U.S.-PANAMA TRADE AGREEMENT

KEY IMPROVEMENTS TO THE AGREEMENT

- **Renegotiation of Panama FTA to Include May 10 Changes.** After gaining the Majority in 2007, House Democrats insisted the agreement be renegotiated to: **(1)** require Panama to comply with international labor standards, fully enforceable through the normal dispute settlement mechanism; **(2)** require Panama to comply with key international environmental agreements, again fully enforceable through dispute settlement; **(3)** help to ensure that poor patients in Panama have access to affordable medicines; and **(4)** make clear that nothing in the agreement provides foreign investors greater rights than U.S. investors have under U.S. law.

- **Tax Transparency.** For many years, Panama served as a "tax haven" for U.S. companies and individuals seeking to evade U.S. taxes. For six years, the Bush Administration tried but failed to conclude a TIEA with Panama. But, with consideration of the FTA pending, Panama was persuaded to sign, ratify and fully implement the TIEA. According to the Economist Intelligence Unit, Panama's ratification "marks the most significant step to date on the road to ending over four decades of virtually water-tight banking secrecy laws."[1]

- **Labor Law Reform.** Following the practice taken with the Peru FTA, House Democrats sought to ensure that Panama's labor laws conformed with the "May 10" labor obligations prior to consideration of the FTA. In April, Panama's President signed into law the last remaining changes to bring Panama into compliance with the labor obligations of the agreement. Changes made by Panama include: repealing a prohibition on collective bargaining in new companies (less than 2 years old); conforming a list of "essential services" (where the right to strike was limited) to ILO recommendations; and eliminating restrictions on the right to strike and collective bargaining in export processing zones.

REPLACING AN OLD INVESTMENT TREATY WITH AN IMPROVED ONE

The Panama FTA's investment chapter will replace a 1982 bilateral investment treaty ("BIT") between Panama and the United States. Importantly, this means many of the key concerns voiced about old investment agreements, such as NAFTA, will be addressed.[2] In fact, a vote for the trade agreement is a vote to give governments greater protections in investment disputes than they currently have under the existing BIT. For example, unlike the BIT, the trade agreement:

- Clarifies that regulations that protect legitimate public-welfare objectives, such as environmental protections, generally are not considered expropriations requiring investor compensation;

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1 Economist Intelligence Unit, "Tax Deal Lifts FTA's Chances," May 23, 2011.
2 To be clear, the United States has never lost a single dollar in an investor-state dispute under any BIT or FTA.

- Provides for the quick dismissal of frivolous investor claims;

- Provides for transparency and input in the arbitration process from environmental groups and other non-governmental organizations;

- Clarifies that the agreement does not provide foreign investors greater substantive rights than U.S. investors have under U.S. law;

- Limits so-called “minimum standard” investor claims (e.g., regarding “fair and equitable treatment” of investors); and

- Provides a mechanism for the governments to agree to dispose of investor claims.

INCREASING A U.S. TRADE SURPLUS

The United States has consistently maintained a trade surplus with Panama for over 20 years ($5.7 billion in 2010), and the trade agreement is expected to increase that surplus. Most goods from Panama currently enter the United States duty free, under a U.S. trade preference program for developing countries, whereas U.S. exporters face import duties in Panama ranging from 5 to over 35 percent. The agreement would level this playing field by eliminating Panama’s import duties on U.S. goods. The ITC expects U.S. passenger vehicle exports to increase 43% and machinery exports (air conditioners, refrigerators, washing machines) to increase 14%.[3] The Agreement will also open Panama’s government procurement market to U.S. suppliers (including on the Panama Canal Expansion project).

[3] U.S. imports from Panama account for less than 0.1% of total U.S. imports. Imports are concentrated in a few product categories: fish and seafood (more than 30% of total imports), cane sugar, gold, coffee, and fruit.