MFN duty-free. When the TPA enters into force, an additional 60 percent of U.S. tariff lines and 45 percent of Panamanian tariff lines will be duty-free immediately.³⁵ Duties on other goods will be phased out over varying transition periods. The Panamanian tariff commitments represent increased duty-free access for U.S. exporters. The U.S. tariff commitments under the TPA largely make permanent duty-free benefits already afforded to Panama under the CBI and the GSP. Currently GSP benefits and certain benefits under CBI, including those for textiles, are subject to periodic expiration and legislative renewal.

For these reasons, the simultaneous removal of barriers by each of the Parties will likely mean that the price paid by Panamanian consumers of U.S. goods will fall more than the price paid by U.S. consumers of Panamanian goods. Accordingly, it is reasonable to expect that the lowering of the barriers through the TPA will have a greater positive effect on U.S. exports to Panama than on Panamanian exports to the United States.

The TPA will also require Panama to further open its services market to U.S. service providers.³⁶ Under the TPA, Panama commits to provide substantial market access across its entire services regime, including financial services. Panama will provide improved access in sectors including express delivery and grant new access in professional services that previously had been reserved exclusively to Panamanian nationals. Panama will allow Panamanian mutual funds and pension funds to obtain certain management services and advice from U.S. financial institutions. Because the U.S. services market is already very open (see section II.B.2 of this report), the TPA will likely not have as much of an effect on U.S. imports of services from Panama.

Under the TPA, Panama commits to open its government procurement market, including the Panama Canal, to U.S. goods, services and suppliers and to follow procedures that will ensure that its procurements are transparent, predictable, and fair. Panama is an observer to the WTO Government Procurement Agreement, but not a party to the Agreement.³⁷

³⁴ See WTO Tariff Profiles for Panama and the United States, available online at: <http://stat.wto.org/TariffProfile/WSDBTariffPFHome.aspx?Language=E>

³⁵ The figures presented include both agricultural tariff lines and industrial and textile tariff lines. For a more detailed discussion of the tariff staging commitments of the TPA, see USITC (2007) Tables 2.1 and 2.2. Available online at <http://www.usitc.gov/publications/332/pub3948.pdf>.

³⁶ The discussion in this paragraph and the following two paragraphs is based upon *2010 National Trade Estimate Report on Foreign Trade Barriers: Panama* (Office of the U.S. Trade Representative, 2010).

³⁷ See http://www.wto.org/english/tratop_e/gproc_e/memobs_e.htm#parties.

In the longer term, the TPA may also lead to increased FDI between Panama and the United States. The TPA creates a more stable legal framework for investors. All forms of investment are protected under the agreement. The United States already affords equal treatment to non-U.S. investors. U.S. investors in Panama will newly enjoy the right to establish, acquire, and operate investments on an equal footing with local investors in almost all sectors.

C. Features in the TPA to Ease the Adjustment Process

This section discusses features in the TPA that affect the extent and speed of adjustments that may follow from increased bilateral trade between the United States and Panama.

The TPA contains a general safeguard mechanism to address potential increases in imports that cause serious injury to a domestic industry, as well as special agricultural and textile safeguard mechanisms. For example, if, as the result of the reduction or elimination of a customs duty under the TPA, an originating good of the other Party is imported into the territory of a Party in such increased quantities as to be a substantial cause or threat of serious injury to a domestic industry producing a like or directly competitive product, during a transition period beginning after entry into force,³⁸ the Trade Remedies Chapter (Chapter 8) allows the importing Party to:

- Suspend the further reduction of the rate of customs duty provided for that good under the TPA; or
- Increase the rate of customs duty on the good to a level not to exceed the lesser of the MFN applied rate of duty on the good in effect at the time the action is taken or the MFN applied rate of duty on the good in effect on the day immediately preceding the date of entry into force of the TPA.

A safeguard action may be in place for up to four years, but must terminate at the end of the transition period. Neither Party may impose a bilateral safeguard measure more than once on the same good. The Party taking the action must provide appropriate trade liberalizing compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties expected to result from the measure. Each Party retains its rights and obligations for global safeguard actions under Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

Products benefiting from preferential treatment under the TPA must originate in Panama or the United States. Final products from other countries are ineligible for preferential treatment under the TPA. The TPA contains strict rules of origin, including requirements that specify that items from outside the two countries must undergo substantial transformation within the United States or Panama to be eligible for benefits under the TPA.

³⁸ The transition period is ten years, except that for any good for which a Party will eliminate tariffs over a period of more than ten years, the transition period is the tariff elimination period.

Finally, some goods traded between the countries will not become duty-free immediately. The TPA specifies that tariffs on sensitive goods will be phased out over transition periods that range from two to seventeen years (see also Section III.B of this report).

IV. The Labor Chapter of the TPA

The Labor Chapter of the TPA³⁹ contains provisions that support protection of labor rights and enforcement of labor laws, thereby helping to preserve a level playing field for American workers. It satisfies the relevant provisions of the Trade Act of 2002 and reflects the May 10, 2007, Congressional-Executive Agreement on Trade.

Article 16.1 of the Chapter reaffirms the Parties' obligations as members of the International Labor Organization (ILO). Article 16.2.1 commits each Party to "adopt and maintain in its statutes and regulations, and practices thereunder," fundamental labor rights as stated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work,⁴⁰ and includes a prohibition on the worst forms of child labor.⁴¹ Article 16.2.2 further provides that "neither Party shall waive or otherwise derogate from, or offer to waive or otherwise derogate from, its statutes or regulations implementing" the obligation in Article 16.2.1 "in a manner affecting trade or investment between the Parties." Article 16.3 states that "a Party shall not fail to effectively enforce its labor laws,⁴² including those it adopts or maintains in accordance with Article 16.2.1, through a sustained or recurring course of action or inaction, in a manner affecting trade or investment between the Parties." Article 16.4 obligates each Party to provide procedural guarantees for enforcement of its labor laws, including access to labor tribunals, proceedings that are transparent and comply with due process of law, and remedies to ensure enforcement of labor laws.

All obligations in the Chapter are subject to the same dispute settlement procedures and enforcement mechanisms as commercial obligations in the TPA. The Chapter also

³⁹ Full text available from <http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/final-text>.

⁴⁰ The ILO Declaration states that all ILO members have an obligation "to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions, namely: (a) freedom of association and the effective recognition of the right to collective bargaining; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation." See <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/com-dtxt.htm>.

⁴¹ Establishing a Party's violation of Article 16.2.1 requires demonstration that the Party "has failed to adopt or maintain a statute, regulation, or practice in a manner affecting trade or investment between the parties [to the agreement]."

⁴² Article 19.8 defines "labor laws" for the purposes of the Agreement as "a Party's statutes and regulations, or provisions thereof, that are directly related to the following internationally recognized labor rights: (a) freedom of association; (b) the effective recognition of the right to collective bargaining; (c) the elimination of all forms of forced or compulsory labor; (d) the effective abolition of child labor, a prohibition on the worst forms of child labor, and other labor protections for children and minors; (e) the elimination of discrimination in respect of employment and occupation; and (f) acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health."

establishes a labor cooperation and capacity building mechanism to improve labor standards and advance common commitments regarding labor matters.

Tables

Table III.1: U.S. Exports to Panama by NAICS-based Sector and Subsector, 2006-2010

NAICS-based U.S. Export Sector and Subsector	Value of U.S. Exports to Panama (millions of dollars)					Percent of	
	2006	2007	2008	2009	2010	Total U.S. Sector Exports in 2010	All U.S. Exports to Panama in 2010
Total U.S. Exports to Panama	2,523.6	3,492.4	4,614.6	4,063.2	5,708.1	0.5	100
11—Agriculture and Livestock Products	87.7	136.2	184.7	145.7	170.6	0.3	3.0
111—Agricultural Products.....	82.0	130.1	177.5	137.4	162.8	0.3	2.9
112—Livestock and Livestock Products.....	3.7	4.1	4.7	5.7	5.4	0.3	0.1
113—Forestry Products.....	0.9	0.5	0.3	0.4	0.6	(¹)	(¹)
114—Fresh, Chilled, or Frozen Fish and Other Marine Products.....	1.2	1.4	2.2	2.2	1.8	(¹)	(¹)
21—Oil, Gas, Minerals and Ores	5.3	9.6	18.1	5.4	5.1	(¹)	0.1
211—Oil and Gas.....	1.0	8.0	8.4	3.2	0.1	(¹)	(¹)
212—Minerals and Ores.....	4.3	1.6	9.7	2.2	5.1	(¹)	0.1
31-33—Manufacturing	2,311.6	3,182.0	4,166.0	3,695.0	5,227.6	0.5	91.6
311—Food and Kindred Products.....	111.2	156.7	223.7	196.0	250.9	0.5	4.4
312—Beverages and Tobacco Products.....	14.2	16.2	24.2	24.2	26.4	0.5	0.5
313—Textiles and Fabrics.....	2.8	3.1	4.6	3.7	4.2	0.1	0.1
314—Textile Mill Products.....	7.0	9.7	12.9	11.1	14.4	0.6	0.3
315—Apparel and Accessories.....	14.4	18.3	22.4	27.4	35.3	1.2	0.6
316—Leather and Allied Products.....	7.9	10.1	10.1	12.6	13.3	0.6	0.2
321—Wood Products.....	4.6	6.1	15.5	15.2	16.2	0.3	0.3
322—Paper.....	71.6	74.6	88.7	54.3	63.7	0.3	1.1
323—Printing, Publishing and Similar Products.....	5.7	7.6	9.9	11.1	8.9	0.1	0.2
324—Petroleum and Coal Products.....	853.3	1,174.2	1,804.6	1,524.6	2,452.5	4.0	43.0
325—Chemicals.....	326.5	427.0	337.7	345.2	408.8	0.2	7.2
326—Plastics and Rubber Products.....	25.4	36.5	42.2	43.4	53.6	0.2	0.9
327—Nonmetallic Mineral Products.....	14.0	16.8	16.5	21.1	30.8	0.3	0.5
331—Primary Metal Manufacturing.....	24.8	39.4	101.9	63.9	91.8	0.2	1.6
332—Fabricated Metal Products.....	35.5	56.5	83.9	82.6	116.5	0.4	2.0
333—Machinery, Except Electrical.....	182.4	287.1	390.5	307.7	383.9	0.3	6.7
334—Computer and Electronic Products.....	197.8	246.4	307.7	298.8	300.6	0.2	5.3
335—Electrical Equipment, Appliances, and Components.....	56.9	66.6	104.9	109.5	181.0	0.6	3.2
336—Transportation Equipment.....	276.2	393.8	393.8	379.1	601.7	0.3	10.5
337—Furniture and Fixtures.....	12.6	19.1	20.9	22.3	22.6	0.6	0.4
339—Miscellaneous Manufactured Commodities.....	66.7	116.1	149.4	141.3	150.2	0.4	2.6
51—Information	0.7	1.0	0.4	2.3	1.9	0.2	(¹)
511—Publishing Industries (except Internet).....	0.7	1.0	0.4	2.3	1.9	0.2	(¹)
91-99—Special Classification Provisions	118.3	163.6	245.3	214.8	302.9	0.4	5.3
91—Waste and Scrap.....	3.3	6.3	9.1	7.5	14.7	0.1	0.3
92—Used or Second-hand Merchandise.....	5.6	9.2	11.1	13.6	10.8	0.2	0.2
99—Special Classification Provisions, not otherwise specified or included.....	109.5	148.1	225.0	193.7	277.4	0.6	4.9

(¹) Less than 0.05 percent.

Note: The NAICS-based industry structure presented in this table is based on the HTS-to-NAICS concordance developed by the U.S. Census Bureau, as extracted from the USITC Dataweb. The NAICS-based manufacturing sector includes many processed agricultural products that are often considered agricultural products. Under alternative aggregation schemes, including the WTO's definition of agricultural products, many of the products classified in NAICS-based subsectors 311 (Food and Kindred Products) and 312 (Beverages and Tobacco Products), would be considered agricultural products. The value of U.S. exports is the free alongside ship (FAS) value of domestic U.S. merchandise exports at the U.S. port of export. Because of rounding, figures may not add to totals shown.

Source: USDOL tabulations of tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

Table III.2: U.S. Imports from Panama by NAICS-based Sector and Subsector, 2006-2010

NAICS-based U.S. Import Sector and Subsector	Value of U.S. Imports from Panama (millions of dollars)					Percent of	
	2006	2007	2008	2009	2010	Total U.S. Sector Imports in 2010	All U.S. Imports from Panama in 2010
Total U.S. Imports from Panama	337.6	361.4	373.7	296.0	376.1	0.02	100.0
11—Agriculture and Livestock Products	132.6	130.9	131.5	95.3	117.7	0.25	31.3
111—Agricultural Products.....	28.1	28.5	32.4	20.3	30.7	0.13	8.2
112—Livestock and Livestock Products.....	0.1	0.2	0.1	0.1	(¹)	(²)	(³)
113—Forestry Products.....	(¹)	(¹)	(¹)	(¹)	(¹)	(²)	(³)
114—Fresh, Chilled, or Frozen Fish and Other Marine Products.....	104.4	102.2	98.9	74.9	87.0	0.78	23.1
21—Oil, Gas, Minerals and Ores	1.7	0	0	0	0	0	0
211—Oil and Gas.....	0	0	0	0	0	0	0
212—Minerals and Ores.....	1.7	0	0	0	0	0	0
31-33—Manufacturing	102.3	104.5	117.1	87.8	84.4	0.01	22.4
311—Food and Kindred Products.....	28.4	25.3	21.3	20.3	20.5	0.05	5.5
312—Beverages and Tobacco Products.....	0.8	1.1	2.3	3.4	4.1	0.03	1.1
313—Textiles and Fabrics.....	0.6	0.1	(¹)	(¹)	(¹)	(²)	(³)
314—Textile Mill Products.....	0.2	0.1	(¹)	0.1	(¹)	(²)	(³)
315—Apparel and Accessories.....	1.8	1.8	1.8	1.4	0.9	(²)	0.3
316—Leather and Allied Products.....	0.5	0.2	0.3	0.3	0.4	(²)	0.1
321—Wood Products.....	5.3	2.3	0.5	0.2	0.7	0.01	0.2
322—Paper.....	4.3	3.4	3.2	2.3	1.3	0.01	0.4
323—Printing, Publishing and Similar Products.....	0.7	0.3	0.5	0.2	0.8	0.02	0.2
324—Petroleum and Coal Products.....	0.5	26.8	34.9	0.2	0.1	(²)	(³)
325—Chemicals.....	6.0	3.5	7.7	5.3	9.5	0.01	2.5
326—Plastics and Rubber Products.....	1.1	1.6	1.0	0.7	0.7	(²)	0.2
327—Nonmetallic Mineral Products.....	8.9	4.0	3.0	1.7	2.1	0.01	0.6
331—Primary Metal Manufacturing.....	27.3	17.4	26.3	40.0	29.4	0.04	7.8
332—Fabricated Metal Products.....	2.4	0.5	2.1	0.4	0.7	(²)	0.2
333—Machinery, Except Electrical.....	1.4	4.0	2.2	1.1	2.5	(²)	0.7
334—Computer and Electronic Products.....	7.3	7.3	4.8	3.5	5.1	(²)	1.4
335—Electrical Equipment, Appliances, and Components.....	0.3	0.4	0.4	0.6	0.4	(²)	0.1
336—Transportation Equipment.....	0.3	0.5	1.0	1.6	1.9	(²)	0.5
337—Furniture and Fixtures.....	2.1	1.9	0.7	0.4	0.3	(²)	0.1
339—Miscellaneous Manufactured Commodities.....	2.0	2.0	3.1	3.7	2.7	(²)	0.7
51—Information	0	0	0	0	0	0	0
511—Publishing Industries (except Internet).....	0	0	0	0	0	0	0
91-99—Special Classification Provisions	101.0	126.0	125.1	112.9	173.9	0.24	46.3
91—Waste and Scrap.....	19.5	26.7	27.8	18.0	36.6	0.70	9.7
92—Used or Second-hand Merchandise.....	1.6	1.0	1.0	1.1	2.6	0.04	0.7
98—U.S. Goods Returned and Reimported Items.....	69.2	94.6	90.8	90.7	130.5	0.32	34.7
99—Special Classification Provisions, not otherwise specified or included.....	10.7	3.7	5.4	3.1	4.2	0.02	1.1

(¹) Less than \$50,000.

(²) Less than 0.005 percent.

(³) Less than 0.05 percent.

Note: The NAICS-based industry structure presented in this table is based on the HTS-to-NAICS concordance developed by the U.S. Census Bureau, as extracted from the USITC Dataweb. The NAICS-based manufacturing sector includes many processed agricultural products that are often considered agricultural products. Under alternative aggregation schemes, including the WTO's definition of agricultural products, many of the products classified in NAICS-based subsectors 311 (Food and Kindred Products) and 312 (Beverages and Tobacco Products), would be considered agricultural products. The value of U.S. imports is the customs value (the appraised value of the merchandise, exclusive of import duties, freight, insurance, and other charges incurred in placing the merchandise alongside the carrier at the port of exportation) of U.S. merchandise imports for consumption (the amount that immediately enters U.S. consumption channels, but not bonded warehouses or Foreign Trade Zones). Because of rounding, figures may not add to totals shown.

Source: USDOL tabulations of tariff and trade data from the U.S. Department of Commerce and the U.S. International Trade Commission.

Table III.3: Customs Value, Dutiable Value, Calculated Duties, and Average Rate of Duty on U.S. Imports from Panama by NAICS-based Subsector, 2010
(sorted by 2010 value of Calculated Duties)

NAICS-based U.S. Import Subsector	Customs Value	Dutiable Value	Calculated Duties	Average Rate of Duty
	(thousands of dollars)			percent
315—Apparel and Accessories.....	942.1	668.5	106.4	15.9
316—Leather and Allied Products.....	433.2	401.4	45.1	11.2
990—Special Classifications Provisions.....	4,215.8	4,213.4	32.9	0.8
339—Miscellaneous Manufactured Commodities.....	2,695.8	214.0	11.2	5.2
334— Computer and Electronic Products.....	5,135.8	486.5	10.0	2.1
114—Fresh, Chilled, or Frozen Fish and Other Marine Products.....	86,953.4	109.4	6.6	6.0
327—Nonmetallic Mineral Products.....	2,073.2	108.0	5.3	4.9
All Other Subsectors.....	273,618.5	675.3	21.3	3.1
Total.....	376,067.8	6,876.5	238.6	3.5

Note: The customs value of U.S. imports is the appraised value of the merchandise, exclusive of import duties, freight, insurance, and other charges incurred in placing the merchandise alongside the carrier at the port of exportation. The customs value given is for imports for consumption, which represents the amount that immediately enters U.S. consumption channels, but not bonded warehouses or Foreign Trade Zones. The dutiable value represents the customs value of the foreign merchandise imported into the United States that is subject to duty. The calculated duty represents the estimated import duties collected. Estimated duties are calculated based on the applicable rates of duty as shown in the Harmonized Tariff Schedule of the United States Annotated for Statistical Reporting Purposes. Estimates of calculated duty do not necessarily reflect amounts of duty paid. The average rate of duty is the ratio of calculated duties over dutiable value, expressed in percentage terms. Because of rounding, figures may not add to totals shown.

Source: USDOL tabulations of official U.S. trade statistics from the U.S. Department of Commerce, Bureau of Census.