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NAFTA Updates and American Trade News Highlights for Fall 2012

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NAFTA UPDATES AND AMERICAN TRADE NEWS HIGHLIGHTS FOR FALL 2012

*Sarah Bridges**

I. THE U.S.-PANAMA TRADE PROMOTION AGREEMENT WENT INTO EFFECT OCTOBER 31, 2012

THE U.S.-Panama Trade Promotion Agreement (TPA or Agreement) went into effect on October 31, 2012, beginning a relationship the Obama Administration believes will create more opportunities for American businesses and more American jobs.¹ While the significant reductions on tariffs have some U.S. exporters thrilled, some question Panamanian sincerity in enforcing labor standards and fear adverse effects to local markets.

A. SETTING THE STAGE — THE TRADE MARKET IN THE MODERN AMERICAS

The highly-specialized economies in the modern world have become increasingly and inevitably interdependent, leaving behind the days of self-sufficiency and closed-door tariff and taxation policies. The Western Hemisphere is no exception, nor the United States, as President Obama has commenced trade agreements with Colombia, Korea, and now, the Republic of Panama.²

Panama claims one of the fastest-growing economies in the Americas, expanding over 6 percent in 2010 and projecting similar growth for the first half of the following decade.³ Not only is Panama's market one of few Western economies rising steadily, its strategic location makes it a major shipping access route; two-thirds of the transits traveling through

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1. Press Release, Melanie Wheeler, U.S. and Panama Set Date for Entry-Into-Force of the U.S.-Panama Trade Promotion Agreement, (Oct. 23, 2012), *available at* <http://www.ustr.gov/about-us/press-office/blog/2012/october/us-panama-set-date-eif-tpa>.
2. *From Enactment To Entry Into Force: Next Steps On The Trade Agreements*, OFF. U.S. TRADE REPRESENTATIVE (Oct. 2011), <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/october/enactment-entry-force-next-steps-trade-agreements>.
3. *U.S.-Panama Trade Promotion Agreement*, OFF. U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa> (last visited Feb. 12, 2013).

the Panama Canal are arriving at or departing from U.S. ports.⁴ Panama is not ignorant of its place in the global market—for example, it finalized a trade agreement with Canada in 2010⁵ and entered into an Association Agreement with the European Union on March 22, 2012.⁶ These and other competing markets' increased exports to Panama have made the U.S. stake in this thriving cross-oceanic gateway much less secure. In actuality, given that U.S. industrial goods have faced tariffs as high as 81 percent in Panama, with agricultural goods facing tariffs of over 200 percent, a U.S. role in the Panamanian economy would not have been a possibility before the Agreement.⁷

B. THE TRADE AGREEMENT

1. *Enacting the Agreement*

The Caribbean Basin Initiative (Initiative) previously governed trade between Panama and the United States. The Initiative gave Panama great access to the U.S. market, but did not afford the United States equal treatment—for example, it allowed over 99 percent of Panamanian agricultural exports to enter the United States duty-free, but less than 40 percent of U.S. agricultural exports had the same access to the Panamanian market.⁸

Negotiations for the TPA began under the Bush Administration in April of 2004⁹ and concluded in 2006.¹⁰ While the Panamanian government approved the Agreement in 2007, it took the United States considerably more time to issue its stamp of approval—the Agreement was not signed into law until October of 2011.¹¹ Just as with the U.S.-Colombia Free Trade Agreement, U.S. congressional and executive committees expressed concern over the state of labor and environmental laws and lack of enforcement thereof in Panama.¹² As such, Panama spent 2009 through 2011 enacting a series of legislative and administrative changes

4. *Key Facts of the U.S.-Panama Trade Promotion Agreement*, OFF. U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/uspanamatpa/facts> (last visited Feb. 12, 2013) [hereinafter *Key Facts*].

5. *Benefits of the U.S.-Panama Trade Promotion Agreement*, WHITE HOUSE, http://www.whitehouse.gov/sites/default/files/panama_trade_agreement_benefits.pdf (last visited Dec. 22, 2012). The agreement, however, has not yet entered into force.

6. *Key Facts*, *supra* note 4.

7. *Id.*

8. *U.S.-Panama Trade Promotion Agreement: Expanding Markets for America's Farmers and Ranchers*, WHITE HOUSE, http://www.whitehouse.gov/sites/default/files/panama_trade_agreement_agriculture.pdf (last visited Dec. 22, 2012) [hereinafter *Farm and Ranch Benefits*].

9. J.F. HORNBECK, CONG. RESEARCH SERV., RL32540, U.S.-PANAMA FREE TRADE AGREEMENT (2012), available at <http://www.fas.org/spp/crs/row/RL32540.pdf>.

10. Wheeler, *supra* note 1.

11. *Id.*

12. LABOR ADVISORY COMM. FOR TRADE NEGOTIATIONS AND TRADE POLICY, 110TH CONG., THE U.S.-PANAMA FREE TRADE AGREEMENT 3-4 (Comm. Print 2007), available at http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file696_11235.pdf [hereinafter *LAC Report*].

meant to strengthen its labor laws (considered in more detail below) and enforcement in a number of areas, including environmental protection.¹³ In addition to the Agreement, and in response to concerns regarding Panama's tax structure, Panama and the United States entered into a Tax Information Exchange Agreement, discussed below, which is intended to enable each country to improve their tax information exchange networks on a global scale.¹⁴

2. Content and Effects of the Agreement

a. Generally

The TPA itself is a significant liberalization of trade between the two countries—both in goods and in the service sector.¹⁵ Almost 90 percent of U.S. consumer and industrial exports to Panama became duty-free immediately, and what tariffs remain are to be phased out over the next decade.¹⁶ Over half of U.S. farm and ranch exports now enjoy duty-free status, including beef, soybeans, corn/oil, almost all fruit products, wheat, and cotton; the majority of the remaining tariffs will be eliminated in the next fifteen years.¹⁷ The Agreement also provides for an expansion of Panamanian intellectual property laws and increased enforcement thereof, bringing such laws in line with U.S. standards. These protections will cover new and emerging technologies in software, music, and text, and are accompanied by a new electronic registration system for trademark maintenance.¹⁸

In addition to reducing barriers to the exchange of goods and services, the TPA opens doors for the United States to participate in over ten billion dollars' worth of anticipated infrastructure projects in Panama—and that number does not include the Panama Canal expansion, which is projected to require over five billion dollars of equipment, materials, and labor.¹⁹ Eliminating tariffs in this area allows the United States to remain sufficiently competitive to participate in this project. The expansion project and Panama's prime shipping location make the Agreement that

13. Press Release, United States, Panama Set Date for Entry into Force of United States-Panama Trade Promotion Agreement, Off. U.S. Trade Representative (Oct. 22, 2012), available at <http://www.ustr.gov/about-us/press-office/press-releases/2012/october/us-panama-set-date-eif>.

14. *U.S.-Panama Trade Promotion Agreement*, *supra* note 3.

15. *Id.*

16. *Key Facts*, *supra* note 4. Those products that became duty-free upon enactment of the TPA include information technology equipment, agricultural equipment, construction equipment, environmental products, aircraft parts, medical equipment, pharmaceuticals, fertilizers, and agro-chemicals.

17. *Farm and Ranch Benefits*, *supra* note 8.

18. *Key Facts*, *supra* note 4.

19. *Id.* Construction equipment exports to Panama formerly bore a 5 percent tariff—this was one of the duties eliminated immediately upon enactment of the Agreement.

much more essential to continued U.S. viability in the modern American market.²⁰

b. Labor Provisions

In May of 2007, bipartisan action resulted in a U.S. Congressional-Executive agreement to incorporate increased labor standards into the country's trade agreements.²¹ This sentiment is reflected in the 2007 report of the U.S. Executive Labor Advisory Committee for Trade Negotiations and Trade Policy addressing the primary drafts of the TPA.²² The 2007 report detailed concern that the TPA draft did not contain enforceable provisions requiring Panama to meet labor standards promulgated by the International Labor Organization, did not prevent Panama from weakening its local labor laws to increase competitiveness, and did not provide for sanctions or other fines to ensure compliance with labor standards.²³ In response to U.S. concerns, Panama began strengthening its labor laws in 2009, particularly in the areas of subcontracting, temporary employment, employer interference with unions, bargaining with non-union workers, and strikes in essential services.²⁴ These changes clarified existing laws, increased monitoring and enforcement thereof, and provided protections where none had existed.²⁵

The TPA commits both the United States and Panama to adopt, effectively enforce, and not waive fundamental labor rights.²⁶ Both countries' labor standards are to conform with the fundamental labor rights as stated in the 1998 International Labor Organization Declaration on Fundamental Principles and Rights at Work.²⁷ The Declaration commits 185 member states of the International Labor Organization—a specialized agency of the United Nations²⁸—to respect and promote principles with regards to four categories of rights: freedom of association and the effective recognition of the right to collective bargaining, the elimination of forced or compulsory labor, the abolition of child labor, and the elimination of discrimination in respect of occupation.²⁹ The Agreement's labor obligations will be under the same level of accountability for dispute set-

20. *U.S.-Panama Trade Promotion Agreement*, INT'L TRADE ADMIN., <http://www.trade.gov/fta/panama/index.asp> (last visited Feb. 12, 2013).

21. *Labor in the U.S.-Panama Trade Promotion Agreement: Protecting And Enhancing Labor Rights*, OFF. U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/uspanamatpa/labor> (last visited Feb. 14, 2013).

22. *LAC Report*, *supra* note 12.

23. *Id.*

24. *Labor Protections and the U.S.-Panama Trade Promotion Agreement*, WHITE HOUSE, http://www.whitehouse.gov/sites/default/files/panama_trade_agreement_labor.pdf (last visited Feb. 14, 2013) [hereinafter *Labor Protections*].

25. *Id.*

26. *Key Facts*, *supra* note 4.

27. *Id.*

28. *Alphabetical List of ILO Member Countries*, INT'L LABOUR ORG., <http://www.ilo.org/public/english/standards/relm/country.htm> (last visited Feb. 14, 2013).

29. *About the Declaration*, INT'L LABOUR ORG., <http://www.ilo.org/declaration/thedeclaration/lang-en/index.htm> (last visited Feb. 14, 2013).

tlement as its commercial obligations, indicating the gravity of the U.S. appraisal of the state of Panama's labor regime.³⁰ Trade sanctions and fines are among the available remedies for violations of the labor obligations.³¹

c. Tax Provisions

To cure U.S. hesitations regarding the transparency—or lack thereof—in Panama's tax system, Panama and the United States signed a Tax Information Exchange Agreement (TIEA) approximately a year before the TPA went into play.³² In addition, Panama published two notable laws pertaining to tax transparency. Law 33, published in 2010, allows the Panamanian government to obtain and share information as needed to comply with international conventions—including the TIEA—even if the information obtained was not otherwise a domestic tax concern.³³ The other is Law 2, the “Know Your Client” law, which deals with the Panamanian problem of anonymous accounts by requiring law firms that incorporate corporations to conduct due diligence in verifying the identity of the corporation's owners, and mandates that they share that information with the government upon request.³⁴ These changes, coupled with the TIEA, allowed the level of transparency required to ensure compliance with the TPA.

C. PITFALLS AND PRAISES

1. Praises — Support for the Agreement

Reports issued by various advisory committees indicate full-fledged support for the TPA. The report issued by the Advisory Committee evaluating the Agreement's effect on consumer goods was clearly positive, touting a unanimous agreement by the Advisory Committee that the Agreement “promotes the economic interests of the United States.”³⁵ Not surprisingly, considering the immediate and long-term benefits to exports of various crops, livestock, and poultry, the Agreement was hailed by the reports of the Agricultural Policy Advisory Committee for Trade and the Animal and Animal Products Advisory Committee for Trade.³⁶

30. *Labor Protections*, *supra* note 24.

31. *Id.*

32. *U.S.-Panama Trade Promotion Agreement*, *supra* note 3.

33. *Tax Transparency in Panama*, WHITE HOUSE, http://www.whitehouse.gov/sites/default/files/panama_trade_agreement_tax_transparency.pdf (last visited Feb. 14, 2013).

34. *Id.*

35. INDUSTRY TRADE ADVISORY COMMITTEE ON CONSUMER GOODS (ITAC-4), THE U.S.-PANAMA TRADE PROMOTION AGREEMENT 3 (2007), available at http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file907_11226.pdf.

36. AGRIC. POLICY ADVISORY COMM. FOR TRADE, THE U.S.-PANAMA TRADE PROMOTION AGREEMENT 3 (2007), available at http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file13_11223.pdf; ANIMAL & ANIMAL PRODS. ATAC, THE U.S.-PANAMA TRADE PROMOTION AGREEMENT 3-4 (2007), available at http://www.ustr.gov/archive/assets/Trade_

The Animal and Animal Products Committee specifically approved of the immediate and phase-out tariffs, and proclaimed that the increased U.S. access for beef and poultry to the Panamanian market met international standards.³⁷

In its initial report on the 2007 draft of the TPA, the Industry Trade Advisory Committee for Chemicals, Pharmaceuticals, Health/Science Products and Services felt the Agreement lacked intellectual property protection within its industry.³⁸ Its May 2011 report on the TPA not only hailed the Agreement's tariff provisions, but also stated:

The U.S.-Panama TPA requires high levels of intellectual property protection, consistent with U.S. standards of protection, and will support the growth of trade in digital and other intellectual property-based products. This Agreement provides protection for copyrighted works, stronger protection for patents and trade secrets and the high level of enforcement required provides tough penalties for piracy and counterfeiting.³⁹

2. *Pitfalls — Criticisms of the Agreement*

While some criticisms of early drafts of the TPA were quelled prior to its 2012 enactment, others persist. One area of frustration involves local concerns regarding specific markets. For example, North Carolina opposed the TPA, arguing that it would accelerate the loss of textile jobs in the state while failing to provide additional protection to its working population.⁴⁰

Additionally, several complaints lodged by the Intergovernmental Policy Advisory Committee pertaining to investment provisions were not cured by the ensuing final draft of the Agreement. The Committee complained that the definition of "investment" was overbroad and problematic, in that it was "far more expansive than NAFTA, includes concepts of 'investment authorization,' licenses, and permits, and is less linked to business enterprises."⁴¹ The final TPA text disregards the Committee's warnings, as the definition for that section of "investment" expressly includes "licenses, authorizations, permits, and similar rights conferred pur-

Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file574_11222.pdf [hereinafter *Animal Food Report*].

37. *Animal Food Report*, *supra* note 36, at 4.

38. U.S. INDUS. TRADE ADVISORY COMM. FOR CHEMS., PHARMS., HEALTH/SCI. PRODS. & SERVS., THE U.S.-PANAMA TRADE PROMOTION AGREEMENT 3 (2007), available at http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file922_11225.pdf.

39. INT'L TRADE ADMIN., THE U.S.-PANAMA TRADE PROMOTION AGREEMENT 2 (2011), available at http://trade.gov/mas/ian/build/groups/public/@tg_ian/documents/webcontent/tg_ian_002782.pdf.

40. INTERGOVERNMENTAL POLICY ADVISORY COMM., THE U.S.-PANAMA TRADE PROMOTION AGREEMENT (TPA) 2 (2007), available at http://www.ustr.gov/archive/assets/Trade_Agreements/Bilateral/Panama_FTA/Reports/asset_upload_file273_11233.pdf [hereinafter *IPAC Report*].

41. *Id.* at 3.

suant to domestic law.”⁴² The Committee was also concerned over the use of unclear international standards to evaluate due process, rather than those based on the U.S. Constitution, as required by the Trade Act of 2002.⁴³ Section 1 of Article 10.5 of the final text sets the standard for government protection of foreign investors as “in accordance with customary international law,” and provides further that the “customary international law *minimum standard of treatment of aliens*” is the minimum protection to be afforded investments under the Agreement, and that fair treatment and due process “do not require treatment in addition to or beyond that which is required by that standard, and do not create additional substantive rights.”⁴⁴ Essentially, the TPA provides that Americans investing in Panama’s sectors lose Constitutional protection and submit to vague standards of legal treatment that are not even the same as those offered by Panama to its own citizens.

II. CANADA EXPANDS ITS INFLUENCE IN THE WORLD MARKET

Under the Harper Government, Canada has made massive steps to secure its place in the global economy. In the last six years, for example, Canada secured trade agreements with nine countries: Colombia, Honduras, Jordan, Panama, Peru, Iceland, Liechtenstein, Norway, and Switzerland.⁴⁵ Several of the key steps occurred in the fall of 2012, making the country a stand-out deserving of its own treatment. Not only did the country gain admission to negotiations in the Trans-Pacific Partnership, it, like the United States, made steps in a free trade agreement with Panama, and has recently tabled a free trade expansion with Chile.

A. CANADA JOINS THE TRANS-PACIFIC PARTNERSHIP NEGOTIATIONS

On October 9, 2012, Canada announced it had formally joined the Trans-Pacific Partnership (TPP) trade negotiations.⁴⁶ The country’s joiner of the now-eleven nations was announced six months ago, but the member countries had to ratify the inclusion before Canada’s formal acceptance.⁴⁷ The last hurdle was ratification by the United States, which

42. United States-Panama Trade Promotion Agreement, U.S.-Pan., art. 10.29, June 28, 2007, 125 U.S.T. 497, available at <http://www.ustr.gov/trade-agreements/free-trade-agreements/panama-tpa/final-text>.

43. *IPAC Report*, *supra* note 40, at 2, 15.

44. United States-Panama Trade Promotion Agreement, *supra* note 42, at art. 10.5 (emphasis added).

45. *Canada Formally Joins Trans-Pacific Partnership*, FOREIGN AFFS. & INT’L TRADE CAN. (Oct. 9, 2012), http://www.international.gc.ca/media_commerce/comm/news-communiqués/2012/10/09a.aspx?lang=eng&view=d.

46. *Id.*

47. Canadian Press, *Trans-Pacific Partnership: Canada Formally Joins Trade Bloc, to Participate in December Negotiations*, HUFFINGTON POST CAN. (Oct. 9, 2012, 7:45 PM), http://www.huffingtonpost.ca/2012/10/09/canada-trans-pacific-partnership-trade-bloc_n_1952346.html [hereinafter Canadian Press].

completed its ninety-day Congressional consultation in early October.⁴⁸

1. *The Trans-Pacific Partnership*

The TPP countries—the United States, Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam, Mexico, and, now, Canada⁴⁹—represent more than 650 million people and a gross domestic product exceeding 20 trillion U.S. dollars.⁵⁰ The partnership covers core topics traditionally found in such agreements, such as commercial goods, agriculture, and textiles, and also the more modern issues presented by intellectual property, technical trade barriers, and the environment.⁵¹ But the TPP reaches beyond such topics, addressing “cross-cutting” issues typically excluded from trade agreements—encouraging compatibility in regulatory systems, for example, and helping small- and medium-sized businesses become more active in international trade.⁵²

2. *Canada Joins the TPP*

According to the Canadian Minister on International Trade, “[o]pening new markets and increasing Canadian exports to fast-growing markets throughout the Asia-Pacific region is a key part of our government’s plan to create jobs, growth and long-term prosperity.”⁵³ The government sees the Asia-Pacific region as a priority market for Canadian exports.⁵⁴

Canada was asked to join the TPP negotiations in June during the summit of leaders from the Group of Twenty nations in Mexico.⁵⁵ After the matter was submitted to member countries for approval, the Office of the U.S. Trade Representative held a public hearing on the matter of Canada’s participation,⁵⁶ during which the U.S. Trade Representative for Southeast Asia and the Pacific testified as to Canada’s likely role in regional economic stimulation.⁵⁷ Stakeholders representing multiple, different industries testified and raised topics for discussion relating to

48. *Id.*

49. *The United States in the Trans-Pacific Partnership*, OFF. U.S. TRADE REPRESENTATIVE (Nov. 2011), <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/november/united-states-trans-pacific-partnership>.

50. *Canada Formally Joins Trans-Pacific Partnership*, *supra* note 45.

51. *The United States in the Trans-Pacific Partnership*, *supra* note 49.

52. *Id.*

53. *Canada Formally Joins Trans-Pacific Partnership*, *supra* note 45.

54. *Id.*

55. Andrew Mayeda, *Canada Joins Trans-Pacific Partnership Trade Negotiations*, BLOOMBERG BUSINESSWEEK (Oct. 9, 2012 3:00 PM), <http://www.businessweek.com/news/2012-10-09/canada-joins-trans-pacific-partnership-trade-negotiations>.

56. Press Release, Office of the U.S. Trade Representative, USTR Holds Pub. Hearing on Can. and the Trans-Pac. P’ship. (Sept. 24, 2012), *available at* <http://www.ustr.gov/about-us/press-office/press-releases/2012/september/USTR-hearing-Canada-TPP> [hereinafter USTR Holds Pub. Hearing].

57. Press Release, Office of the U.S. Trade Representative, USTR Pub. Hearing on the TPP and Can. (Sept. 25, 2012, 12:07 PM), *available at* <http://www.ustr.gov/about-us/press-office/blog/2012/september/ustr-hearing-tpp-canada> [hereinafter USTR Pub. Hearing on the TPP and Can.].

Canada's joinder.⁵⁸ Multiple hot button topics were discussed, some echoing the U.S. Trade Representative's 2012 report on trade barriers to exports.⁵⁹ Included in this report were over-arching problems, such as supply management, and also more specific issues, such as Canadian copyright and pharmaceutical patent regimes, provincial liquor board policies favoring Canadian wines, and dairy-related regulations that control and limit the ingredients and techniques of cheese-making.⁶⁰ The U.S. poultry and egg industries were sore at Canada's consideration, pointing out the Canadian government's long-standing assertion that it will maintain supply-management measures for dairy and poultry — largely consisting of matching production to domestic demand and levying large tariffs to discourage imports.⁶¹

3. Looking Forward

As the U.S. Chamber of Commerce observed, despite these issues, "lowering tariffs, reducing non-tariff barriers to trade, and aligning regulatory measures could strengthen this relationship even further, acting as an 'economic shot in the arm.'"⁶² As such, the United States approved Canada's entry into the TPP, and Canada joined the other countries in December 2012 for the fifteenth round of negotiations in New Zealand.⁶³ But it missed being heard in the prior rounds of negotiation, including the most recent in September 2012. As such, it will likely be expected to adopt decisions already reached by the other member countries.⁶⁴ But, as one Canadian trade attorney put it, "the TPP has a long, long way to go and once Canada gets into the game in December we'll have as much influence as any of the others in the remaining issues . . . and there are many still on the table."⁶⁵

B. CANADA'S FREE-TRADE AGREEMENT WITH PANAMA PASSES THE HOUSE OF COMMONS

The Canada-Panama Economic Growth and Prosperity Act (the Act) passed the Canadian House of Commons early in November, and, after

58. *Id.*; USTR Holds Pub. Hearing, *supra* note 56.

59. USTR Pub. Hearing on the TPP and Can., *supra* note 57; OFFICE OF THE U.S. TRADE REPRESENTATIVE, 2012 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 53 (2012) [hereinafter 2012 NATIONAL TRADE ESTIMATE REPORT].

60. 2012 NATIONAL TRADE ESTIMATE REPORT, *supra* note 59, at 53-54, 57.

61. Doug Palmer, *U.S. Dairy, Poultry Producers Press for Canada Market Openings*, REUTERS CAN. (Sept. 24, 2012, 5:18 PM), <http://ca.reuters.com/article/businessNews/idCABRE88N10E20120924?sp=true>.

62. USTR Pub. Hearing on the TPP and Can., *supra* note 57.

63. *Trans-Pacific Partnership (TPP): 15th Round of TPP Negotiations Set for Singapore—Mar. 4-13, 2013*, OFF. U.S. TRADE REPRESENTATIVE, <http://www.ustr.gov/tpp> (last visited Feb. 17, 2013).

64. Canadian Press, *supra* note 47.

65. *Id.*

approval by the Senate, will be put forward for Royal Assent.⁶⁶ Along with the Act, Canada and Panama negotiated the Canada-Panama Agreement on Environmental Cooperation and the Canada-Panama Agreement on Labor Cooperation.⁶⁷

1. Background

In 2007, merchandise traveling between Canada and Panama totaled over 100 million dollars.⁶⁸ Panama is the second largest importer of Canadian goods in Central America, after Costa Rica.⁶⁹ Like the United States, however, Canadian exports to Panama far exceed its imports—for example, in 2007, its exports were valued at roughly four times its imports.⁷⁰ Many of Canada's exports to Panama mirror those of the United States, as discussed above, so ensuring free trade has become essential to the federal state.

The Canada-Panama market was formerly governed by a 1998 Foreign Investment Promotion and Protection Agreement (FIPA)—a bilateral agreement with the goal of promoting foreign investment through binding rights and obligations.⁷¹ The Investment portion of the Act will replace the existing FIPA, a move the Canadian government claims is “further locking in and expanding access for Canadian investors and their investments.”⁷²

2. The Act

Negotiations for the Act began in 2008 and concluded in 2009, resulting in agreements on the terms of the Act as well as labor cooperation and the environment.⁷³ Once fully approved by the Canadian government, the Act will immediately remove tariffs on greater than 90 percent of Canadian exports of goods to Panama.⁷⁴ Like the United States, Canada also hopes to secure access to the government construction market in

66. *House of Commons Approves Harper Government's Trade Agreement with Panama*, FOREIGN AFFS. & INT'L TRADE CAN. (Nov. 7, 2012), http://www.international.gc.ca/media_commerce/comm/news-communiques/2012/11/07a.aspx?lang=eng&view=d.

67. *Canada-Panama Free Trade Agreement*, FOREIGN AFFS. & INT'L TRADE CAN., <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/index.aspx?view=d> (last visited Feb. 17, 2013) [hereinafter *C-P FTA*].

68. *Economic Analysis: Prospective Free Trade Agreement between Canada and Panama-December 2008*, FOREIGN AFFS. & INT'L TRADE CAN., <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/panama/analyse-analyse.aspx?view=d> (last visited Feb. 17, 2013) [hereinafter *Economic Analysis*].

69. *House of Commons Approves Harper Government's Trade Agreement with Panama*, *supra* note 66.

70. *Economic Analysis*, *supra* note 68.

71. *Negotiations and Agreements*, FOREIGN AFFS. & INT'L TRADE CAN., <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/index.aspx?lang=en&view=d> (last visited Feb. 17, 2013).

72. *C-P FTA*, *supra* note 67.

73. *Id.*

74. *House of Commons Approves Harper Government's Trade Agreement with Panama*, *supra* note 66.

Panama.⁷⁵ As discussed, this movement is in direct competition with the United States, making both countries' recent actions all the more significant.

C. AN AGREEMENT TO EXPAND TRADE WITH CHILE IS TABLED IN THE HOUSE

The Minister of International Trade tabled an agreement to expand the scope of the existing Canada-Chile Free Trade Agreement (FTA) and bring it into the modern world.⁷⁶ The amended agreement will contain a new chapter regarding financial services,⁷⁷ essential to keeping Canada's agreement with what it calls its "priority market" relevant.⁷⁸ Prime Minister Harper and the Chilean President witnessed the signing of the amending agreement, which was tabled in the House of Commons for twenty-one sitting days in April of 2012.⁷⁹

Not only is Chile an importer of Canadian goods, it is one of many Central American countries that have become a prime spot for Canadian investment—eighth, in fact, among such countries.⁸⁰ As such, this expansion could combine with the other movements of the Harper Government to increase Canada's stance as a world player. A study is underway to assess the impact of the FTA expansion, but with multiple new or changing agreements underway, the Government anticipates it will be some time before enough data is available to measure the impact of these agreements.⁸¹

III. NAFTA UPDATES

With all the evolving trade patterns and agreements in the Western Hemisphere, it is somewhat a surprise to report that all is relatively quiet on the North American Free Trade Agreement (NAFTA) front. Two developments are worth noting.

The Spring NAFTA updates reported on the NAFTA binational panel's affirmation of the U.S. Department of Commerce's holding in the administrative review regarding Carbon and Certain Alloy Steel Wire Rod from Canada, NAFTA Secretariat File Number USA-CDA-2008-1904-02.⁸² While the panel affirmed the Department's holding that the

75. *Economic Analysis*, *supra* note 68.

76. *Harper Government Tables Agreement That Will Expand Canada-Chile Free Trade Agreement*, FOREIGN AFFS. & INT'L TRADE CAN. (Oct. 23, 2012), http://www.international.gc.ca/media_commerce/comm/news-communiques/2012/10/23a.aspx?lang=eng&view=d [hereinafter *Harper Tables Agreement*].

77. *Id.*

78. *Evaluation of the Global Commerce Strategy*, FOREIGN AFFS. & INT'L TRADE CAN. (Jan. 2012), http://www.international.gc.ca/about-a_propos/oig-big/2012/evaluation/gcs_scm12.aspx?lang=eng&view=d.

79. *Harper Tables Agreement*, *supra* note 76.

80. *Evaluation of the Global Commerce Strategy*, *supra* note 78.

81. *Id.*

82. Sarah Bridges, *NAFTA Update and Trade News Highlights for Spring 2012*, 18 L. & BUS. REV. AM. 421 (2012).

Canadian company made sales in the United States below its commodity's normal value, it also remanded the case to have the Department explain its methodology in reviewing the company.⁸³ In October 2012, the panel finally ended the seven-year case, affirming the Department's methodology—specifically, its use of zeroing in calculating the commodity's prices—and holdings.⁸⁴

Additionally, Golden Dragon, a Mexican producer and exporter of copper pipe, has requested panel review of the Department's final determination regarding Seamless Refined Copper Pipe and Tube from Mexico in its New Shipper Anti-Dumping Review (the Report) spanning 2011 and 2012.⁸⁵ The Report found Golden Dragon's weighted-average dumping margin was over 5.5 percent (of the export price of the product), which was well above the 2 percent cut-off for ending an investigation due to *de minimus* dumping.⁸⁶ As the Department's determination will result in anti-dumping duties being levied on Golden Dragon, the company is seeking review through NAFTA's binational panel review system. The NAFTA Secretariat has assigned Case Number USA-MEX-2012-1904-03 to this request.⁸⁷

83. *Id.*

84. Decision and Order of the Panel, *Carbon and Certain Alloy Steel Wire Rod*, NAFTA Secretariat File Number USA-CDA-2008-1904-02, 34-35 (Oct. 25, 2012), available at <http://registry.nafta-sec-alena.org/cmdocuments/1e451265-54e5-4da4-8ba4-904a6097cd12.pdf>.

85. Notice of First Request for Panel Review, 77 Fed. Reg. 66,441 (Nov. 5, 2012) available at <http://www.gpo.gov/fdsys/pkg/FR-2012-11-05/html/2012-26959.htm> [hereinafter Notice of First Request for Panel Review].

86. Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty New Shipper Review, 77 Fed. Reg. 59,178 (Sept. 26, 2012), available at <http://www.gpo.gov/fdsys/pkg/FR-2012-09-26/pdf/2012-23686.pdf>.

87. Notice of First Request for Panel Review, 77 Fed. Reg. at 66,441.

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