

**FACTUAL PRESENTATION**

**Bilateral Protocol between Costa Rica  
and Panama to the Free Trade Treaty  
between  
Central America and Panama  
(Goods and Services)**

**Report by the Secretariat**

This report, prepared for the consideration of the Bilateral Protocol Agreement between Costa Rica and Panama that operationalizes the Free Trade Treaty (FTT) between Central America and Panama, has been drawn up by the WTO Secretariat on its own responsibility and in full consultation with the Parties. The report has been drawn up in accordance with the rules and procedures contained in the Decision for a Transparency Mechanism for Regional Trade Agreements (WT/L/671).

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### Key Facts

**Parties to the Bilateral Protocol:**

Costa Rica and Panama

(Parties to the Free Trade Treaty between Central America and Panama:  
Panama and Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua)

**Date of Signature of the Bilateral Protocol:** 7 August 2007

(Date of Signature of the Treaty: 6 March 2002)

**Date of Entry into Force:** 23 November 2008

**Date of Notification:** 7 April 2009

## I. TRADE ENVIRONMENT

### A. OVERVIEW

1. The Bilateral Protocol between Costa Rica and Panama to the Free Trade Treaty between Central America and Panama is Costa Rica's seventh regional trade agreement, and Panama's fifth one. It is the second bilateral Protocol of the relevant Treaty that has been notified to the WTO.

2. Though in terms of population and economic size Costa Rica is slightly larger than Panama, they are within a similar band. In 2008, their respective population reached 4.5 and 3.4 million, while the GDP attained respectively 29,834 and 23,088 million US\$. GDP per capita is however slightly higher in the case of Panama –6,800 US\$ compared to 6,590 US\$ for Costa Rica.<sup>1</sup>

3. As regards the size of their external sectors, in 2008 Costa Rica ranked before Panama as regards trade in goods, both imports and exports, while the opposite occurred as regards trade in services. Actual figures for trade in goods ranked Costa Rica in 80<sup>th</sup> place as goods importer and 87<sup>th</sup> as an exporter, with a 0.09% share of world imports and a 0.06% share of exports. Panama, for its part, was in 96<sup>th</sup> place in the world for goods imports and 142<sup>nd</sup> place for exports, accounting for 0.06% and 0.01% of world imports and exports, respectively. As regards trade in services, in 2008 Panama's world ranking was 86<sup>th</sup> for imports, with 0.07% of the total, and 62<sup>nd</sup> for exports, with 0.15% of the total; the corresponding figures for Costa Rica were 0.06% and 0.11%, respectively, giving it a world ranking of 99<sup>th</sup> for imports and 72<sup>nd</sup> for exports.

### B. MERCHANDISE TRADE

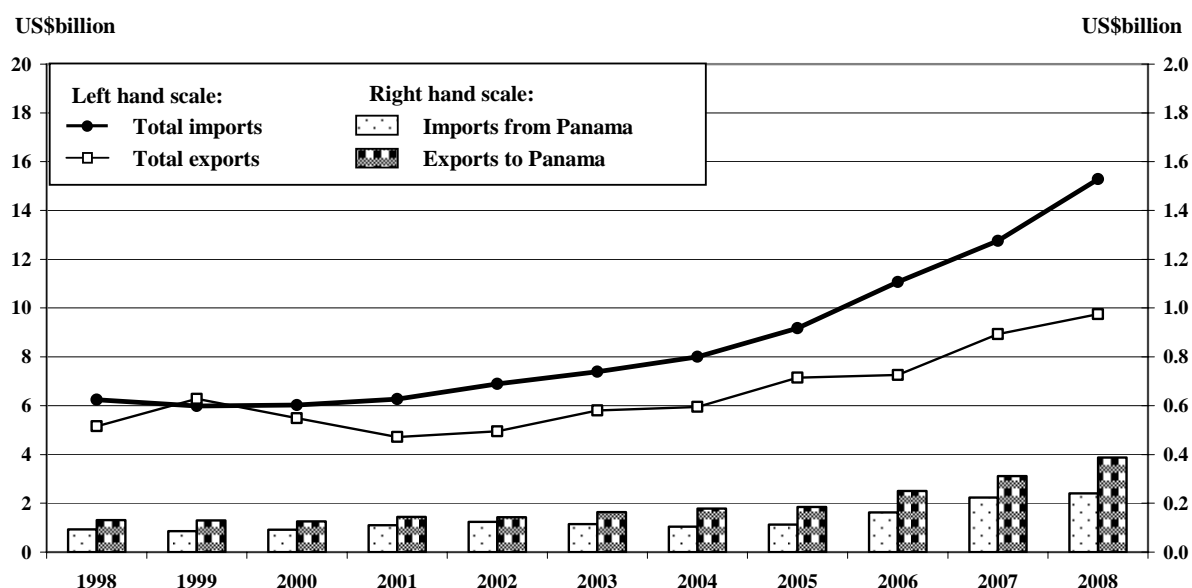
4. Charts I.1 and I.2 below show development in merchandise trade between the Parties and between them and the rest of the world. Both Costa Rica and Panama present a trade deficit *vis-à-vis* the world (with the exception of the year 1999 for Costa Rica), though that of Panama is significantly higher than that of Costa Rica. The growth of Panama's deficit *vis-à-vis* the world has speed up in particular from 2006 onwards; by 2008, imports amounted to around eight times the import revenue.

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<sup>1</sup> The cumulative figures used in this section are taken from the WTO trade statistics database. They may therefore not coincide with the data provided by the national authorities.

5. Intra-trade shows a trade surplus in favour of Costa Rica.<sup>2</sup> In the case of Panama, exports to Costa Rica have seen a descending trend up to 2003, when the situation reversed; imports have however continuously increased. As for Costa Rica, both imports from and exports to Panama have fluctuated in the period 1998-2005, but, as from 2006, they have both been following an upward trend.

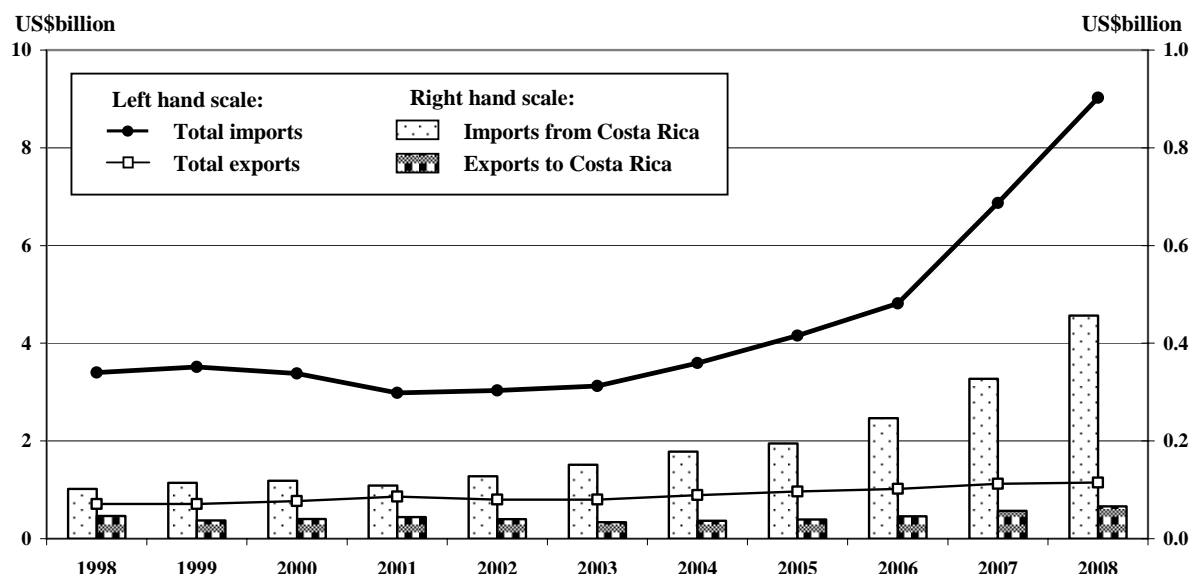
**Chart I.1- Costa Rica: Merchandise imports from and exports to world and Panama, 1998-2008**



Source : UNSD, Comtrade database.

<sup>2</sup> In the charts below, there is a major discrepancy in bilateral trade figures; this is because the figures from Panama do not include the Colón Free Zone, but the opposite occurs as regards the figures from Costa Rica.

**Chart I.2 - Panama: Merchandise imports from and exports to world and Costa Rica, 1998-2008**



Source : UNSD, Comtrade database; WTO-IDB (2004 Panama imports from world and Costa Rica).

6. Chart I.3 shows the composition of trade between the Parties and their exports and imports to and from the rest of the world, on the basis of Harmonized System (HS) product categories, using the annual average of trade flows during the period 2006-2008.

7. Around one third (32.5%) of Costa Rica's imports from the world were machinery products, the other two largest imports were minerals and chemicals, accounting respectively for 11.2% and 10.9%. Panama had the same two top imports from the world, with minerals at 20.5% and machinery at 19.6%, after these, vehicles came third in the import rank, representing 11% of total imports. On global exports, Costa Rica's profile was made of a mix of new and traditional products, with machinery accounting for 32.5% and fruit and vegetables for 22%. Around three fourths of Panama's exports to the world were concentrated in live animals and their products, in particular fish, which reached 40.7%, and fruits and vegetables at 36.3%.

8. Costa Rica's imports from Panama were diversified; about one fourth (29.1%) was concentrated on chemicals, but other five categories of products had a share between 10.7% and 7.1% - namely machinery, animals and their products, textiles, pulp of wood and base metals. This contrasts with the largely concentrated export profile of Panama *vis-à-vis* the world.

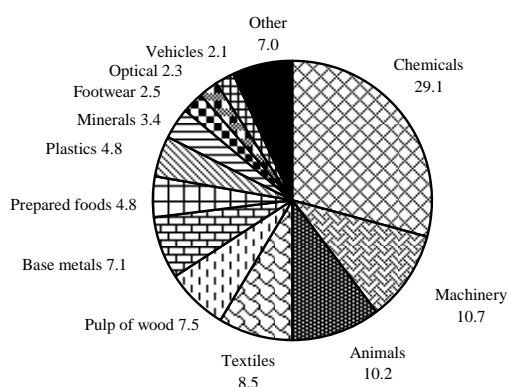
9. Panama's imports from Costa Rica were relatively less diversified; more than one third (35.4%) were chemical products, four other categories - prepared foods, machinery, base metals and plastics - had a ratio between 16% and 9.9%. Taken together, these five categories accounted for 83% of imports from Costa Rica.

### Chart I.3

## Costa Rica and Panama: product composition of merchandise trade, annual average (2006-2008)

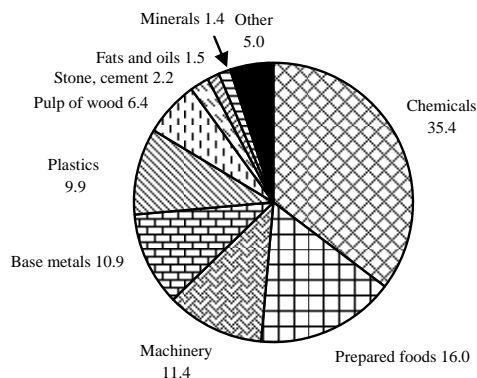
Per cent

**Costa Rica's imports from Panama**



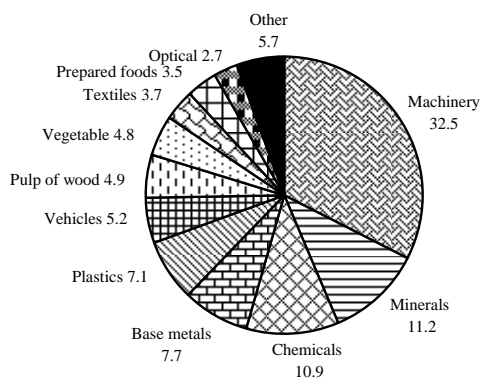
**Total: US\$209 million**

**Panama's imports from Costa Rica**



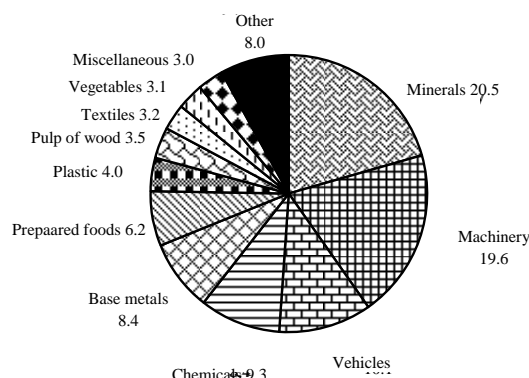
**Total: US\$343 million**

**Costa Rica's global imports**



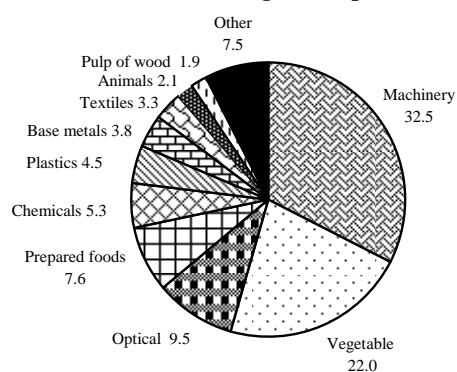
**Total: US\$13, 039 million**

**Panama's global imports**



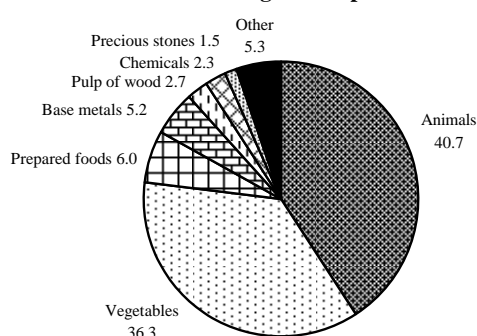
**Total: US\$6, 902 million**

**Costa Rica's global exports**



**Total: US\$8,642 million**

**Panama's global exports**



**Total: US\$1,096 million**

Source: UNSD, Comtrade database.



### C. SERVICES TRADE

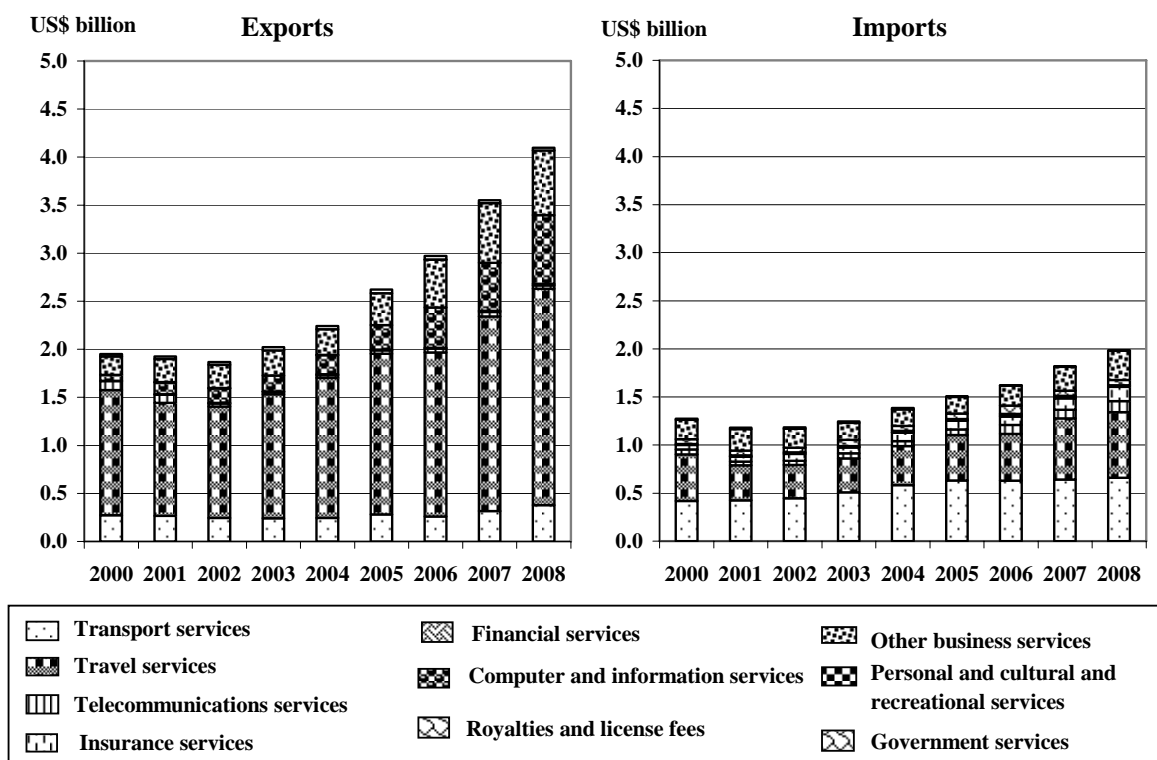
10. In 2008, Costa Rica's commercial services exports amounted to US\$4.055 billion, representing 0.11% of world exports, while imports amounted to US\$1.878 billion and represented 0.06% of world imports. The value of services exports is less than half of Costa Rica's exports of goods; the value of goods imports is nine times bigger than services imports.

11. The evolution of Costa Rica's total commercial services trade during the period 2000-2008 is shown in Chart I.4. Between 2000 and 2008, the value of exports to the world doubled, while 2008 imports were 1.5 times higher than those of 2000. Costa Rica has a constant trade surplus in commercial services.

12. As regards the composition of exports, travel services remained the leading sector over the entire period, but with its importance reduced from 67% of exports in 2000 to 55% in 2008; transport services, second sector of export importance, has seen a similar trend passing from 14% to 9% during that same period. Conversely, exports of computer and information services have faced an ascending trend passing from 9% in 2000 to 18% in 2008. With respect to imports, travel and transport account each for around one third of services imports; the sectoral distribution of imports has remained stable during the period under consideration.

**Chart I.4**

#### Costa Rica, total commercial services trade, 2000-2008

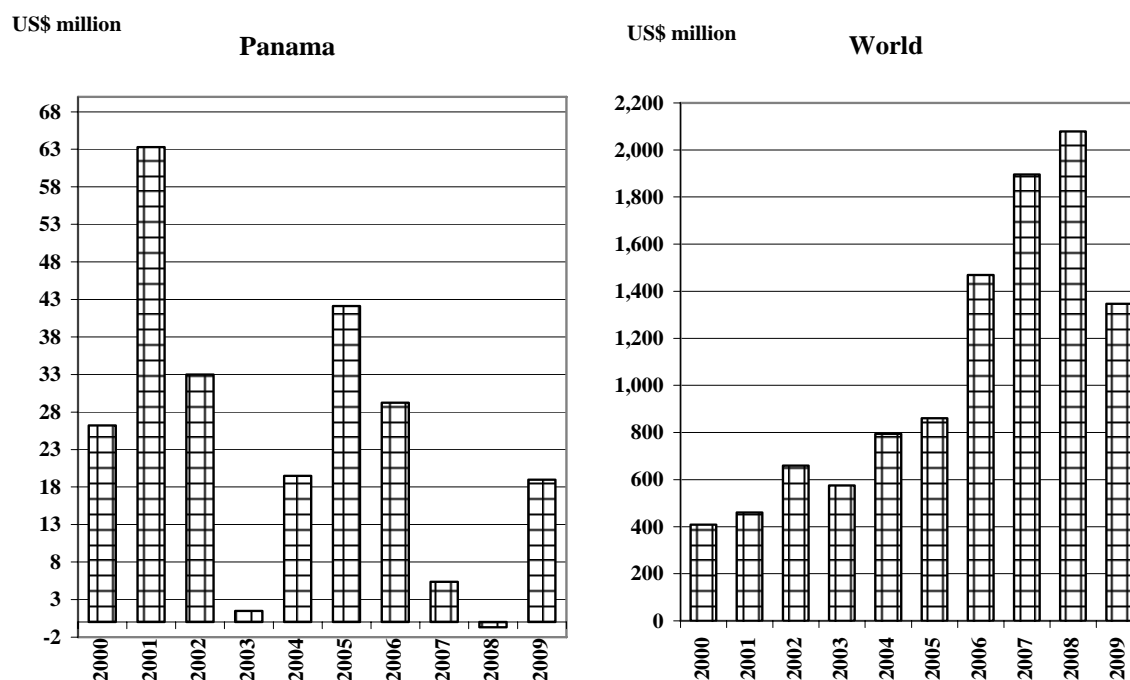


Source: Central Bank of Costa Rica.

13. Chart I.5 show that Costa Rica's current inflows of FDI from Panama and the world in the period 2000-2009. While the inflow of FDI from Panama has been irregular over the period surveyed, a constant upward trend (with the exception of 2003 and 2009) has been registered on FDI inflow from the world, reaching the maximum figure of US\$2.078 billion in 2008, up from 409 million in 2000.

### Chart I.5

#### Costa Rica, foreign direct investment flow with Panama and world, 2000-2008



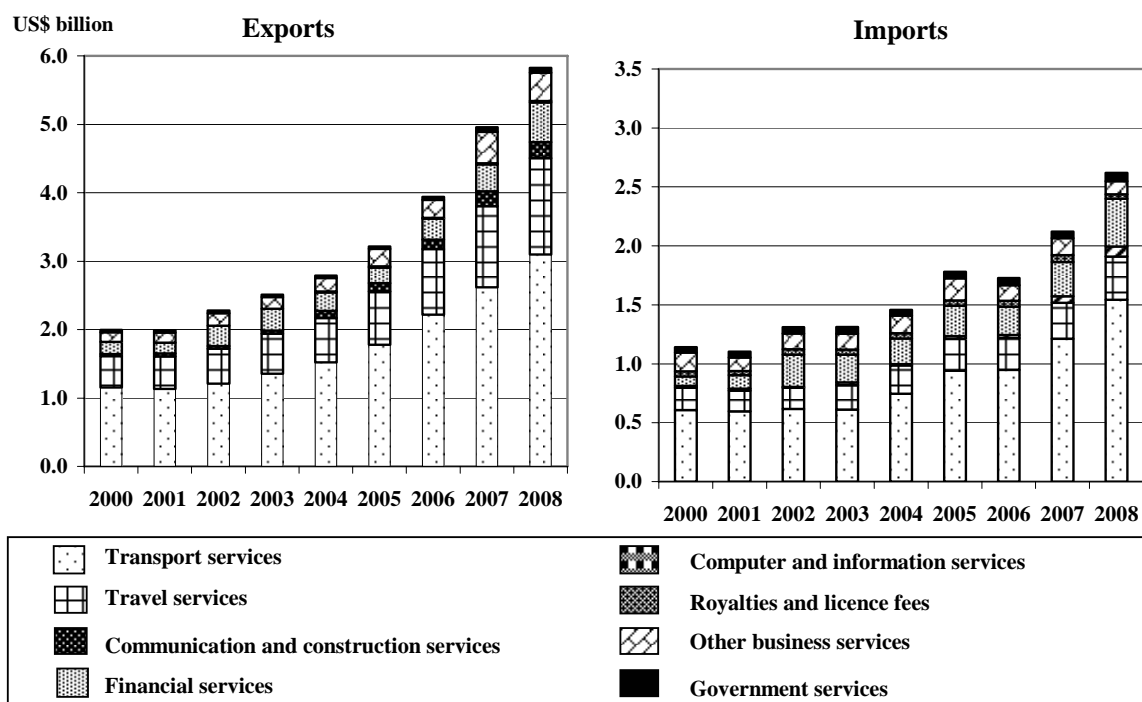
Source: BCCR, CINDE, PROCOMER, COMEX and ICT.

14. In 2008, Panama's commercial services exports amounted to US\$5.826 million, representing 0.15% of world exports, while imports amounted to US\$2.621 million and represented 0.07% of world imports. Panama's dynamism in services exports is reflected in its extremely high proportion of Panama's external trade, accounting for 83.6% of total exports; the proportion of services in total imports is however significantly lower – i.e. 16.4%.

15. The evolution of Panama's total commercial services trade during the period 2000-2008 is shown in Chart I.6. In 2008, Panama's exports to the world was almost three times bigger than those of 2000; imports have also followed an upward trend, but with yearly variations, and at a lower increase path: in 2008, they had increased by 130.8%.

16. As regards the composition of exports, transport services remained the leading sector over the entire period, accounting for more than half (55.3%) of Panama's total services exports, with the single sub sector of maritime transport accounting for around 40%. Travel and financial services immediately follow, accounting for a growing share of total exports. Sectors that emerged during this period were communication and construction, exports of which increased from US\$34 million to US\$238 million. Transportation also represents the largest share in Panama's imports, with the value in 2008 being almost three times that of 2000; in particular, such increase has accelerated since 2006. Imports of financial and travel services also showed an upturn.

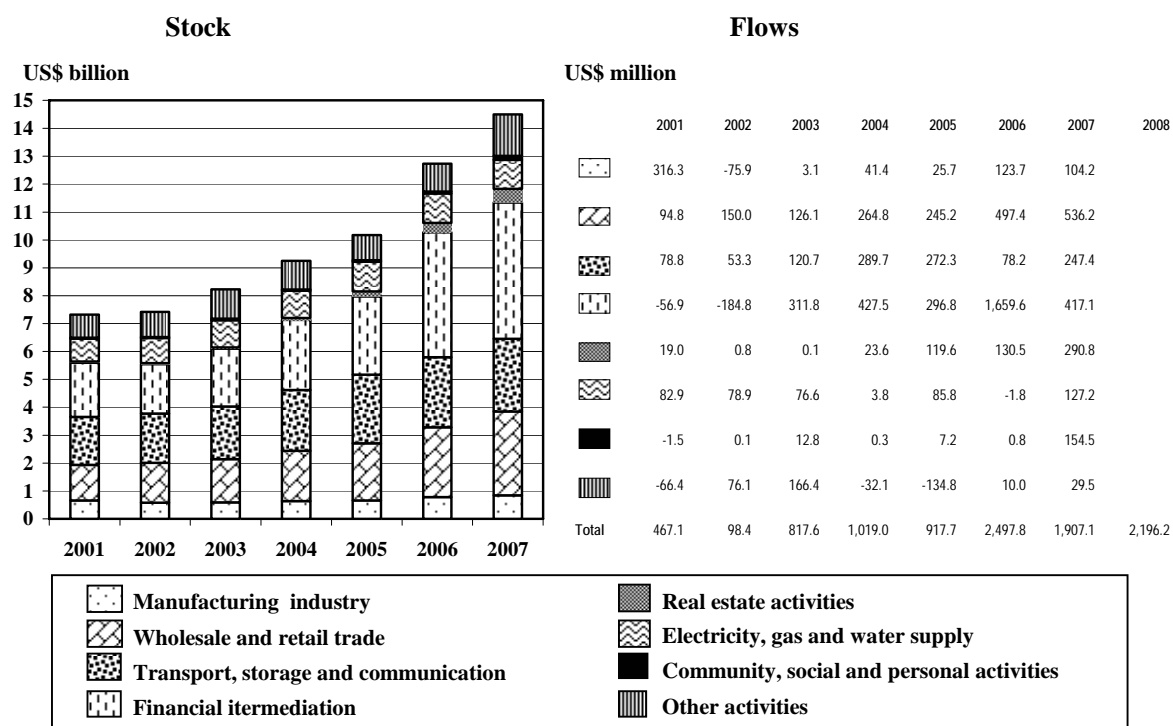
**Chart I.6 - Panama: Total commercial services trade, 2000-2008**



17. Chart I.7 shows FDI flows and stock of FDI in relation to the world, by branch of economic activity. While the stock of FDI has constantly increased during 2001 and 2007, flows have followed a more erratic evolution. The stock of FDI in 2007 reaches US\$14.5 billion in 2007, up from US\$7.3 billion in 2001. Figures show that financial intermediation is the sector that concentrates most of the FDI, followed by wholesale and retail trade. In the latter sector, positive flows have been registered throughout the whole period, while in the former negative flows have been registered in 2001 and 2002, following an irregular evolution in the following years.

18. Figures for the bilateral FDI stock and flows from Costa Rica in Panama are available for the years 2001-2007 (Table I.1). These figures show that investment from Costa Rica in Panama is of limited importance, amounting to less than 1% of the stock in the years considered. Flows during the period considered have also followed an inconstant path.

**Chart I.7 - Panama: FDI by branch of economic activity, 2001-2008**



Source: Office of the Comptroller General of the Republic of Panama.

**Table I.1**  
**FDI Stock and Flows from World and Costa Rica, 2001-2007 (US\$ million)**

Year	FDI Stock		FDI Flows	
	From World	From Costa Rica	From World	From Costa Rica
2001	7,314.1	n.a.	467.1	11.6
2002	7,412.5	n.a.	98.4	22.8
2003	8,230.1	n.a.	817.6	-21.5
2004	9,249.1	n.a.	1,019.0	1.1
2005	10,166.8	61.0	917.7	15.3
2006	12,723.8	51.3	2,497.8	4.9
2007	14,500.4	63.2	1,907.1	24.6

Source: Office of the Comptroller General of the Republic of Panama.

## II. CHARACTERISTIC ELEMENTS OF THE TREATY

### A. BACKGROUND INFORMATION

19. A Free Trade Treaty between Central America and Panama (hereinafter the Treaty) was signed on 6 March 2002 by the respective Governments.<sup>3</sup> The Treaty contains the regulatory text governing the trade in goods and services between Panama and each of the five member countries of the Central America, but not the trade between members of the Central American Common Market (CACM). The entry into force of the bilateral regulatory framework is subject to the conclusion of bilateral Protocols between Panama and each of the CACM countries, which are to include a tariff elimination programme, import and export restrictions, specific rules of origin, and reservations and restrictions regarding trade in services and investment. Unless otherwise indicated, the Treaty applies on a bilateral basis between Panama and each of the Central American countries.

20. The Treaty between Panama and Costa Rica entered into force on 23 November 2008, following the signature of the bilateral Protocol on 7 August 2007.<sup>4</sup> On 7 April 2009, pursuant to Article XXIV:7(a) of the GATT 1994 and Article V:7(a) of the GATS, the Parties notified to the WTO the Treaty's and the bilateral Protocol's aspects relating to trade in goods and services, respectively.<sup>5</sup>

21. The Treaty comprises 22 chapters with annexes, divided into eight parts, together with a Bilateral Protocol between the Parties which contains the annexes on matters agreed bilaterally between them. The structure of the Treaty is as set forth in Table II.1:

Table II.1  
Free Trade Treaty between Central America and Panama

Preamble	
<b>Part One</b>	<b>General Aspects</b>
Chapter 1	Initial Provisions
Chapter 2	General Definitions
<b>Part Two</b>	<b>Trade in Goods</b>
Chapter 3	National Treatment and Market Access for Goods
Chapter 4	Rules of Origin
Chapter 5	Customs Procedures
Chapter 6	Safeguard Measures
Chapter 7	Unfair Trading Practices
<b>Part Three</b>	<b>Technical Barriers to Trade</b>
Chapter 8	Sanitary and Phytosanitary Measures
Chapter 9	Standards-related Measures, Metrology and Approval Procedures
<b>Part Four</b>	<b>Investment, Services and Related Matters</b>
Chapter 10	Investment
Chapter 11	Cross-Border Trade in Services
Chapter 12	Financial Services

<sup>3</sup> The member countries of the Central America Common Market (CACM) are the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua.

<sup>4</sup> As of August 2010, the Treaty had entered into force for all the Parties. The Protocol relating to Panama-El Salvador had been notified in February 2005 and is in force since 11 April 2003; a Factual Presentation has been distributed in document WT/REG196/3 of 9 May 2008; that of Panama-Honduras had been notified in December 2009 and is in force since 9 January 2009; a Factual Presentation was being drafted. The Protocols relating to Panama-Guatemala and Panama-Nicaragua, in force since 22 June 2009 and 21 November 2009, respectively, had not been notified as of August 2010.

<sup>5</sup> WTO document WT/REG264/N/1 - S/C/N/325 of 17 April 2009. The Council for Trade in Goods and the Council for Trade in Services took note of the Treaty in their meetings of 12 May and 23 June 2009, respectively (documents G/C/M/97 and S/C/M/94). The text of the Treaty and the Protocol are available, together with their Annexes, at the official web sites of the Parties:

<http://www.comex.go.cr/acuerdos/Panama2/Paginas/Partenormativa.aspx> (Treaty)

<http://www.comex.go.cr/acuerdos/Panama2/Paginas/Protocolobilateral.aspx> (Protocol), and

<http://www.mici.gob.pa/tlc-pma-costarica.php>.

<b>Preamble</b>	
Chapter 13	Telecommunications
Chapter 14	Temporary Entry of Business Persons
<b>Part Five</b>	<b>Competition Policy</b>
Chapter 15	Competition Policy, Monopolies and State Enterprises
Part Six	Government Procurement
Chapter 16	Government Procurement
Part Seven	Intellectual Property
Chapter 17	Intellectual Property
Part Eight	Administrative and Institutional Provisions
Chapter 18	Transparency
Chapter 19	Administration of the Treaty
Chapter 20	Dispute Settlement
Chapter 21	Exceptions
Chapter 22	Final Provisions

*Source:* Free Trade Treaty between Central America and Panama.

22. Disciplines relating to trade in goods are dealt with in Parts Two and Three (Chapters 3-9), disciplines regarding trade in services are contained in Part Four (Chapters 10-14). Parts Five to Seven contain provisions on competition policy, government procurement and intellectual property, respectively.

23. The Treaty provides no specific time-limit for implementation. Progressive elimination of trade restrictions for both goods and services starts as normally at the date of entry into force of the individual bilateral Protocols; however, for the bilateral Protocols between Panama and Costa Rica, two situations are envisaged: if the Treaty enters into force between 1 January and 30 June, the first tariff reduction begins as of the Treaty's entry into force; if the Treaty enters into force between 1 July and 31 December, the first tariff reduction begins as of 1 January of the year after. Thus, the first implementation of tariff reduction took place on 1 January 2009.

24. Chapter 2 lays down general definitions applicable to the Treaty as a whole, whether of general application (Article 2.01) or country-specific (Article 2.02). Those of general application include the terms "substantial business activities", defined on the basis of a number of objective criteria<sup>6</sup>; "measure", defined as any law, regulation, procedure, requirement, provision or practice; "person of a Party", defined as a national or an enterprise of a Party. Country-specific definitions provide in both cases that a "national" encompass those having the nationality by birth or by naturalization (also by adoption in the case of Panama) and also permanent residents in their respective territories.

### **III. TRADE IN GOODS**

#### **A. NATIONAL TREATMENT AND MARKET ACCESS PROVISIONS ON TRADE IN GOODS**

##### **1. Import duties and charges, and quantitative restrictions**

###### **(a) General provisions**

25. The provisions relating to the liberalization of goods imports are contained in Chapter 3 of the Treaty. Article 3.03 provides that the Parties shall accord national treatment to each other in accordance with Article III of the GATT 1994, that is, that they shall afford to the goods of the other Party treatment no less favourable than the most favourable treatment accorded to like goods of national origin.

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<sup>6</sup> See Section C.2.e below.

26. Under Article 3.04, the Parties undertake to eliminate tariffs, fees and charges on imports of originating goods other than those set out in Annex 3.04 (Tariff Elimination Programme, TEP); in practice, however, this "negative list" encompasses the entire tariff universe and includes all products, regardless of the tariff elimination date (see section III.A.1(b) below). It is also forbidden to increase, or apply new, tariffs above the levels specified in the TEP. Article 3.11 extends that prohibition to customs processing fees and consular fees, and eliminates the current ones. Tariff-rates quotas are allowed for some products (see paragraph 35 below).

27. Under Articles 3.05 and 3.06, the Parties authorize duty-free temporary admission for certain goods imported from the other Party, regardless of origin, including, *inter alia*, goods intended for display and goods of no commercial value. Goods that are re-imported after undergoing repairs or alterations cannot be subject to customs duties (Article 3.07).

28. Customs valuation matters are governed by the WTO Customs Valuation Agreement, with the provision that those countries which have negotiated reservations before the WTO under Annex III of the Agreement on Implementation of Article VII of the GATT 1994 shall fully implement the Customs Valuation Agreement after the lapse of two years from the date of entry into force of this Treaty.<sup>7</sup> Customs processing fees and consular fees are also eliminated (Article 3.11).

29. Article 3.10 provides for the elimination of all non-tariff measure as from the entry into force of the Treaty, except those applied in accordance with Articles XX and XXI of the GATT 1994, and Chapters 8 and 9 of the Treaty (sanitary and phytosanitary measures, technical barriers to trade). The Parties undertake not to adopt or maintain any restriction on the importation of any good from the other Party, except in accordance with Article XI of the GATT 1994, which is incorporated into the Treaty. Import price requirements are prohibited, except as permitted for enforcement of countervailing and anti-dumping duties and price undertakings. If a Party maintains a restriction or prohibition on imports from a third country, it may not prevent the other Party from importing goods from that country.

30. Paragraph 6 of Article 3.10 of the Treaty provides that the general prohibition of import restrictions, as described above, do not apply for those measures listed in Annex 3.10(6). This, read together with Article 1 of the bilateral Protocol and the list attached to it, allows the maintenance of import prohibitions as follows:

- (a) For Costa Rica, on crude petroleum and derivatives, asphalt and naptha; ethyl alcohol and rum; and any action authorized by the WTO Dispute Settlement Body;
- (b) for Panama, on official lottery tickets or coupons in circulation; videos and other games of tariff heading 9504 which distribute prizes in cash; and any action authorized by the WTO Dispute Settlement Body.

(b) Liberalization of tariff lines and trade

31. Under the TEP, tariffs are eliminated in accordance with 11 different categories for Costa Rica and 12 for Panama, while a last category applies for products that are excluded from the Treaty. In accordance with paragraph 2(a)(ii) of Annex 3.04 of the Protocol, the first instalment of the tariff dismantling took place on 1 January 2009.<sup>8</sup> Transition periods of respectively 16 and 17 years will apply to Costa Rica and Panama - thus running until 2025 and 2026. Box III.1 below summarizes the TEP and its scope of application in terms of tariff lines.

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<sup>7</sup> No reservation is applied by the Parties.

<sup>8</sup> This paragraph provides that if the Treaty enters into force between 1 January and 30 June, the first instalment takes place at the Treaty's entry into force, otherwise it is postponed to 1 January of the year after.

**Box III.1**

**Tariff Elimination Programme in the Costa Rica-Panama Protocol to the FTT**

<u>Category</u>	<u>Tariff Elimination Schedule</u>
<b>A</b>	Elimination of customs tariffs on 1 January 2009.
<b>B3</b>	Tariff elimination in 3 equal instalments; tariff liberalization on 1 January 2011.
<b>B</b>	Tariff elimination in 5 equal instalments; tariff liberalization on 1 January 2013.
<b>B8</b>	Tariff elimination in 8 equal instalments; tariff liberalization on 1 January 2016.
<b>C</b>	Tariff elimination in 10 equal instalments; tariff liberalization on 1 January 2018.
<b>C11</b>	Tariff elimination in 11 equal instalments; tariff liberalization on 1 January 2019.
<b>C12</b>	Tariff elimination in 12 equal instalments; tariff liberalization on 1 January 2020.
<b>C13</b>	Tariff elimination in 13 equal instalments; tariff liberalization on 1 January 2021.
<b>D</b>	Tariff elimination in 15 equal instalments; tariff liberalization on 1 January 2023.
<b>F</b>	Elimination of tariffs in 7 equal instalments starting on 1.1.2013; tariff liberalization on 1.1.2019.
<b>G</b>	Elimination of tariffs in 6 equal instalments starting on 1.1.2019; tariff liberalization on 1.1.2024.
<b>H</b>	Elimination of tariffs in 12 equal instalments starting on 1.1.2014; tariff liberalization on 1.1.2025.
<b>I</b>	Elimination of tariffs in 7 equal instalments starting on 1.1.2019; tariff liberalization on 1.1.2025.
<b>J (Panama)</b>	Elimination of tariffs in 10 equal instalments starting on 1.1.2011; tariff liberalization on 1.1.2020.
<b>EXCL</b>	Not subject to TEP, MFN rate applies.

*Source:* Annex 3.04 of the Bilateral Protocol between Panama and Costa Rica.

32. The base rate for establishing the TEP is defined at tariff line level for Costa Rica and Panama (in Annex 3.04 of the Bilateral Protocol); the established base rate for Costa Rica corresponds to the MFN tariffs in effect in March 2006 (Third Amendment), except for a few lines for which the base rate is lower than the MFN, and the established base rate for Panama corresponds to the third amendment version updated at 1 January 2007.<sup>9</sup> In addition, paragraph 3 of Article 3.04 of the Treaty provides that the customs duties applied to imports of originating goods shall be the lesser of either the duties established under the TEP or the MFN applied customs duty.

33. In accordance with paragraph 2(a)(ii) of Annex 3.04 of the bilateral Protocol<sup>10</sup>, the first step of implementation of tariff reductions has taken place on 1 January 2009.

34. Tables III.1A and III.1B below show total tariff elimination under the Treaty. For both countries, liberalization is front-loaded, with however a distinct starting point: while prior to entry into force around one third of Panama's tariff lines and half of its imports from Costa Rica were already duty-free, these figures were around 2% for Costa Rica. As of entry into force, however, this distinction vanishes – for both countries, duty-free applies with respect to around 86%-91% in terms of tariff lines and trade. By 2018 – i.e. the tenth year of implementation – these figures would raise to around 97%, to reach around 98% at the end of the transition period. The TEP has therefore produced a double symmetric liberalization – i.e. in terms of liberalisation by Party, and in terms of tariff lines and trade. The remaining differences in terms of coverage are negligible: by year 10, 97.8% of Costa Rica's imports from Panama – 97.5% of the tariff lines – will become duty-free; the equivalent figures for Panama are 96.5% and 97.5%. At the end of the transition period, the respective figures will be 98.7%-98.2% for Costa Rica and 98.5%-97.5% for Panama. Excluded products, similar for both countries, represent around 2% of tariff lines and trade in both cases and include pig and poultry meat, eggs, potatoes, onions, coffee and coffee extracts, rice, animal and vegetal fats and oils, sugar, motor cars and vehicles, trucks and motorcycles.

<sup>9</sup> For Costa Rica, this apply to 0207.11.00, 0207.12.00, 0207.13.91 and 0207.14.91, as reflected in paragraph 3 of Annex 3.04 of Costa Rica. For Panama this apply to 0201.90.11, 0102.90.19, 0102.90.20, 0102.90.90, 0201.10.00, 0201.20.00, 0201.30.00, 0202.10.00, 0202.20.00, 0201.30.00 and 2103.20.10, as specified in paragraphs 3-5 of Annex 3.04 of Panama.

<sup>10</sup> This paragraph states that in cases where the Treaty enters into force between July and December, the first tariff reduction will take place the year after.



**Table III.1**  
**Tariff elimination commitments under the Treaty and corresponding average trade**  
**A. Costa Rica**

Duty phase-out period	Number of lines	% of total lines in Costa Rica's tariff schedule	Value of Costa Rica's imports from Panama (2006-2008) in million US\$	% of Costa Rica's total imports from Panama 2006-2008
<b>MFN duty free (2009)</b>	116	1.8	4.9	2.3
2009	5,594	88.7	174.9	83.5
2011	7	0.1	0.0	0.0
2013	82	1.3	0.9	0.4
2016	15	0.2	0.6	0.3
2018	340	5.4	23.6	11.3
2019	7	0.1	1.9	0.9
2020	17	0.3	0.0	0.0
2021	6	0.1	0.0	0.0
2023	6	0.1	0.0	0.0
2024	2	0.0	0.0	0.0
2025	4	0.1	0.0	0.0
<b>Remain dutiable</b>	109	1.7	2.7	1.3
<b>Total</b>	6,305	100.0	209.5	100.0

Note: Based on the HS 2002 nomenclature.

Source: WTO estimates based on data provided by Costa Rica.

**Table III.1**  
**Tariff elimination commitments under the Treaty and corresponding average trade**  
**B. Panama**

Duty phase-out period	Number of lines	% of total lines in Panama's tariff schedule	Value of Panama's imports from Costa Rica (2006-2008) in million US\$	% of Panama's total imports from Costa Rica 2006-2008
<b>MFN duty free (2009)</b>	2,797	31.3	171.2	49.9
2009	4,957	55.5	140.0	40.8
2011	8	0.1	0.0	0.0
2013	158	1.8	5.2	1.5
2016	24	0.3	2.3	0.7
2018	715	8.0	12.2	3.6
2019	9	0.1	5.5	1.6
2020	17	0.2	1.2	0.3
2021	12	0.1	0.1	0.0
2023	4	0.0	0.0	0.0
2024	3	0.0	0.0	0.0
2025	5	0.1	0.2	0.1
2026	2	0.0	0.0	0.0
<b>Remain dutiable</b>	225	2.5	5.0	1.4
<b>Total</b>	8,936	100.0	343.0	100.0

Source: WTO estimates based on data provided by Panama and the WTO-IDB.

(c) Tariff-rate quotas

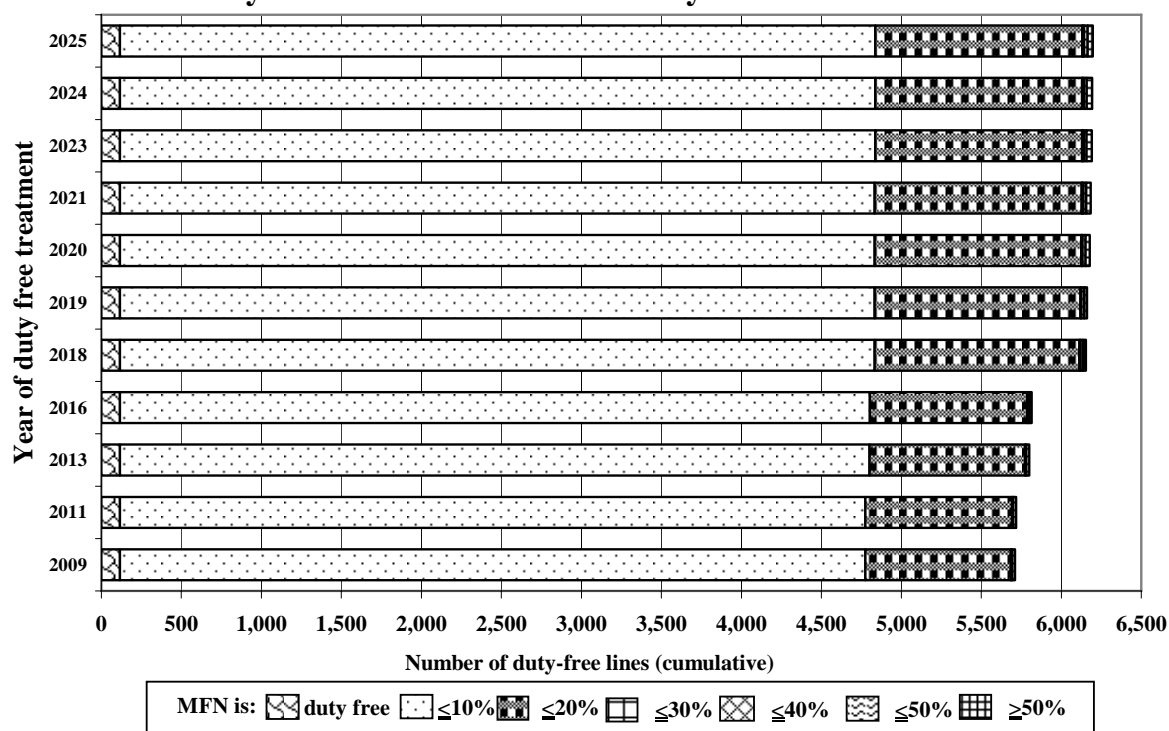
35. Appendix I to Annex 3.04 of the Protocol provides the disciplines applying to the tariff-rate quotas (TRQs) provided for under the TEP. These TRQs, for which the in-quota rate is duty-free, are used either as a temporary instrument in force only during the progressive phasing-out of the relevant tariff (bovine meat, milk, sausages and ham, prepared meat of fowls, articles of paper, hoses and socks) or – for those products that are excluded from the TEP – as a permanent mechanism (pig meat and palm oil). For other tomato sauces (subheading 2103.20), a duty-free TRQ is associated with a less-stringent rule of origin (change of tariff subheading). Out of the quota, these products – which are under category A – benefit from duty-free at entry into force only if they qualify as originating in accordance with the specific rule of origin that requires 50% domestic tomato solid content (both rules of origin are listed in section C of Annex 4.03, see also paragraph 47 below). Details on the TRQs provided for are contained in Annex II of this document.

(d) Costa Rica's liberalization schedule

36. Costa Rica's tariff in 2009 had a total of 6,305 tariff lines (8-digit level), generally those applied by CACM common tariff system (see paragraph 175 below). In 2009, the MFN applied tariff was zero for 1.8% of the lines; up to 20% for 96.7% of lines, between 20% and 40% for 0.22% of the lines, 14 lines between at 40% and 50%, and 73 lines accounting for 1.2% of the lines above 50% (at 51%, 66% and 151%), which apply on dairy products, poultry meat and preparations thereof; no specific rate of duty was applied. The elimination of these higher tariffs started as from entry into force, with liberalization affecting 17 lines – dairy products except milk, which is only liberalized in 2020. Other representative years for the liberalization of higher tariffs are 2018, 2023 and the final year of implementation, 2025. The chart shows the important liberalization as from entry into force of lower tariffs: only 2.2% of the lines up to at 6% and 10% were not liberalized in 2009, and more than two thirds of the lines at 15% became duty free at that year. At year 10 – i.e. 2018 – liberalization of lines up to 10% was virtually completed, and less than 5% of the lines at 15% were still subject to tariffs; of these, 3.1% were excluded from the TEP. For the 16 lines having a MFN rate between 20% and 40%, 1 was liberalized at entry into force, 5 in 2018 and by 2025, 5 remained subject to duties. Out of the other 104 lines that remained subject to duties, 84 had MFN rates below 20% and 20 had rates above 40%.

**Chart III.1**

**Costa Rica's duty elimination under the Treaty**



Source: WTO Secretariat estimates, based on data provided by Costa Rica.

37. Table III.2 shows Costa Rica's trade liberalization commitments under the Treaty at the HS 8-digit level, organized by HS section product categories. All sections will benefit from some liberalization at entry into force, with eight sections being fully liberalized at that moment – VIII (raw hides and skins, leather, fur skins and articles thereof), XII-XIV (footwear, articles of stone, pearls and precious stones), XVI (machinery), XVIII (precision equipment), XIX (arms and ammunition) and XXI (works of art). In addition, more than 90% of lines of all sections covering industrial products – with the exception of sections XI (textiles and articles thereof) and XVII (vehicles) – will also become duty-free at that time. Around three fifths of Costa Rica's imports from Panama are concentrated in sections I (live animals), VI (chemicals), XI (textiles and article thereof) and XVI (machinery); the latter three will be fully liberalized at the latest on 2018, but 14 lines (out of 289) of section I will remain dutiable. This section is where the average final tariff will be the highest, attaining 68.4%; in terms of coverage of lines, however, the higher protection is applied on products of section III (animal and vegetable fats and oils), with 24 lines (out of 54) remaining subject to duties.

**Table III.2**  
**Costa Rica: Tariff elimination under the Treaty, by HS section**

Costa Rica. Tariff elimination under the Treaty, by HS section																	
HS section	MFN avg.%	Total No of lines	MFN 2009	Number of duty-free lines												Remain dutiable	Avg. Final Tariff (Dutiable)
				2009	2011	2013	2016	2018	2019	2020	2021	2023	2024	2025			
I	20.9	289		228	7	5		17		8		6	2	2	14	68.4	
II	10.3	371		310		23	1	8		9				1	19	27.7	
III	8.9	54		26		4									24	12.1	
IV	14.1	272		2		14	4	5	4		6			1	6	35.7	
V	3.6	177	11	161		2		3									
VI	2.8	920	1	907		1	1	10									
VII	4.9	330		8				2									
VIII	8.8	108		108													
IX	8.2	90		88		2											
X	5.7	285		3		3	1	5	3								
XI	9.9	914		638			8	268									
XII	12.5	63		63													
XIII	6.8	160		160													
XIV	7.5	54		54													
XV	3.9	694		677		15		2									
XVI	2.9	901	89	812													
XVII	6.1	191		137		8									46	5.9	
XVIII	4.5	245	15	230													
XIX	12.9	21		21													
XX	10.9	157		152		5											
XXI	8.2	9		9													
Total	6.9	6,305	116	5,594	7	82	15	340	7	17	6	6	2	4	109	20.7	

Note: Based on the HS 2002 nomenclature.

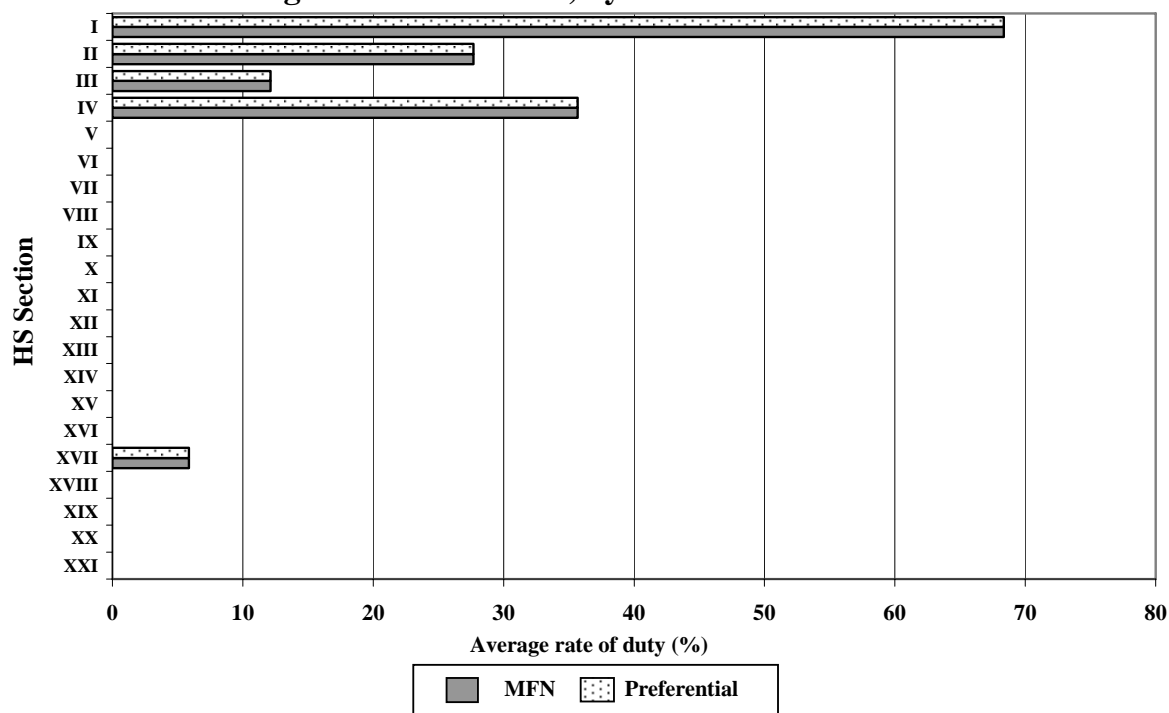
Source: WTO estimates based on data provided by Costa Rica.

Source: WTO estimates based on data provided by Costa Rica.

38. Chart III.2 shows a comparison of average dutiable rates in those HS sections where preferential duties are to remain at the end of the implementation period. The comparison is made between the average preferential and MFN rates only for lines subject to preferential duties. Chart III.3 makes a similar comparison but in terms of average dutiable rates by HS Chapter. Both Charts show that, both in terms of HS sections and Chapter, the Treaty and its TEP had no impact on tariff peaks, which remain at the same level for both preferential and MFN duties. The only preferential treatment that applies concern quotas for products of Chapters 2, 4, 15 and 21 (see Annex II of this document).

**Chart III.2**

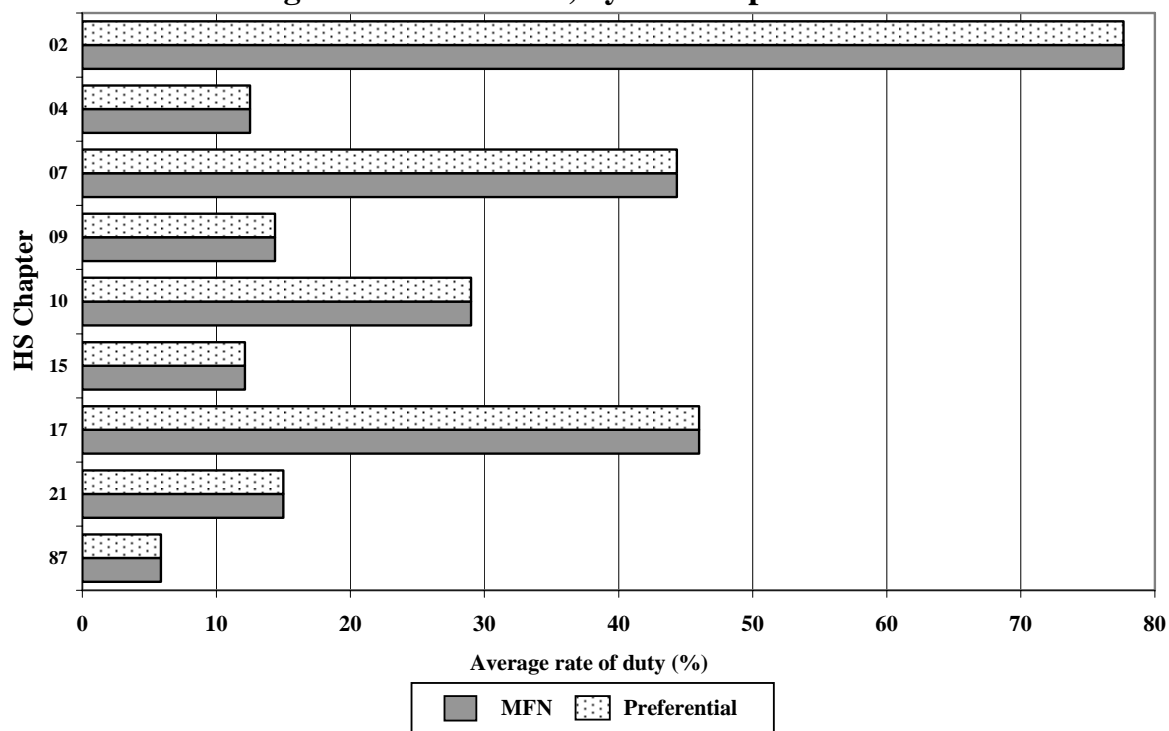
**Costa Rica: Average of dutiable rates, by HS Section**



Source: WTO Secretariat estimates, based on data provided by Costa Rica.

**Chart III.3**

**Costa Rica: Average of dutiable rates, by HS Chapter**

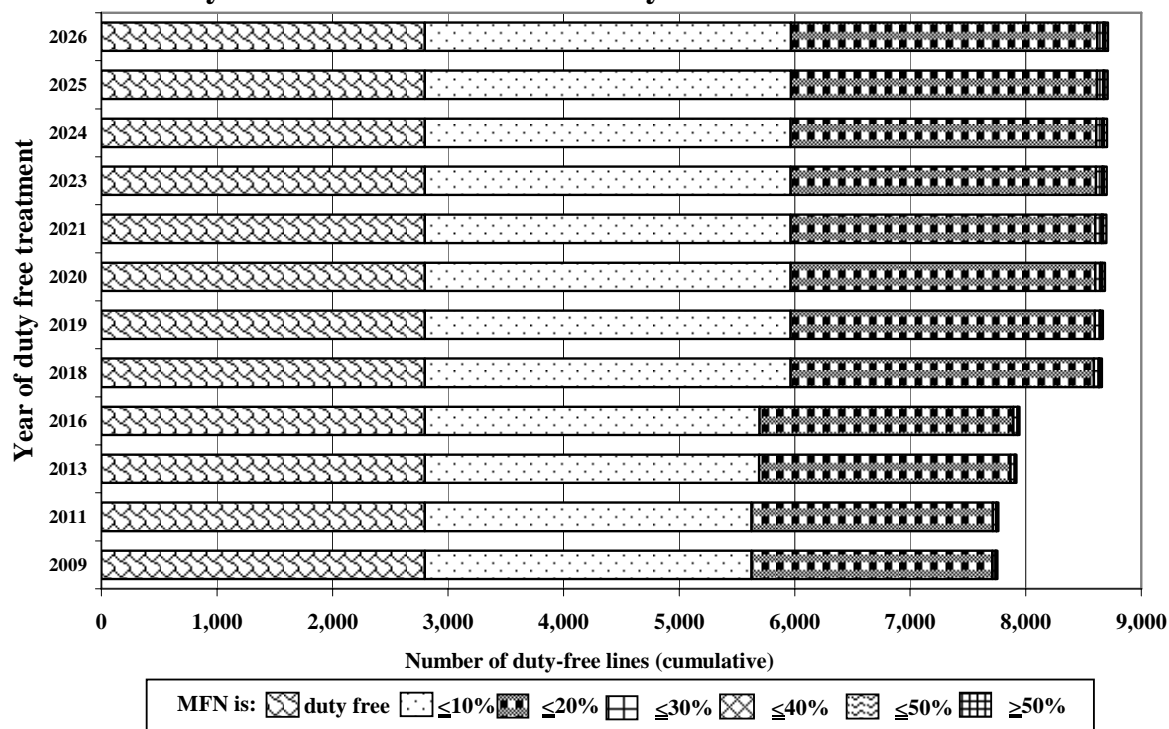


Source: WTO Secretariat estimates, based on data provided by Costa Rica.

## (e) Panama's liberalization schedule

39. Chart III.4 shows Panama's tariff elimination schedule. Panama's tariff universe in 2009 comprised 8,936 tariff lines (8-digit level); 98.4% of these lines had a MFN rate up to 20% (31.3% were duty-free, 36.2% up to 10% and 30.9% up to 20%), 70 lines were at 50% or above and the remainder 72 lines were between 22.5% and 50%; no specific rate of duty was applied. From the chart, it can be seen that the TEP reflects well Panama's tariff structure, with liberalization equally distributed among the various tariff ranges. At entry into force, all tariff ranges – except the three lines at 40% (maize and cereal grains, liberalized at year 10 in 2018) – will benefit from some liberalization, including 15 lines at 50% or above. At the end of the transition period in 2026, all tariff ranges – except the 14 lines with MFN rates of 40% and 50% (concentrated milk or cream, buttermilk, ketchup) – will however have some tariff lines subject to duties: more than half of the lines above 50%, and about one fourth of the lines between 22.5% and 30%. After year 10 – i.e. as from 2019 – 13 lines at 50% or above will be liberalized, while the corresponding figure for tariffs under 10%, 20% and 30% are 3, 26 and 10.

**Chart III.4**  
**Panama's duty elimination under the Treaty**



Source: WTO Secretariat estimates, based on data provided by Panama.

40. Table III.3 shows Panama's trade liberalization commitments under the Treaty at the HS 8-digit level, organized by HS section product categories. All sectors benefited from some liberalization at entry into force, with the same eight sections as Costa Rica being fully liberalized (i.e. VIII, XII-XIV, XVI, XVIII, XIX and XXI; besides, more than 90% of lines of all sections except I-IV, XI and XVII will also become duty-free at that date. As indicated in Chart I.3, more than half of imports of Costa Rica into Panama are of sections IV (prepared foods), VI (chemicals) and XVI (machinery); while the latter two will be fully liberalized – sections XVI at entry into force, section VI by 2018 – liberalization of lines of section IV will start at entry into force and take place until 2025, with 11 lines (out of 572) remaining dutiable. All other sections covering agricultural products will also have lines subject to duties; for industrial products, only Section XVII (vehicles)

will still have lines dutiable as of 2026. In terms of coverage, vegetable oils (section III) and vehicles remain as the most protected sections under the Treaty – with respectively 33.8% and 42.7% of lines remaining dutiable – while live animals and meat are those products having the highest average rate of duty.

**Table III.3**  
**Panama: Tariff elimination under the Treaty, by HS section**

Annex A: Tariff Elimination under the Treaty, by HS section																	
HS section	MFN avg. %	Total No of lines	MFN 2009	Number of duty-free lines												Remain dutiable	Avg. Final Tariff (Dutiable)
				2009	2011	2013	2016	2018	2019	2020	2021	2023	2024	2025	2026		
I	22.3	400	22	289	8	9		28		10		4	3		2	25	68.7
II	10.1	429	148	229		25		7		6				2		12	61.8
III	10.8	71	21	18		4		4								24	18.8
IV	14.0	572	87	356		35	7	55	5	1	12			3		11	57.3
V	7.0	199	84	107		2		6									
VI	2.5	1,268	843	388		6	3	28									
VII	4.3	460	258	199				3									
VIII	12.3	121	3	118													
IX	7.3	176	69	102		5											
X	7.4	485	205	259		6	1	10	4								
XI	7.9	1,285	476	225			13	571									
XII	11.8	164	6	158													
XIII	9.7	294	40	254													
XIV	7.2	66	24	42													
XV	7.4	930	344	532		51		3									
XVI	6.0	1,029	121	908													
XVII	11.5	358	20	179		6										153	12.5
XVIII	9.7	306	19	287													
XIX	14.6	27		27													
XX	11.7	287	3	275		9											
XXI	7.8	9	4	5													
Total	8.3	8,936	2,797	4,957	8	158	24	715	9	17	12	4	3	5	2	225	24.2

Note: Based on the HS 2002 nomenclature.

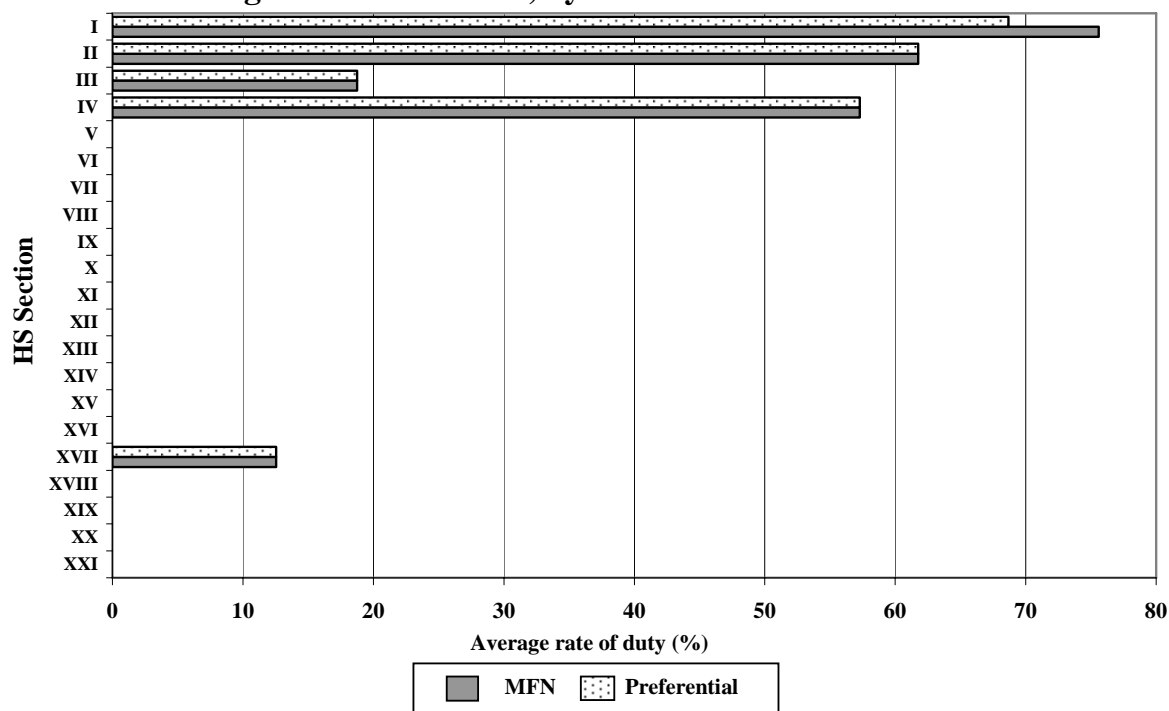
Source: WTO estimates based on data provided by Panama and the WTO-IDB.

41. Chart III.5 shows a comparison of average dutiable rates in those HS sections where preferential duties are to remain at the end of the implementation period. The comparison is made between the average preferential and MFN rates only for lines subject to preferential duties. As can be seen, only in the case of HS section I (live animals) is the preferential rate lower than the MFN rate; in particular, tariff peaks of sections II and IV, with an average rate beyond 50%, remain. This is reflected in terms of average dutiable rates by HS Chapter in Chart III.6, which shows that only in the case of Chapter II (meat and edible meat offal) the average dutiable preferential rate is lower than the corresponding MFN rate: 73.3% for the preferential rate and 80.9% for the MFN rate.<sup>11</sup> Additional preferential treatment granted to these products concern quotas for products of Chapters 2, 4, 15 and 21 (see Annex II of this document).

<sup>11</sup> As indicated previously, pig and poultry meat are excluded from the TEP – 25 lines out of the 66 tariff lines relating to these products are excluded, with MFN rates at 15% (2 lines), 60%, 70% and 260%; lines not excluded face MFN rates of 10% or 15%.

**Chart III.5**

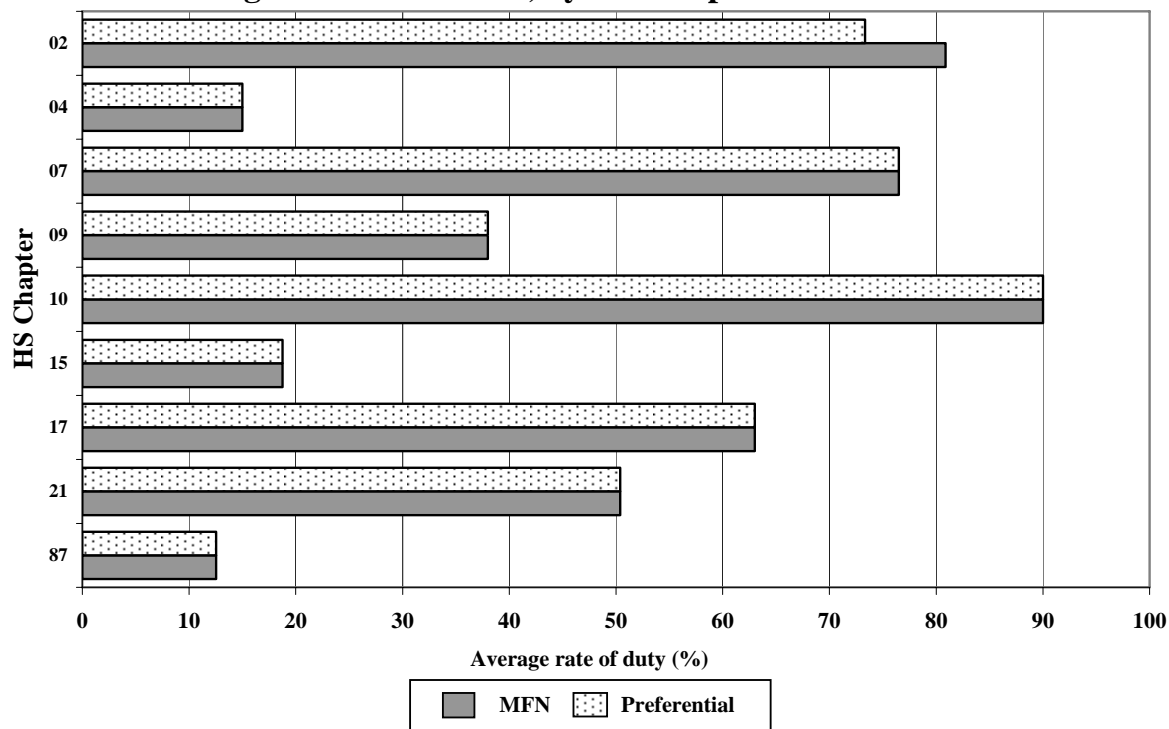
**Panama: Average of dutiable rates, by HS Section**



Source: WTO Secretariat estimates, based on data provided by Panama.

**Chart III.6**

**Panama: Average of dutiable rates, by HS Chapter**



Source: WTO Secretariat estimates, based on data provided by Panama.

## 2. Rules of origin

42. The provisions relating to rules of origin are contained in Chapter 4 of the Treaty; customs procedures are dealt with in its Chapter 5. Rules of origin provisions of the Treaty are complemented by other provisions in the bilateral Protocol; in particular, specific rules of origin are listed either in the Treaty or in the Protocol (see below). This fragmentation of specific rules of origin results in origin of a "Party" being defined differently to either include any of the six signatories of the Treaty or only the two signatories of the Protocol – thus having effects on cumulation possibilities.

43. Article 4.01 contains definitions concerning rules of origin and Articles 4.02-4.14 deal with the substantive aspects. The basic requirements for a good to be considered originating (Article 4.03) are the following:

- (a) The good is wholly obtained or produced entirely in the territory of one or more of the Parties<sup>12</sup>;
- (b) the good is produced in the territory of one or more of the Parties exclusively from originating materials as defined in the Chapter;
- (c) the good is produced in the territory of one or more of the Parties from non-originating materials that undergo a change in tariff classification, comply with a regional value content or other requirements, as set out in Annex 4.03 (either that of the Treaty or that of the Protocol), and the good satisfies all other applicable provisions of the Chapter;
- (d) the good is produced in the territory of one or more of the Parties, but one or more of the non-originating materials that are used in the production of the good do not undergo a change in tariff classification for one of the three reasons described in Article 4.03(d), provided that the regional value content (RVC) is not less than 30%.

44. Annex 4-03 on Specific Rules of Origin is composed of three sections; sections A and B are included in the Annex to the Treaty itself – thus applying to all CACM countries and Panama – while section C is included in Annex 4-03 to the Protocol, thus only applying to the bilateral trade between Costa Rica and Panama. Section A contains the general interpretative notes and section B lists the specific criteria that must be fulfilled by non-originating materials in order for a final product to acquire the status of originating product; these rules of origin – applicable to trade between all Central American countries and Panama – apply for 35 HS Chapters in full and partially for 42 other Chapters (see Table III.4). For the remainder 19 Chapters, rules of origin are specific to each bilateral relation and thus included in section C of Annex 4-03, which also includes a general interpretative note.

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<sup>12</sup> This concept is defined in Article 4.01 and in general refers to mineral goods, vegetable goods and animals extracted, harvested, raised and obtained in the territory or on vessels of the Parties, as well as goods and waste derived from production in the territory of the Parties.



**Table III.4**  
**Treatment of Rules of Origin in the context of the Costa Rica-Panama Protocol and Panama-Central America FTT**

All HS Chapter dealt with in the FTT (fully harmonized ROO)	All HS Chapter dealt with in the bilateral Protocol (ROO specific to each bilateral Protocol)	Part of the HS Chapter in FTT, part in the bilateral Protocol (partially harmonised ROO)
1, 5-7, 10, 13, 14, 26, 35-37, 45-49, 65-68, 70, 71, 74, 75, 78-82, 86, 88, 89, 91-93	2, 15, 19, 20, 30, 39, 42, 43, 44, 54, 56-64	3, 4, 8 <sup>*</sup> (all but mixture of nuts and dried fruits), 9, 11, 12, 16-18, 21-25, 27-29, 31-34, 38, 40, 41, 50, 51-53, 55, 69, 72, 73, 76, 83-85, 87, 90, 94-97

\* Only in cases where one subheading is treated differently from the whole of the Chapter, a reference is made to the product concerned.

*Source:* Annex 3-04 to the FTT and to the Bilateral Protocol.

45. In the vast majority (around three fourths of the cases), the product acquires originating status if the working or processing carried out in the territory of the Parties results in a change of tariff heading (CTH). A change in tariff chapter (CTC) is however required for agricultural products as well as for few minerals, pharmaceuticals, raw hides and skins, wood and pulp, textiles, footwear, articles of stone and cement, transport equipment and furniture. Requirements for a change in tariff subheading (CTS) apply with respect to few spices, cereal grains, prepared vegetables, prepared foodstuff, chemicals, plastics, chemicals, glass and glassware, base metals, vehicles, optical instruments, furniture and to machinery and mechanical appliances.

46. In some cases – some agricultural products of HS Chapters 1, 4, 6-10, 12-14, 18 and tariff headings 2101 and 2201 – an alternative rule is provided, where the "whole obtained or produced" concept applies. A RVC of 30% is also provided as an alternative rule for some products of HS Chapters 32, 39, 44, 84-85, 90, 94 and 96; in many cases, this is combined with a CTS requirement. For dolls (HS 9502.10), the RVC threshold is increased to 40%. Tea is the only product for which only a RVC requirement applies; the threshold is also set at 30%.

47. The rules of origin regime of the Protocol has particularities applying to two HS subheadings which are worth underlining; for both Costa Rica and Panama, these subheadings are under Category A, i.e. becoming duty-free at entry into force. First, for processed cheese not grated or powdered (HS 0406.30)<sup>13</sup>, a rule of origin requiring a CTS and an originating content of solid weight of 20% applies for 12 years; from thereon (i.e. 2021), origin will be from the country where the milk was obtained. Second, for other tomato sauces (HS 2103.20)<sup>14</sup>, one rule of origin applies for imports under TRQs – whereby a CTH is required – while the out-of-quota rule of origin requires an originating content of solid weight of 50%.<sup>15</sup> Article 6 of the Protocol provides that, in cases where the out-of-quota rule cannot be complied with due to shortage, the in-quota rule of origin will apply to the extent necessary fulfil the tomato solid weight content not domestically supplied; the Administrative Commission is empowered to activate this mechanism.

48. Article 4.07 provides the formula for calculating the RVC, which is obtained by deducting from the transaction value of the good (adjusted to a fob basis, except in cases where the good is not exported directly) the transaction value of non originating materials (adjusted to a cif basis, except in cases where it has been acquired in the domestic market). In cases where the transaction value cannot be determined in accordance with Article 1 of the WTO Agreement on Implementation of Article VII of the GATT 1994, the value shall be determined in accordance with the provisions of Articles 2-7 of the latter.

<sup>13</sup> MFN 2009 rates are as follows: 66% for Costa Rica and 30% for Panama.

<sup>14</sup> MFN 2009 rates are as follows: 15% for Costa Rica and for Panama either 25% or 50% depending on the content of dried tomato extract.

<sup>15</sup> Conversely, ketchup is subject to a single rule of origin requiring a CTH; it does not however benefit from a TRQ.

49. Article 4.06 provides, in bilateral trade with Panama, for cumulation between Panama and the Central American countries for which the Treaty, and the corresponding Protocol, have entered into force; as of 1 January 2010, cumulation was in force for all the five CACM countries and Panama.<sup>16</sup> Cumulation is applied on condition that either the specific rule of origin is common to all the Parties (i.e. those rules of origin included in the Annex 4.03 to the Treaty), or where the same rule of origin and the same TEP for a good are common to a group of no fewer than three countries. The Parties of the Treaty have agreed to examine, two years after its entry into force for all Parties – i.e. by end November 2011 – the possibility that materials of Panamanian origin benefit from cumulation on trade carried out in the context of the CACM (paragraph 5 of Article 4.06).

50. The Treaty implicitly establishes the absorption principle, under which a non-originating material that has acquired originating status by meeting the corresponding requirement, is considered to be 100 per cent originating once incorporated into a final product. Paragraph 3 of Article 4.03 provides that production using non-originating materials shall take place in one or more of the Parties, and that RVC shall also be fully fulfilled in the territory of one or more of the Parties, thereby allowing full cumulation.

51. Article 4.08 provides for a tolerance/*de minimis* rule so that a good not meeting the CTC requirements prescribed in Annex 4.03 will be granted originating status, it may still be considered as originating if the value of all non-originating materials does not exceed 10% of the value of the good, calculated on the basis of Article 4.07 (Article 4.08).<sup>17</sup> This rule does not apply to non-originating materials used in the production of goods classified in HS Chapters 1-27, unless the material in question is included in a subheading other than that of the good in which it is to be incorporated. For textiles goods of HS Chapters 50-63, the 10% refers to the weight of the fibres and yarns compared to the weight of the good produced.

52. Paragraph 3 of Article 5.03 of the Treaty provides for the possibility of claiming a duty drawback, within a year of the date of importation, in respect of goods for which no claim for preferential treatment had been made at the time of importation, provided the relevant documentation is supplied at the time of the request.

53. Minimum operations that do not confer origin are listed in Article 4.04. As regards territoriality, originating goods shall lose their originating status unless that transit through third countries is justified for geographical reasons or reasons related to international transport requirements, that the good had not entered for consumption or placed on the market of the country of transit, and that it had remained under customs control during transit (Article 4.14). The origin of fungible goods shall be determined in accordance with one of the three inventory management methods described in Article 4.09.<sup>18</sup> Sets or assortments of goods shall qualify as originating provided that each of the goods contained therein complies with the corresponding rules (Article 4.10). Accessories, spare parts and tools accompanying goods shall be disregarded in determining whether the good has undergone a CTC, subject to conditions, but shall be taken into account in calculating the RVC (Article 4.11). Articles 4.12 and 4.13 lay down requirements for containers and packing and packaging materials.

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<sup>16</sup> By the end of 2009 the Treaty was in force for all parties; the TEP in the context of Panama-Nicaragua Protocol was the last one to become operational on 1 January 2010.

<sup>17</sup> This rule does not apply to non-originating materials of goods classified in HS Chapters 1-27 unless the material in question is included in a subheading other than that of the good in which it is to be incorporated. For goods classified in HS Chapters 50-63 the 10% refers to the weight of the fibres and yarns compared to the weight of the good produced.

<sup>18</sup> First-in-first-out; last-in-first-out; and method of averages.

**Box III.2**

**Rules of Origin: Summary of basic characteristics**

- No rules of origin of general scope.
- Specific criteria for each product:
  - Goods wholly obtained or produced in the case of agricultural products;
  - the most common rule is CTH although CTC and CTS are also used;
  - in some cases, the RVC (30% except one case of 40%) is used in combination with a CTC;
  - only in the case of tea the RVC is used alone to confer originating status.
- Some flexibility in the CTC requirement for unassembled goods and goods accompanied by parts.
- Absorption principle.
- *De minimis* rule at 10% of the value (or of the total weight in the case of textile products) of the good.
- Duty-drawback possible within one year from importation.
- Direct transshipment and shipment permitted in certain cases.

Source: Text of the Treaty and of the Bilateral Protocol.

**3. Export duties and charges, and quantitative restrictions**

54. Under Article 3.10, the Parties undertake not to adopt or maintain any restriction on exports to the other Party, except in accordance with Article XI of the GATT 1994. Export price requirements are also prohibited. If a Party maintains a restriction or prohibition on trade with a third country, it may not prevent the other Party from re-exporting goods to that country. Paragraph 6 of Article 3.10 of the Treaty provides that this general prohibition of export restrictions do not apply for those measures listed in Annex 3.10(6). This, read together with Article 1 of the bilateral Protocol and the list attached to it, allows the maintenance of export prohibitions as follows:

- (a) For Costa Rica, on wood in logs of any species from the natural forest; hydrocarbons; coffee; ethyl alcohol and rum; bananas (as relates to minimum export prices); and any action authorized by the WTO Dispute Settlement Body;
- (b) for Panama, on wood from the natural forest and any action authorized by the WTO Dispute Settlement Body.

55. The Parties agree not to maintain or adopt any duty on the export of goods to the other Party, unless the same duty is applied to the same good when destined for domestic consumption (Article 3.14). Goods listed in Annex 3.14 (annexed to the Protocol) are exempted from this prohibition; Costa Rica is thus authorized to maintain export taxes on bananas, coffee and meat. Panama has not taken any such exemption.

**B. REGULATORY PROVISIONS ON TRADE IN GOODS**

**1. Standards**

- (a) Standards

56. Chapter 9 deals with standards-related measures, metrology and approval procedures. The Parties state that the provisions of this Chapter shall apply in addition to those of the WTO Agreement on Technical Barriers to Trade (TBT). The Parties guarantee the right of each of them to adopt standards-related measures, approval procedures and metrology-related measures, as well as technical regulations and applicable conformity assessment procedures, provided that such measures do not create an unnecessary obstacle to trade and are applied on the basis of international standards, and provided that MFN treatment is accorded to goods of the other Party. Risk assessment must also

be carried out with due regard for international standards and available scientific information, as well as related technology and end uses of the product (Article 9.05).

57. The Parties undertake, where possible, to make compatible their respective standards-related and metrology related measures, and to treat technical regulations as equivalent when the importing Party determines that the technical regulations of the other Party are in line with its objectives (Article 9.06).

58. Article 9.07 deals with conformity assessment procedures. Each Party is required to apply MFN treatment to the procedures applicable to the other Party. At the same time, the Parties are urged to finalize mutual recognition agreements and to accept the results of assessment procedures conducted by competent bodies of the other Party, which shall be accredited under the same conditions as their own bodies. MFN treatment also applies to approval procedures (Article 9.08).

59. Articles 9.10 and 9.11 establish criteria for notification and designation of enquiry points, respectively. Under Article 9.13, the Parties guarantee technical cooperation between the bodies responsible for standardization and metrology.

60. A Committee on Standardization, Metrology and Approval Procedures is set up under Article 9.12 to monitor implementation of the Chapter and to promote and facilitate cooperation between the Parties in this field.

(b) Sanitary and Phytosanitary Measures

61. Sanitary and phytosanitary (SPS) measures are provided for in Chapter 8 of the Treaty, which is based on the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The rights and obligations applicable to the Parties are set out in Articles 8.03 and 8.04, respectively, which permit them to apply SPS where necessary to protect human and animal life and health or to preserve plant health, provided that they are applied to the extent necessary to achieve an appropriate level of protection; do not constitute a disguised trade restriction or create unnecessary obstacles to trade; are based on scientific principles; are based on international standards, guidelines or recommendations, except if it can be scientifically proved that they do not provide an efficient or adequate protection; and that they do not arbitrarily discriminate between domestic goods and similar goods of a Party, nor between goods of the other Party and of a non-Party.

62. The Parties undertake to base procedures for control, inspection and approval of SPS measures on international and/or scientifically demonstrable standards and to establish harmonized SPS systems for sampling, diagnosis, inspection and certification, as well as to accept their SPS measures as equivalent to the fullest extent possible (Articles 8.05 and 8.06).

63. The procedures and principles necessary for risk assessment and determination of the appropriate level of SPS protection are dealt with in Article 8.07, under which a Party is permitted to adopt provisional measures in cases where the conclusion of a risk assessment points to insufficient scientific information. As regards the application of provisional measures, the Parties agreed on a 30-day period following the adoption of such measures to allow the importing Party to ask the exporting Party for the technical information required to complete the risk assessment. If the information has not been requested within this period, the measure shall be withdrawn. Should the importing Party request the information, a 60-day period is established as of the date of submission of the additional technical information to allow the importing Party to either withdraw the measure or impose it as a definitive measure. According to Article 8.08, a Party wishing to declare an area pest-or disease-free shall provide the necessary information to the importing Party, which shall be responsible for establishing whether the description is accurate. In Article 8.09 the Parties undertake to apply the provisions of Annex C to the SPS Agreement relating to control, inspection and approval

procedures. In addition, the Parties agreed to establish a maximum period of 90 days, counted from the date on which the request was first submitted, for the importing Party to conduct an inspection of a productive unit of the exporting Party, where such an inspection is a prerequisite for import. Once the inspection has been conducted, the authority of the importing Party shall issue a reasoned decision and notify it within a maximum of 30 days of the date on which the inspection was completed.

64. Transparency requirements under the Treaty go beyond those of the WTO SPS Agreement; the notifications under the Treaty are made through the procedures established under it. While the latter provides only for the notification of a SPS measure for which an equivalent does not exist at the international level or whenever their content are not substantially the same – without specific deadlines – Article 8.10 requirements apply to all SPS measures of general application at the central level of government, as follows:

- (a) Each Party is to notify to the other Parties of any proposal, modification or adoption on these measures;
- (b) prior notification of at least 60 days for changes in SPS measures having a significant trade effect on trade among the Parties, except in urgent cases;
- (c) timeframes for notifying changes in animal and plant health: significant changes in respect to animal health within 24 hours and in plant health 72 hours, other findings within 10 days;
- (d) notification of outbreaks of diseases where the linkage to consumption of imported, natural or processed food products has been scientifically proved;
- (e) notification of reasons for having refused a good from the other Party.

65. The Parties also agree to provide mutual technical cooperation in this field (Article 8.12). To deal with SPS matters, a Committee on SPS Measures is established under Article 8.11.

## **2. Safeguard mechanisms**

- (a) Bilateral safeguard measures

66. Article 6.02 contains the disciplines for the application of bilateral safeguards, which may only be applied during the transition period applicable to the product concerned; beyond that period, a safeguard may only be imposed upon consent of the Party concerned (paragraph 5). Proceedings related to the application of the safeguard measures (Article 6.04) are described in paragraph 72 below.

67. Disciplines relating to the application of safeguards on goods originating in the other Party are as follows:

- (a) The importation of such goods causes or threatens to cause serious injury to the domestic industry<sup>19</sup>;
- (b) the measure may either consist of the suspension the foreseen tariff reduction provided for in the TEP, or of an increase in the tariff to the lowest tariff between the applied MFN or the MFN prevailing on 22 November 2008;

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<sup>19</sup> Both serious injury and threat of serious injury are defined as in the WTO Agreement on Safeguards.

- (c) prompt written notification to the other Party upon the beginning of the proceedings;
- (d) a safeguard measure shall take effect at the latest within one year from the beginning of the proceedings;
- (e) in critical circumstances and on the basis of a preliminary determination of the link between the TEP and increased imports, a provisional measure may be imposed for a maximum duration of 120 days;
- (f) a maximum duration of two years (including any provisional measure), plus a possible extension of one year; no product may be subject (application and extension) to a safeguard measure more than twice. When a safeguard is applied a second time on a product, a time interval of at least half of the time it had been applied has to be respected;
- (g) in cases of the extension of a safeguard measure, the tariff shall be gradually reduced to the level of the TEP;
- (h) at the termination of a safeguard measure, the tariff shall be that originally foreseen in the TEP;
- (i) finally, the Party imposing the measure must offer mutually agreed compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties. If the Parties fail to reach agreement, the affected Party shall be free to retaliate.

(b) Global safeguard measures

68. Global safeguard measures are described in Article 6.03. The Parties reaffirm their rights and obligations under Article XIX of the GATT 1994 and the WTO Agreement on Safeguards, except those regarding compensation or retaliation and exclusion from a safeguard measure. In cases where a Party applies a global safeguard measure, imports from the other Party shall be exempted unless they account for a substantial share of total imports and the imports from the other Party contribute significantly to the serious injury or threat thereof caused by total imports. In general, only imports from the five main suppliers are considered as "substantial"<sup>20</sup> and a contribution is "not significant" if the growth rate of imports for the concerned period is appreciably lower than the growth rate of total imports from all sources (paragraph 3 (a) and (b) of Article 6.03).

69. A Party shall promptly notify in written form the other Party of the beginning of global safeguard proceeding. Any application of a global safeguard requires previous notification to the Treaty's Administrative Commission; adequate opportunity for prior consultation with the other Party shall also be provided.

70. The Party applying a global measure must provide the other Party with mutually agreed compensation in the form of concessions having substantially equivalent trade effects or equivalent to the value of the additional duties; if agreement cannot be reached, the affected Party is free to retaliate.

71. Details of safeguard measures and the provisions applicable to them are given in Chapter 6 of the Treaty. Such measures are divided into two categories, bilateral and global, as described in

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<sup>20</sup> On the basis of the three most recent years of statistics.

points (a) and (b) below in which the Parties affirm that the investigating authority shall conform to the provisions of Article XIX of the GATT 1994 and the WTO Agreement on Safeguards.

72. The administrative procedures governing application of the two types of safeguard measure are set out in Article 6.04, which calls for the consistent, transparent, fair and impartial application of safeguard measure procedures. The responsibility for determining injury or threat of injury shall lie with the investigating authority of each Party, as designated in Annex 6.01.<sup>21</sup> The investigating authorities have the capacity to initiate proceedings for the application of safeguard measures, either *ex-officio* or at the request of an entity "representative" of the domestic industry of a like or directly competitive product – defined, in paragraph 4 of that Article, as representing at least 25% of the domestic production. The remainder of the Article deals with the applicable requirements concerning the contents of a petition, consultations, notification of rulings, public hearings, treatment of confidential information, evidence of injury or threat thereof and deliberation and report, where it is established that, except in regard to global safeguard measures involving perishable goods, before making an affirmative determination the investigating authority shall hold a public hearing at which all interested parties will be given an opportunity to express their views.

73. Lastly, as stipulated by the Treaty's dispute settlement provisions, Article 6.05 makes it clear that the Parties may not request the establishment of an arbitral panel regarding any safeguard measure that has simply been proposed.

### **3. Anti-dumping and countervailing measures**

74. Chapter 7 of the Treaty contains provisions on unfair trading practices. In this Chapter the Parties confirm their rights and obligations under Articles VI and XVI of the GATT 1994 and under the WTO Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures (SCM). Accordingly, the Parties undertake to ensure that their legislation is in conformity with the commitments assumed under these Agreements (Article 7.01). Beyond those WTO rules, additional disciplines are provided for anti-dumping duties, while for countervailing measures, the disciplines are those of the WTO.

75. Any investigation carried out for more than 18 months shall be immediately terminated without the imposition of any definitive anti-dumping (AD) duty (Article 7.02). In cases where an investigation has resulted on the non-imposition of an AD duty, an interval of at least 12 months is required before a new investigation concerning the same product and Party shall be initiated, unless the domestic industry so requesting accounts for at least 50% of the total domestic production of the like product (Article 7.03).

76. Definitive anti-dumping duties shall be terminated within a period of not more than 60 months from the date of imposition and may not be extended (Article 7.04).<sup>22</sup>

77. Under the terms of Article 7.06, the Parties agree to cooperate within the framework of the Treaty, the Free Trade Area of the Americas and the WTO in proposing reforms to reduce the impact of measures of this kind and to clarify the definition of some related concepts. A rendezvous clause is set within two years from the entry into force of the Treaty for all Parties – i.e. by November 2011 – for the adoption of a work programme dealing in particular with the determination of reasonable profit margins and of existence of threat of serious injury.

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<sup>21</sup> For Costa Rica, the investigating authority is the Department of Trade Defence of the Ministry of the Economy, Industry and Trade. For Panama, the investigating authority is the National Directorate for the Administration of Trade Treaties and Trade Protection of the Ministry of Trade and Industry.

<sup>22</sup> The WTO Agreement allows for the 5 year maximum duration to be extended if a sunset review shows that the expiry of the duty would be likely to lead to a continuation of the dumping and injury.

78. As at December 2010, none of the Parties had applied anti-dumping or countervailing measures against the other Party.

#### **4. Subsidies and State-aid**

79. In accordance with Article 3.09, disciplines regarding domestic support for agricultural goods and export subsidy programmes are defined in the context of the bilateral Protocol and included in an annex. Chapter 7 of the Treaty reaffirm the Parties' rights and obligations under Article VI and XVI of the GATT 1994 and under the WTO SCM Agreement.

80. In the Annex to Article 3-09, attached to the Protocol, the Parties agree to eliminate export subsidies for agricultural and non-agricultural products in their mutual trade at the entry into force of the Treaty, through a few inconsistent measures are allowed provided they are in conformity with Article 27.4 of the SCM Agreement.<sup>23</sup> Both Costa Rica and Panama maintain export subsidy programmes, which they have notified so as to benefit from the extension under Article 27.4.

81. Accordingly, export subsidies may be maintained both in bilateral trade and trade with third parties in the context of Costa Rica's programmes related to the "Free Zone Regime" and "Inward Processing Regimes" and of Panama's "Official Industry Register" and "Export Processing Zones" up to December 2015, provided that they comply with the procedure for further extensions of the transition period set forth in Article 27.2(b) of the Agreement on Subsidies and Countervailing Measures, which are granted to certain developing country Members under Article 27.4 of the Agreement.<sup>24</sup>

82. The Parties also undertake to cooperate in order to eliminate all export subsidies in the WTO context, and to achieve the maximum possible reduction of trade-distorting domestic support measures to agriculture.

#### **5. Customs-related procedures**

83. Chapter 5 of the Treaty is concerned with customs procedures. In accordance with Article 5.12, which requires all Parties to the FTT to agree within 60 days from the signature of the Treaty on uniform regulations for the interpretation, application and administration of Chapters 3, 4 and 5 of the FTT, these have been agreed by all Parties, and are in force between Costa Rica and Panama since the date of entry into force of the Treaty and the Protocol.<sup>25</sup> Single forms for both the certificate of origin<sup>26</sup> and the declaration of origin<sup>27</sup> have also been agreed upon, as required in Article 5.02.

84. Self-certification by the exporter is the rule for the certificate of origin; these are valid one year from the date of its signature. Certificates of origin may be used with respect to more than one import of identical goods into the territory of the other Party, provided a specific deadline not beyond

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<sup>23</sup> This Article provides special and differential treatment for developing country members by establishing a temporary exemption for such members from the general prohibition on export subsidies.

<sup>24</sup> See document WT/L/691.

<sup>25</sup> *The Uniform Regulations for the Interpretation, Application and Administration of Chapters 3, 4 and 5 of the FTT* can be found at:

<http://www.comex.go.cr/acuerdos/Panama2/Certificado/VF%20Rev%20Legal%20RU%20CAPAN%20140303.pdf> and <http://www.mici.gob.pa/Reglamentaciones%20Uniformes%20al%20TLC%20Centroamerica-Pma.pdf>.

<sup>26</sup> The certificate of origin can be found at:

<http://www.comex.go.cr/acuerdos/Panama2/Certificado/Certificado%20de%20origen%20Panam%C3%A1.doc> and <http://www.mici.gob.pa/tratados/CertificadoDeOrigen.doc>; instructions regarding how to fill it in at: <http://www.comex.go.cr/acuerdos/Panama2/Certificado/Instructivo%20llenado%20CO.pdf>.

<sup>27</sup> See: <http://www.mici.gob.pa/tratados/DeclaracionDeOrigen.doc>.



one year is specified in the Certificate. A Declaration of Origin is to be filled in by the producer and also have a one year validity; it shall be voluntarily provided to the exporter.

85. Articles 5.03 and 5.04 give details of the Parties' rights and obligations regarding importation and exportation, respectively, including the documents to be presented by importers. Provisions are also made for the exchange of information between the Parties' customs authorities, equal treatment for exporters and importers in cases of false declaration or certification of origin, duty-drawback (see paragraph 52 above) and the time-frame (five years) during which all documentation relating to the origin of the product imported/exported shall be kept.

86. Article 5.05 provides that unless imports are made separately with the aim of circumventing certification requirements, a Certificate of Origin is waived in three cases, namely commercial imports below US\$1,000 (an invoice indicating that the good is originating may be required); non-commercial imports below US\$1,000 (in both cases a Party may establish a higher threshold); and imports of a good for which the importing Party has waived the need for presenting the Certificate of Origin (Article 4.18).

87. Articles 5.08 of the Treaty and 24 of the Uniform Regulations establish the proceedings for verifying the origin of goods. Verification by the customs authorities of the importing Party may be done through either written questionnaires to be filled in by the exporters or producers, visits to the exporter or producer in the territory of the other Party – subject to prior notification – or any other means jointly agreed by the Parties. Verification procedures shall be concluded within one year and shall be communicated in writing; in duly justified cases and only once at a time, an extension of 90 days is possible provided previous notification is given to the exporter/producer (Article 5.08(12) of the Treaty and Article 24(19) of the Uniform Regulations). Deadlines are associated with each step of the verification proceedings. Failure to respond to a written questionnaire or to consent to a verification visit within the set deadlines (30 days upon receipt; for the reply of the questionnaire, one extension of 30 days is possible) allows the importing Party not to grant the preferential treatment. Should the exporter fail to respond to the questionnaire or to consent to the verification visit, the competent authority shall refuse to grant preferential treatment, by means of a written decision pursuant to the paragraph 13 of Article 5.08.

88. Provisions for advanced ruling prior to importation are dealt with in Articles 5.09 of the Treaty and 25 of the Uniform Regulations; these are issued by the authorities of the importing Party upon request of its importer, or the exporter or producer of the other Party. Advanced rulings may be modified or revoked in particular in cases of error or modifications; these shall not be applied retroactively and Parties are to delay by 90 days such modification or revocation in cases of good faith of the importer, exporter or producer, as relevant.

89. Each Party shall grant the same rights regarding review and appeal procedures to its own importers as well as producers and exporters of the other Party (Article 5.10). Applicable penalties, which may reach the level of criminal penalties, may be imposed as stipulated in Article 5.11.

90. Goods re-exported from a free zone of a Party shall be considered to originate in a third country and the treatment, preferential or otherwise, granted to that third country by the importing Party shall be applied to them, subject to compliance with the conditions set out in Article 5.14.

91. Article 5.13 defines the areas of cooperation between the Parties, which include, *inter alia*, the notification of a range of measures and rulings, as well as the exchange of customs information. Other provisions relate to invoicing by a third country operator (Article 5.06) and confidentiality (Article 5.07).

#### **IV. TRADE IN SERVICES AND INVESTMENT**

##### **A. SCOPE AND DEFINITIONS**

92. As regards bilateral trade on services and investment between Costa Rica and Panama, Part IV of the Treaty contains specific provisions on trade in services in Chapters 10-12 and 14. "Cross border trade in services", as defined in Chapter 11, covers cross-border supply, consumption abroad and partially the presence of natural persons (GATS equivalent modes of supply 1, 2 and partially 4) in services sectors, with the exception of "Financial Services", which is covered by Chapter 12. GATS mode 3 (commercial presence) is covered by Chapter 10 on "Investment"; mode 4 (temporary movement of persons) is also covered in Chapter 14 on "Temporary Entry of Business Persons". Chapter 13 on "Telecommunications" – which contains a series of rights and obligations related exclusively to the telecommunications sector – do not apply between the two countries (Article 13.01); however, the telecommunications sector is not excluded from the coverage as trade in this sector remains subject to the disciplines of Chapters 10, 11 and 14 and to the reservations laid down in the Annexes on Non-Conforming Measures. Since the entry into force of the Treaty, there have been changes to Costa Rican legislation on telecommunications, which was amended to abolish monopoly and allow free competition; nonetheless, the Parties have not agreed to modify the Treaty's provisions relating to telecommunications services.

93. With the aim of increasing the Treaty's coverage as relates to insurance and reinsurance sectors (which in Costa Rica is subject to a State monopoly), the Parties agreed – in Article 4 of the Protocol – to review trade developments in those sectors as from one year from entry into force – i.e. as of November 2009 – and once a new regulatory framework for these sectors would be in force in Costa Rica. Since the entry into force of the Treaty, and although Costa Rica has amended its legislation on insurance to abolish monopoly and allow free competition, as at December 2010 the Parties had not yet revised the provisions relating to insurance services.

94. Article 11.02 provides that disciplines relating to the cross-border trade in services do not apply to the following:

- (a) Subsidies or donations granted by the government or State-owned companies, including government-supported loans, guarantees and insurance;
- (b) air transport services, including domestic and international air transport services, whether scheduled or non-scheduled, and related services in support of air services, except aircraft repair and maintenance services during the period in which an aircraft is withdrawn from service, specialty air services and computerized reservation systems;
- (c) government services, such as law enforcement, social readaptation, retirement, services related to income security or insurance, social security, social welfare, public education and training, and childcare;
- (d) financial services (dealt with in Chapter 12); and
- (e) government procurement, including procurement by a State-owned enterprise.

95. Chapter 10 on Investment includes a number of provisions that are relevant for GATS mode 3 on commercial presence; these are described in the relevant sections below. Regarding coverage, Article 10.01 provides that Chapter 10 covers (a) investors of the other Party in all investment-related matters; (b) investments made in the territory of a Party from other Party's investors; and (c) all investments of investors from a Party in the territory of the other Party with respect to Article 10.07

(performance requirements). It is also specified that disciplines on investment apply in all of the Party's territories and with respect to all levels of government<sup>28</sup>, and to investments in place at entry into force as well as forthcoming. Other disciplines of the Chapter include, *inter alia*, transfers, expropriation and indemnification, extraterritorial application of a Party's legislation, and promotion of investments. In cases of inconsistency between a provision of this Chapter and any other Chapter, the provision of the latter shall prevail to the extent of the inconsistency. The Chapter also includes a mechanism to settle disputes between a Party and investors from the other Party.

96. Excluded from the Investment's Chapter coverage are:

- (a) financial services (dealt with in Chapter 12);
- (b) measures taken by a Party to restrict investment by investors of the other Party in its territory for public policy or national security reasons;
- (c) economic activities reserved for each Party, pursuant to its legislation in force at the time of signature of this Treaty, which are listed in Annex III on economic activities reserved for each Party; and disputes or claims that arose prior to the Treaty's entry into force or related to events preceding the Treaty's enactment, including those which continue to produce their effects after its entry into force; and
- (d) government services or functions as described in paragraph 93(c) above. In cases where an authorization has been granted for an investor of the other Party to nevertheless supply any of these services, then the relevant investments will also be covered by the disciplines of the Chapter.

97. The relevant definitions of the Treaty's Part IV are divided between those general definitions applicable to the Treaty as a whole and definitions specific to individual chapters. "Investment" (Article 10.40) means any kind of goods or rights acquired or used in any way for the purpose of obtaining an economic profit or for other business purposes, acquired with funds transferred or re-invested by an investor, and including, *inter alia*, an enterprise, shares in an enterprise, real estate or other property, tangible or intangible<sup>29</sup>; "investor of a Party" means a national or an enterprise of a Party that is making, has made or seeks to make an investment in the territory of the other Party<sup>30</sup>; "investment of an investor of a Party" means an investment owned or controlled directly or indirectly by an investor of such Party.<sup>31</sup> "Enterprise" is defined in Article 2.1 as any entity constituted or organized under the applicable law of a Party, whether or not for profit, and whether privately owned or government-owned, including companies, firms, foundations, trusts, partnerships, sole proprietorships, joint ventures or other associations. "Service provider" is defined in Article 11.01 as a person of the Party that provides or seeks to provide a cross-border service. For the purposes of Chapter 14, the definition of "national" excludes permanent residents, which are considered "nationals" for the other Chapters of the Treaty (see paragraph 24 above).

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<sup>28</sup> However, the Parties maintain reservations with regard to measures taken at local or municipal level.

<sup>29</sup> The definition of investment in the Chapter on financial services differs from the one contained in Chapter 10 in that the former includes loans granted by providers of cross-border services other than loans to financial institutions.

<sup>30</sup> As explained earlier, the term "national of a Party", in the case of Costa Rica and Panama, is taken to refer to permanent residents. However, for the purposes of Chapter 14, the definition of "national" excludes permanent residents.

<sup>31</sup> An investment is understood to be owned by an investor when the latter has more than 50% ownership of the registered capital, and it is under the investor's direct control when the latter has the power to appoint a majority of the directors or legally manage its operations.

B. DENIAL OF BENEFITS

98. Denial of benefits are foreseen in the context of both investment and trade in services (Articles 10.14 and 11.10, respectively). Subject to prior notification and consultation in accordance with Articles 18.04 and 20.06, a Party may deny the benefits of those Chapters to:

- (a) Service suppliers of the other Party, if it is determined that the services are being provided by an enterprises that is not undertaking "substantial business activities" in the territory of the other Party and that, in accordance the latter's legislation, this enterprise is owned or controlled by investors from a non-Party. "Substantial business activities", as defined in Article 2.01, require that the enterprise (a) is registered as an income tax payer in the territory of that Party; (b) has a payroll duly registered with the corresponding authority of that Party; or (c) has permanent premises, facilities or offices in that Party, which are not restricted to receiving notifications.
- (b) investors of the other Party that constitute an enterprise, and their investments, if the enterprise is owned or controlled by investors from a non-Party (as defined in Article 10.40)<sup>32</sup>, and this enterprise is not undertaking "substantial business activities" in the territory of that Party.

C. GENERAL PROVISIONS ON TRADE IN SERVICES AND INVESTMENT

99. The Treaty covers all the services sectors, except for those mentioned above. It is based on a "negative list" approach; thus, the principles of national and most-favoured-nation treatment, as well as other provisions – e.g. performance requirements, local presence – are of general application unless non-conforming measures have been listed (in Annexes) as exceptions to general rules. These are included in Articles 10.09 and 11.08 and in additional provisions of both chapters, as described below.

100. Generally, the Parties reserve the right to maintain measures that do not conform, in the case of investment, with the principles of national and MFN treatment, as well as restrictions regarding performance requirements and nationality of senior management and executives. As far as trade in services is concerned, the reservation relates to conformity with the principles of national and MFN treatment and local presence. Accordingly, the following are excluded from the Treaty's coverage:

- (a) Existing non-conforming measures listed in Annex I (services and investment) or III (investment only) applied at a national level, as well as their extension or modification, provided that their level of non-conformity is not increased (Articles 10.09(1) and 11.08(1));
- (b) existing non-conforming measures applied at a local or municipal level of government, as well as their extension or modification provided this do not increase their level of non-conformity;
- (c) existing non-conforming measures or any more restrictive measure adopted in future with respect to sectors, subsectors or activities listed in Annex II (Articles 10.09(2) and 11.08(2)).

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<sup>32</sup> An investment is defined as being from an investor of a Party if, for an enterprise, the "national" investor owns more than 50% of the social capital, and, for an investment, if the "national" investor controls it so to nominate the majority of its directors or are able to legally direct operations in another way.

## **1. Market access**

101. The Treaty contains no article on market access akin to Article XVI of the GATS.

102. Quantitative restrictions are defined in Article 11.01 as non-discriminatory measures which place limitations on the number of service suppliers or their operations, either in the form of a quota or an economic needs test, or by any other quantitative means. The Parties are required to establish procedures for notifying quantitative restrictions and for specifying their undertakings to liberalize quantitative restrictions, as well as for consultations with a view to further liberalize such restrictions (Article 11.12). Article 11.09 provides that existing QRs are to be listed in Annex V, that any new such measure shall be notified to the other Party and included in Annex V, and that at least once every two years Parties shall aim at negotiate the liberalization or elimination of these measures. In Annex V attached to the Protocol, Costa Rica and Panama have agreed not to elaborate such a list, making clear however that the rights afforded by the Article remained valid. As part of the process of establishing the Administrative Commission, the Parties are drawing up the lists of the sectors, subsectors or activities to which they apply quantitative restrictions; as at December 2010, they had not completed their work.

## **2. National and MFN treatment**

103. The Parties undertake to accord to investments and services, as well as to investors and service suppliers, treatment no less favourable than that accorded in similar circumstances to investments, services, investors and service suppliers of their own (national treatment in Articles 10.02 and 11.03) or any third country (MFN treatment in Articles 10.03 and 11.04). Moreover, the Parties are to grant to services, investments, investors and service suppliers whichever is the better of the treatment granted under the principles of national or most-favoured-nation treatments (Articles 10.04 and 11.05).

104. Non-discriminatory treatment is granted to investors of the other Party in the event of losses caused by armed conflict or civil strife, in respect of any measure adopted or maintained in relation to such losses (Article 10.05). Investments from the other Party's investors are granted a fair and equitable treatment as well as full protection and security, in accordance with international law (Article 10.06). Measures of general application requiring the use of a particular technology in order to comply with health, security or environment requirements of general application are also subject to the basic non-discriminatory principles (Article 10.07(7)).

105. National and MFN treatment do not apply as follows:

- (a) For both trade in services and investment, measures listed in Annexes I (when applied at the national level of government) and II, and non-conforming measures applied at a local or municipal level of government; and
- (b) for investment only, requirements for an investor of the other Party to provide information about itself or its investment (Article 10.12(3)) and measures related to government procurement or subsidies.<sup>33</sup>

106. Further, and for investment only, national treatment does not apply with respect to formalities related to the establishment of investments by investors of the other Party, provided that such measures do not materially impair the protection afforded by the investment Chapter (Article 10.12).

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<sup>33</sup> As explained above, government procurement and subsidies are excluded from the application of the whole of Chapter 11.

107. The MFN principle does not apply in the following additional cases:

- (a) For investment and trade in services, cases of bilateral or multilateral treaties in force or signed prior to the Treaty's entry into force between the two Parties, or those signed after that date covering aviation, fisheries or maritime affairs, including rescue (Article 10.09(4), as listed in Annex IV). Both Parties also specify the non-application of the MFN principle to existing or future international cooperation programmes aiming at economic development; and
- (b) for trade in services only, recognition of higher education qualifications, although the Parties are required to afford each other an opportunity to demonstrate that qualifications obtained in the other Party should also be recognized (Annex 11.13).<sup>34</sup>

### **3. Local presence**

108. With regard to trade in services, no Party may require a service supplier to establish or maintain a representation office or any other type of enterprise or be resident in its territory in order to be entitled to provide a cross-border service (Article 11.06). Reservations made by the Parties and listed in Annexes I and II may however modify this clause.

### **4. Movement of natural persons**

109. Chapter 14 contains provisions relating to the temporary entry of business persons, which shall normally be granted if the relevant requirements are fulfilled.<sup>35</sup> The Parties recognize the desirability of facilitating temporary entry in accordance with the principle of reciprocity (Article 14.02). The Parties agree to exchange information on measures applied in this regard and they undertake to prepare a consolidated document regarding the requirements for temporary entry (Article 14.05). As at December 2010, the Parties had not reviewed this aspect on a bilateral basis.

110. The denial of a temporary entry of business persons is allowed if such entry might adversely affect (a) the settlement of any labour dispute that is in progress at the place or intended place of employment; or (b) the employment of any person who is involved in the dispute. In this case, the Party refusing the entry must inform/notify in writing respectively the business person and the Party of the national of the reasons for the refusal (Article 14.04). In addition, the temporary entry of business persons is also subject to existing immigration measures, as described in sections A, B and C of Annex 14.04. Consultations provided for in the context of the settlement of disputes of Article 20.6 may not be initiated as a result of a refusal to grant temporary entry, unless the matter involves a recurrent practice and the affected person has exhausted all administrative remedies (Article 14.06).

111. Annex 14.04 lays down the conditions applicable to the entry of business visitors, traders and investors and to intra-company transferees. These conditions are summarized in Table IV.1 below:

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<sup>34</sup> Moreover, the basis for the mutual recognition of qualifications is set out in Annex 11.13.

<sup>35</sup> "Business person" means a national who is engaged in trade in goods, the supply of services or the conduct of investment activities. "National" in the context of Chapter 14 does not include permanent or definitive residents, who are therefore excluded from the benefits of this Chapter.

**Table IV.1**  
**Conditions for the temporary entry of business persons**

Category	Requirements	Prohibitions	Residence
Business visitors	Engagement in any activity referred to in Appendix 14.04(A)(1) with supporting documentation <sup>a</sup>  Proof of citizenship  Evidence that the activity in question is international in scope and that the business person is not seeking to enter the labour market  Compliance with existing immigration measures, as listed in Appendix 14.04(A)(3)	No Party may:  Require prior approval procedures, petitions, labour certifications tests or other procedures of similar effect;  Impose or maintain any numerical restriction on temporary entry	In Panama:  Temporary residence renewable as long as the conditions under which it was granted are maintained.  A request for permanent residency or modification of its migratory status is not allowed unless conditions set out in domestic migratory laws are fulfilled.
Traders and investors	Employment in a supervisory or executive capacity, or one that involves specialized knowledge  Intention to carry on substantial trade  Intention to establish, develop, administer or provide advice or key technical services for the operation of an investment to which a substantial amount of capital has been or is in the process of being committed  Compliance with existing immigration measures, as listed in Appendix 14.04(A)(3)		
Intra-company transferees	Intention to carry out management or executive functions in the enterprise  Previous continuous employment for one year within the three years preceding the date of the application  Compliance with existing immigration measures, as listed in Appendix 14.04(A)(3)		

a See Annex III of this document.

Source: Text of the Treaty, Chapter 14.

## 5. Performance requirements

112. Disciplines on performance requirements are contained in Article 10.07. With respect to the establishment, acquisition, expansion, administration, conduct or operation of an investment from an investor of the other Party in the territory of the Party, the following performance requirements are prohibited (paragraph 1):

- (a) Export performance requirements, i.e. the setting of a target/ratio for the export of goods or services;
- (b) the setting of a local content requirement;
- (c) the granting of preferences to goods produced or services supplied in the territory of the Party or acquiring goods or services from a person in its territory; and
- (d) trade-balancing and foreign exchange-balancing requirements, i.e. relating the volume or value of imports with those of exports or with foreign exchange inflows.

113. The receipt or continuing receipt of any benefit in relation with an investment from an investor of the other Party in the territory of the Party cannot be connected with the following requirements (paragraph 2):

- (a) The setting of a local content requirement;
- (b) the granting of preferences to domestically produced goods or acquiring goods from a person in its territory; and

- (c) trade-balancing and foreign exchange-balancing requirements.
- (d) parties remain however free to connect the granting of these benefits to requirements that the production, supply of a service, training or employment of workers, construction of particular facilities, or the conduct of research and development activities be carried out in its territory (paragraph 4).

114. Exceptions to the prohibitions listed above exist in the following cases (paragraphs 3 and 5):

- (a) In the context of export promotion and foreign aid programmes, only trade-balancing and foreign exchange-balancing requirements remain prohibited;
- (b) in the context of government procurement, export performance, trade-balancing and foreign exchange-balancing requirements remain prohibited;
- (c) in the context of granting preferential treatment in respect to tariff and QRs, all requirements related to the investment itself (i.e. those of paragraph 111 above), as well as subjecting the granting of a benefit to an investment to trade-balancing and foreign exchange-balancing requirements, remain prohibited; and
- (d) local content requirements and preferential treatment to domestically produced goods and services, and domestic sellers under paragraphs 111-112 above, may be maintained or established in order to (i) insure compliance with laws and regulations not otherwise inconsistent with the Treaty, (ii) protect human, animal or plant life or health, or (iii) preserve exhaustible natural resources; provided that such measures do not constitute a disguised restriction and are not applied in an arbitrary or unjustifiable manner.

115. Finally, paragraph 6 lists those requirements that, while not being prohibited, shall be dealt with by the Administrative Commission, upon request of a Party which deems that they adversely affect trade or constitute a significant barrier to investment from its own investors in the territory of the other Party. In cases of a positive determination, the Commission shall provide for its elimination and incorporate such discipline into the Treaty. As at December 2010, no such case had arisen.

116. Reservations entered by the Parties into Annexes I and II may modify disciplines regarding performance requirements.

## **6. Requirements for senior management and board of directors**

117. Article 10.08 prohibits nationality requirements for senior management positions in an enterprise of a Party which is constituted through an investment from an investor of the other Party. However, a nationality requirement relating to the majority of the members of the governing body is authorized, provided it does not materially impair the ability of the investor to exercise control over its investment. Reservations entered by the Parties into Annexes I and II may modify this discipline. Further, as already mentioned, this prohibition do not apply to local and municipal levels of government nor to measures related to government procurement or subsidies.

## **7. Other provisions on trade in services**

118. The Parties undertake not to require the provision of any confidential information, the disclosure of which may create an obstacle to the observance of laws or may be harmful to the public interest or undermine legitimate trade interests of public or private enterprises (Article 11.14).



119. Annex 11.16 provides guarantees for full freedom of transit through the territories of the Parties for inland transportation of freight from one Party to any other Party with no collection of any charges for services other than those specified in Appendix 11.16(6), and reaffirms that Articles 11.03, 11.04 and 11.06 (national treatment, MFN and local presence) apply to the Annex. In Appendix 11.16(6), the Parties agreed that duties, fees and taxes contrary to the MFN and national treatment provisions will not be charged; other taxation measures that do not run counter to the provisions in Annex 11.16 remain however authorized. Parties also agreed to eliminate any documentation other than that required by the "Regulations on the International Inland Customs Transit Regime, Declaration Form and Instructions".<sup>36</sup>

## **8. Other investment provisions**

120. The Parties agree to eliminate any restriction on transfers relating to an investment of an investor of one Party in the territory of the other Party, and to permit transfers to be made in a freely convertible currency. No Party may require its investors to transfer, or penalize its investors that fail to transfer, any amounts derived from investments in the other Party (Article 10.10). Under the terms of Article 10.11, the Parties may expropriate or nationalize an investment of an investor, provided that this is done in the public interest or for reasons of public order and social interest, pursuant to Annex 10.11<sup>37</sup>, on a non-discriminatory basis, in accordance with the principle of legality, with guarantees as to whichever of national or most-favoured treatment is better and subject to the payment of compensation as described in the remainder of the Article. In Article 10.15, the Parties reaffirm their right to adopt or maintain any measure designed to ensure that investment activity complies with environmental legislation, provided that such measure is consistent with the rest of the chapter.

121. Section B of Chapter 10 (Articles 10.16 to 10.39) provides for a mechanism whereby an investor, on its own behalf or on behalf of an enterprise, may submit to arbitration a violation claim. The choice of this mechanism by the investor or enterprise shall be to the exclusion of any other arbitration mechanism; prior to consenting to this mechanism, however, each Party may require that all administrative remedies have been exhausted. A final award by a tribunal may only provide for either a monetary damage or the restitution of property, which may be paid in the form of monetary damage. The Parties have agreed to allow for dispute settlement on all matters related to the Chapter, without any exception (Article 3 of the Protocol is respect to Article 10.39 of the Treaty).

## **D. LIBERALIZATION COMMITMENTS**

122. Disciplines on trade in financial services, ruled by Chapter 12 disciplines, are presented later in this document. Overall, however, the basic principle applying to all other sectors – i.e. a negative list, with the list of non-conforming measures being provided in an annex – also applies for financial services. Therefore, for sake of completeness of the liberalization commitments, those measures exempted from the coverage of the Treaty, which are included in each Party's Annex VI, are included in this section. As for the other sectors, there are two types of non-conforming measures, those equivalent to "Annex I" measures are listed in section A, while those equivalent to "Annex II" are listed in section B.

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<sup>36</sup> Local freight transport by vehicle or cabotage, local or international freight and passenger transport by rail and local or international passenger transport are excluded. Two years after the Agreement has come into force, consideration shall be given to the possibility of achieving broader coverage.

<sup>37</sup> For Costa Rica, for reasons of "public interest" and for Panama for reasons of "public usefulness" and "social interest", as defined in their respective national Constitutions. This Annex is attached to the Protocol.

123. Any comparison made in relation to the GATS shall take into account the fact that any non-conforming measure applied at the local or municipal level of government are excluded from the Treaty's coverage (see paragraph 99 above).

# **1. Costa Rica<sup>38</sup>**

124. In its Annex I, Costa Rica has listed reservations for existing non-conforming measures in a number of sectors (Table IV.2) including restrictions on the national treatment obligation, generally in the form of nationality or establishment requirements. Six MFN reservations have also been listed – in professional, transportation and audiovisual services – reflecting either reciprocity arrangements in place or other arrangements with Central American countries in activities such as. All limitations listed operate at the national level.

125. One out of the two horizontal limitations under the GATS – i.e. the limitation on the number of foreigners in the senior management of enterprises – has been lifted overall but maintained in some subsectors. The second horizontal limitation regarding activities in the coastal area has been maintained in reservation I-CR-8. Two horizontal limitations are listed; these require establishment through a local agent with general powers, and in the cases of the grant of a concession, allow for preferential treatment to nationals and require the constitution of an "anonymous society." Performance requirements applying to enterprises established in free-trade zones with respect to the sales of goods and services to the domestic market can also be considered as a third horizontal limitation.

**Table IV.2**  
**Non-conforming measures listed by Costa Rica in Annex I**

Sector/Subsector	Obligations	Mode	Description/Reduction of Restriction
All	LP	CBTS	Establishment of an agent with general powers required.
All	NT/LP	I/CBTS	In cases of the granting of a concession, preference given to domestic supplier if the tender results in equality. Constitution of local "anonymous society" needed for the signing of a concession contract.
Professional services	NT/MFN/LP	CBTS	Reciprocity and/or residency requirements. Nationality requirements for services related to agronomical engineering, agricultural sciences, political science and international relations. Registration requirements for suppliers of the latter two services. Preference to nationals in recruitment of medical and dental services.
Maritime land zone (applies to all sectors)	NT/LP	I/CBTS	Nationality and equity requirements for tourist activities in the maritime land zone. Concessions in this area are based on nationality, residency, domicile, incorporation and equity requirements. Cession of a concession to foreigners is forbidden.
Land transportation services - transportation of passengers	NT/MFN	I/CBTS	Preferences for domestic companies on domestic routes. International transportation of passengers can only be supplied by companies domestically constituted, and are subject to reciprocity and equity requirements, with preferential treatment for Central American inputs. Transportation of passengers in national territory not open to international transport vehicles.
Land transportation services – local freight transportation	NT/MFN/SMBD	I/CBTS	Nationality requirements. Equity and nationality requirements relating to the effective control of the company. Domestic registration requirements, with certain exceptions for Central American vehicles. Transportation in national territory not open to international transport vehicles.

<sup>38</sup> Costa Rica has only once modified its Schedule of Specific Commitments (SSC) under the GATS, with the integration of commitments in the financial sector in February 1998.

Sector/Subsector	Obligations	Mode	Description/Reduction of Restriction
Water transport services	NT/MFN/LP	I/CBTS	Nationality and equity requirements for the supply of the service. Registration based on nationality and establishment requirements. Establishment of an agent with general powers required. Transportation in local routes not open to internationally-registered boats. Deposit requirements for foreigners in the command of a domestically-registered boat. QRs on the number of foreign crew staff for international transportation in a domestically-registered boat stopping in domestic ports.
Air transport services – air transport and specialty services	NT/MFN/LP/ SMBD	I/CBTS	Nationality and equity requirements for the supply of the service on domestic routes. Foreigners are not allowed in the Senior Board of the company. Certification of planes and the right to supply services based on reciprocity, and requires establishment of an operation and maintenance basis. Registration of planes by foreigners only allowed if local residency and for non-commercial use. Foreign companies require the establishment of a permanent agent with general powers required.
Tourist guides	NT/LP	CBTS	Nationality or residency requirements.
Transport services – Customs agents and their auxiliaries, customs carriers	NT/LP	CBTS	Nationality requirements for customs officers. Customs carriers and other customs-related customs services require a local representative or the headquarters in Costa Rica.
Radio and television services	NT	I	Nationality and equity requirements for the establishment, management and exploitation of wireless transmission services.
Research and development services	NT/LP	I/CBTS	Foreigners or foreign companies providing scientific research services in relation to biodiversity require the establishment of a permanent agent with residency in Costa Rica. Licence required; granted for different time-periods and prices for nationals/foreigners with residency and foreigners without residency.
Audiovisuals – advertising, services of cinema, radio, television and other shows	NT/MFN/PR/LP	I/CBTS	Registration requirements. Domestic content requirements regarding advertisement in favour of companies benefiting from government subsidies; preferential treatment given to Central American nationals of countries providing for reciprocity. Registration, nationality and/or residency requirements for speakers.
Electric energy	NT/LP	I/CBTS	Foreign investment allowed for operating plants of limited capacity, subject to equity requirements and local presence.
Higher education services	NT/SMBD	CBTS	Nationality requirements and limitation on number of foreigners as relates to professors, administrative staff and senior management.
News agency services	NT/LP	CBTS	Residency requirements; exceptions allowed for restricted time and subject to previous authorization.
Marinas and tourist quays and related services	NT/LP	I/CBTS	Concessions may be granted for developing tourist quays, but with establishment requirements. Boats of foreign flags can only provide cruiser services.
Free zones	PR	I	Limitations apply on sales of goods and services to the domestic market by companies benefiting from the free zone regime.
Private security services	NT/LP	CBTS	Nationality or residency requirements.

Note: CBTS: Cross-border trade in services; Investment; LP: Local presence requirements; MFN: Restriction to MFN treatment; NT: National treatment restriction; PR: Performance requirements; SMBD: Restrictions affecting senior management and board of directors.

Source: Annex I to the FTT between Costa Rica and Panama.

126. Table IV.3 below lists those non-conforming measures for which the degree of non-conformity may be increased, as listed in Annex II. Reservations to the basic principles of non-discrimination as regards trade in services and investment covering various sectors have been taken *vis-à-vis* minority-related issues, electrical energy, cultural industries and natural resources; other Annex II reservations are sector-specific.<sup>39</sup>

<sup>39</sup> Others sector-specific reservations listed in Annex II are referred to in the paragraphs below dealing with particular sectors.

**Table IV.3**  
**Non-conforming measures listed by Costa Rica in Annex II**

Sector/Subsector	Obligations	Mode	Description/Reduction of Restriction
Minority related issues	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to the rights or preferences granted to minorities with social or economical disadvantages.
Electrical energy	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to the production, transmission, transformation, distribution and trading of electrical engineering.
Transport services – railways, ports and airports	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to granting concessions or supplying services related to the operation, exploitation, administration and execution of works in railways, ports and airports.
Telecommunications – wire and wireless services	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to the exploitation, administration, operation and supply of wire and wireless telecommunication services; telegraph, telephone, radiotelegraph and radiophone services; value-added services; telecommunication and telecom network services. Some of these restrictions may be removed on the basis of reciprocity, as specified in paragraph 129 below.
Social services	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to law enforcement and social readaptation, as well as social services of public interest such as retirement, services related to income security or insurance, social security, social welfare, public education and training, health, childcare, sewage and water supply.
Electronic betting services	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to electronic betting services.
Services of cultural industries	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure with respect to cultural industries.
Services related to natural resources	NT/MFN/ PR/SMBD	I/CBTS	Any measure relating to the preservation, administration, protection, exploitation, extractions and exploration of natural resources, including the production, manipulation, trading, industrialization and use of genetic materials from plants and animals, as well as their parts and sub-products.
Fisheries and services incidental to fishing	NT/MFN/LP/ PR/SMBD	I	Any measure with respect to these services.

Note: CBTS: Cross-border trade in services; I: Investment; LP: Local presence requirements; MFN: Restriction to MFN treatment; NT: National treatment restriction; SMBD: Senior management and Board of directors restriction; PR: performance requirements.

Source: Annex II to the Costa Rica-Panama FTT.

127. Economic activities reserved for the Parties are listed in Annex III; Costa Rica has specified the following:

- Crude oil and its derivatives: import, refining, distribution and wholesale trade;
- alcohol production and use for liquor production and industrial use, and the elaboration of rums. The production and export of some alcohols is open to private enterprises if these are not produced by the State-owner enterprise;
- postal services; water supply services: sewage and industrial liquid waste collection disposal services; water supply and sewerage services; and
- services of administration and distribution of lotteries.

128. In terms of sectoral coverage, these subsectors, as well as air transport services and government services, provide the complete picture of overall sectoral exclusion from the Treaty's coverage.<sup>40</sup> Costa Rica's commitments under the GATS are limited to 5 of the 11 sector groups in the W/120 classification; thus, the Treaty goes significantly beyond its commitments under the GATS.

<sup>40</sup> Government procurement is excluded from the coverage of both the Treaty and the GATS.

129. Costa Rica's commitments under the GATS for business services are limited to a partial coverage of computer and related services; these are fully liberalized under the Treaty. All other subsectors are opened up, with reservations – normally nationality or residency requirements – applying only on professional, research and development and private security services.

130. Costa Rica has no GATS commitments on communication services. The Treaty reserves postal activities for the State but fully liberalizes courier services. As for telecommunication, while Annex I reservations provides for nationality and equity requirements for wireless services, Annex II reservations significantly restrict the access to a number of wire and wireless services. However, on the basis of reciprocity (and effective market access of Costa Rica's service suppliers and investors) and provided domestic legislation so authorizes, these services may be opened to service suppliers and investors of Panama. Audiovisual services are subject to registration requirements, and numerous non-conforming measures are applied *vis-à-vis* advertisements, such as domestic content requirements, nationality of the speaker and discrimination among foreign speakers. Further, an Annex II reservation has been taken for any measure with respect to cultural industries.

131. Construction and related engineering services; distribution services; environmental services; and recreational, cultural and sporting services are also not subject to commitments under the GATS. As regards construction services, reservations apply *vis-à-vis* electrical energy, where foreign investment is only allowed for plants of limited capacity and subject to equity (51% of capital of Costa Ricans) and local presence requirements; further, electrical energy is also listed in Annex II. This limitation also apply to distribution services of electrical energy; the only other restriction applying in distribution services relate to crude oil and derivatives, which is reserved to the State. As for environmental services, sewage and water supply services are reserved for the State, others subsectors are opened up to Panama. Recreational, cultural and sporting services are opened up; however, news agency services are subject to residency requirements, administration and distribution of lotteries is reserved to the State and electronic betting service is listed in Annex II (that is also the case for services of cultural industries).

132. Costa Rica has partial commitments in all levels of education under the GATS; under the Treaty, public education and training are included in Annex II and limitation on the number of foreigners in private higher education applies – at least 85% of professors, administrative staff senior managers, and the Dean, are nationals. No other restriction apply *vis-à-vis* the rest of the education sector.

133. While transport services are not subject to commitments under the GATS, all transport services other than air transport have been incorporated in the Treaty subject to various limitations. Construction and exploitation of railways, ports and airports are listed in Annex II. The few air transport services subsectors covered by the Treaty are subject to various limitations in terms or national treatment and market access, in particular if the service involve a domestic route. Land transport services of both passengers and freight and water transport services in domestic routes are not opened to enterprises of Panama. Various other reservations apply, with nationality, equity or reciprocity requirements; in many instances, local presence is also mandatory.

134. Health services are partially included under the GATS. Under the Treaty, public health and certain social services are reserved to the State, but otherwise no restriction apply. With respect to tourism and travel-related services, tourism activities in coastal land zones are subject to various requirements, in particular those of nationality and/or that the relevant enterprise has at least 50% of national capital. As regards tourist guides, Panamanians with a residency in Costa Rica may supply these services; in GATS, only nationals are allowed in these services.

135. Table IV.4 below provides the summary of non-conforming measures with respect to financial services listed in Annex VI to the Treaty. Costa Rica has partial commitments in the financial sector under the GATS, covering banking and other financial services (deposits, lending, credit card services, provision and transfer of financial information, financial data processing and related software, and leasing) but not covering insurance, with full liberalization of the right of establishment for subsidiaries but not for branches but with the other three modes of delivery remaining generally unbound, except for services of provision and transfer of financial information, which are fully liberalized.

136. Insurance and reinsurance, as well as pension funds, remain de facto outside the Treaty's scope given that these subsectors have been listed in section B of Annex IV and in relation to restrictions on right of establishment, national treatment, MFN, senior management and Board of directors and new financial services. It shall however be underlined that the Protocol provides for a *rendezvous* clause in respect to insurance and reinsurance (see paragraph 92 above). Also listed in section B are limitations on national treatment and cross-border trade with respect to all financial services except for the provision and transfer of financial information and advisory and other auxiliary financial services. These two subsectors are therefore fully liberalized; that was also the case under the GATS for the former, but not for the latter which was not subject of a specific commitment.

137. As regards other subsectors that have been liberalized, few existing non-conforming measures have been listed in section A; these apply in respect to banks and financial intermediation, securities and investment funds. In particular, discrimination is allowed in relation to the commercialization of funds from certain countries – but not from Panama – and nationality requirements apply to senior managers of banks and to traders.

Table IV.4

Financial services: Non-conforming measures listed by Costa Rica in Annex VI

Sector/Subsector	Obligations	Description/Reduction of Restriction
<b>Section A (existing measures)</b>		
Banks and financial intermediation	NT/SMBD	Nationality requirements for senior positions. A minimum number of national cooperatives are needed for establishing of a cooperative bank. A minimum number of national employee-sponsored <i>solidarista</i> associations are needed to establish a <i>solidarista</i> bank.
Securities	NT/MFN	Exceptions to restriction on the supply of foreign-issued securities may apply in accordance with treaties and conventions signed by Costa Rica. Securities from small and medium enterprises of Costa Rica may register for a "restricted public offer". Nationality or residency requirements for registration as a trader.
Investment funds	MFN	Preferential treatment by authorizing trade of real estate funds from United States, Spain, Mexico, Colombia, Chile, Canada, Brazil and England and any other country as provided for in domestic legislation.
<b>Section B (future measures)</b>		
Financial services	CBTS/ NT	Any measure relating to the cross-border trade in financial services, except for the provision and transfer of financial information, financial data processing and related software, and advisory and other auxiliary financial services (classified as 7.B(l) and (k), respectively, in MTN.GNS/W/120).
Insurance and reinsurance	Right of establishment CBTS/NT/MFN/SMBD New financial services and data processing	State monopoly. Reservation with respect to any measure of insurance and reinsurance for all its modalities and for insurance intermediation.
Pension funds	Right of establishment CBTS/NT/MFN/SMBD New financial services and data processing	Any measure with respect to pension funds and labour capitalization.

Note: CBTS: Cross-border trade in services; MFN: Restriction to MFN treatment; NT: National treatment restriction; SMBD: Senior management and Board of directors restriction.

Source: Annex VI to the Costa Rica-Panama FTT.

## **2. Panama**

138. Under this Treaty, Panama considerably extends its GATS commitments, particularly with regard to the number of sectors subject to liberalization commitments; while it has commitments under the GATS in all 11 sector groups in the SSC, these cover less than half of the 160-odd subsectors comprising the List.

139. The GATS horizontal limitation restricting foreign ownership of real state within 10 km. from the coastal area is maintained; all other GATS horizontal limitations in mode 4 (e.g. 90% of the employees of any foreign investor must be Panamanian or must have resided in the country for ten years) are not listed horizontally but may have been maintained as sector-specific reservations. The Treaty includes a horizontal limitation whereby the control/authority upon any part of national territory is prohibited to foreign governments or their entities, except in the case of Embassies.

140. With regard to the Panama Canal, Panama maintains the right to give preference to Panamanians over foreigners in recruitment for posts within the Canal Authority. Finally, an horizontal limitation requires that the majority of the capital (no specific percentage is provided) of private enterprises of public services be from Panama, subject to exceptions established by law.

141. In business services, Panama fully liberalizes research and development services, real estate services and a large number of other business services subsectors. Nationality requirements and local presence apply for a wide spectrum of professional services (under the GATS, mode 4 for professional services were generally unbound). Also, engineering and architecture enterprises have to be established in Panama to operate, unless otherwise agreed in another international agreement; under the GATS, a hiring of a national was required if the foreigner was to work for more than one year. In order to be able to practise, lawyers are to be Panamanians and have a licence granted by the Supreme Court of Justice. Services incidental to mining, energy distribution and petroleum are subject to numerous restrictions, in particular nationality requirements, local presence and exclusion clauses of foreign governments; none of these are opened up under the GATS. Other business services such as private security agencies, advertisement and printing and publishing services are also subject to some type of nationality requirement, and Chief of Security and Sworn guards are to be of Panamanian nationality.

142. In communication services, Panama's postal and telegraph activities are restricted to the government, but courier services, which is uncommitted under the GATS, is fully liberalized. With respect to telecommunications, mobile phone operators are subject to concessions and their number limited, establishment in Panama is required, and foreign governments are not allowed in the sector; however, capital from the Costa Rican government or their enterprises may be authorized if Costa Rica reciprocates by authorizing capital from Panama in its telecom services sector. In audiovisual services, Panama only reserved the right to maintain non-conforming measures with respect to radio and television broadcasting, e.g. nationality and equity requirements, and licence requirements for speakers. Under the GATS, in the whole communication sector only value-added telecom services were partially liberalized.

143. With regard to distribution services, Panama reserves retail sales services to nationals, subject to some exceptions in particular for foreigners already in the business prior to entry into force of the regulation (1972) and for sales of own production; this subsector is uncommitted under the GATS. Furthermore, the State reserves the operation of the electricity transmission services. Other subsectors are fully liberalized, as generally also under the GATS.

144. In education services, the only reservation with respect to Costa Rica is that history of Panama and civic education be taught by Panamanians; under the GATS, this sector is also significantly liberalized. Private health services are fully liberalized; that also applied in the case of

the GATS for hospital services. In tourism services, the coverage is extended to cover all subsectors, while in the GATS commitments are limited to hotels and certain travel agencies and tour operator services. Requirements applying to travel agencies are those applying to retail sales, thus normally requiring that the service supplier be Panamanian. In recreational services, the entire sector is liberalized under the Treaty – with the exception of games of luck and chance, which may only be operated by the State (Annex III), and artistic activities, for which there is a requirement that every time a Costa Rican band is hired, Panamanian music artists must be hired on the same conditions, and a minimum wage for nationals is also foreseen. The GATS coverage is limited to partly liberalizing mode two commitments on entertainment services.

145. Panama has undertaken commitments in all transport services but in only few subsectors of air transport, as foreseen in the Treaty's scope; for the latter services, nationality and equity requirements apply. Limitations apply on maritime transport services, with nationality requirements for pilot trainees, preference given to Panamanians in the crew of boats of Panamanian flag, and an establishment requirement for crew placement agencies. In the GATS, the only commitment regarding transport services relates to "aircraft repair and maintenance" which is fully liberalized.

Table IV.5

Non conforming measures listed by Panama in Annex I

Sector	Obligations	Mode	Description
Retail Sales	NT	I	Nationality requirement. Some exception apply, in particular for foreigners already in the business prior to entry into force of the regulation (1972) and for sales of own production.
All sectors	NT	I	Nationality requirements: Control/authority upon any part of national territory prohibited to foreign governments or their entities, except for Embassies, in accordance with the Law. Foreign natural or legal persons and fully or partially foreign-owned Panamanian legal entities may not acquire national or individually-owned land located less than 10 km. from the border.
Public Utilities	NT	I	Equity requirements (major part of capital from Panama) on private enterprises of public services.
Issues related to the Panama Canal	NT/SMBD	I/CBTS	Preference for nationals for positions in the Panama Canal Authority.
Services of artistic activities — musicians	NT	CBTS	Hiring of a foreign band requires hiring of a domestic band; minimum remuneration applies. Free presentation of a foreign band subject to prior approval.
Travel agencies services	NT	I/CBTS	Requirements for retail sales have to be fulfilled, with the exception of services related to the promotion, organization, operation and sale of tourist packages to travel into Panama.
Services of transmission of radio/TV programs	NT/MFN/SMBD	I/CBTS	Concession needed; nationality or equity (65%) requirements apply. Paid TV and radio may have more than 50% of foreign capital. Nationality requirements for each and every SMBD in cases of free-to-air radio and TV. Participation of foreign governments or their entities prohibited in the capital of public TV and radio. Licence required for speakers, with nationality requirements. Diffusion of advertisements from non-licensed speakers subject to reciprocity.
Telecommunications services	NT/LP	I/CBTS	Participation of foreign governments or their entities prohibited in the capital of enterprises of telecommunication services. Telecom services directly supplied to users in Panama require an establishment in Panama. Mobile telephone services subject to concessions; limitations on their number apply (4). Some of these restrictions may be removed on the basis of reciprocity, as specified in paragraph 141 above.
Education services	NT	CBTS	Nationality requirement for professors of history of Panama and civil education.



Sector	Obligations	Mode	Description
Electrical energy services	NT/SMBD	I	Nationality requirement for Board of Directors. Enterprises of mixed capital cannot be controlled by foreign governments.
Crude petroleum and natural gas	NT/LP/PR	I/CBTS	Contracts in this area require the contractor to be established in Panama. Import taxes on inputs waived if no domestic good can be supplied. Imports of goods and services authorized only if these are not available in Panama or do not comply with normal industry requirements.
Operation of mines	NT/PR	I/CBTS	Participation of foreign governments or their entities prohibited cannot be granted concessions for exploitation of mines. Prior authorization required for these actors to own equipment used for mining exploitation. Preference given to nationals in mining-exploitation activities. Limitations for hiring foreign senior managers, scientific and technical staff (25% of staff, 25% of wages).
Exploration/exploitation of non-metallic minerals services	NT	I	Reserved to nationals and enterprises constituted in Panama. can have contracts for the supply of the service. Participation of foreign governments or their entities prohibited in the capital of any such enterprises.
Private security agencies services	NT/SMBD	I/CBTS	Registry requirements. Ownership subject to nationality requirements; in case of enterprises, requirements are those applying for retail sales. Nationality requirements for Chief of Security and Sworn Guards. Pre-authorization requirements for foreigners.
Advertising services	NT	CBTS	Nationality and licence requirement for dubbing of foreign-produced advertisements.
Maritime transport services	NT	CBTS	Nationality requirements for Pilot Trainees.
Maritime transport services	NT/LP/PR	I/CBTS	Preference to Panamanian nationals to crews of boats with Panamanian flag. Foreign Placement agencies have to establish an agent of Panamanian nationality with general powers.
Air transport services	NT	I	Certification granted only on the basis of nationality or minimum equity requirements – at 51%, increased to 60% for domestic transportation.
Air transport auxiliary services	NT	CBTS	Nationality requirement for technical crew; foreigners only through prior authorization.
Business services - Printing and publishing services	NT/SMBD	I	Nationality requirements for senior management.
Professional services – Lawyers	NT	I/CBTS	Nationality requirement for lawyers.
Professional services	NT/MFN/LP	CBTS	Nationality requirement (multiple professions, e.g. economist, accountant, nurse, architect, etc.). Architectural and engineering firms require registration with the Engineers and Architects Association in order to operate; this requires establishment in Panama and due accreditation to the responsible persons. Exception may apply with respect to establishment in accordance with existing international agreements.

Note: CBTS: Cross-border trade in services; Investment; LP: Local presence requirements; MFN: Restriction to MFN treatment; NT: National treatment restriction; PR: Performance requirements; SMBD: Restrictions affecting senior management and board of directors.

Source: Annex I to the FTT between Costa Rica and Panama.

146. Table IV.6 contains the non-conforming measures listed by Panama on which it has reserved the right to adopt or maintain existing or future measures as listed in its Annex II. These reservations, which go against the basis principles of the Treaty, have been taken with respect to issues related to native population and minorities, social services, State-enterprises and/or government entities, construction services, domestic road transport services and fisheries.

**Table IV.6**  
**Non conforming measures listed by Panama in Annex II**

Sector	Obligations	Mode	Description
Issues related to native populations	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure in relation to rights or preferences granted to native populations.
Social services	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure in relation to as retirement, services related to income security or insurance, social security, social welfare, public education and training, water supply, health and childcare.
Minority related issues	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure in relation to the rights or preferences granted to minorities with social or economical disadvantages.
Issues related to the Panama Canal	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure related to use, management, administration, operation, maintenance, conservation, modernization, exploitation, administration, development and ownership of the Panama Canal.
Issues related to State enterprises/governmental entity	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure (a) limiting the supply of services, ownership of interests or goods, and technical and financial capacity and experience when selling or disposing shareholding interests or goods; (b) controlling the foreign partnership in such enterprises; and (c) nationality requirements of SMBD in the case of the enterprise's sale or any other type of disposal.
Construction services	NT/LP	CBTS	Any measure related to provision of construction services by foreign natural, juridical persons or organizations, in the sense of residency requirements, local presence or financial guarantees.
Domestic road transport services	NT/MFN/LP/ PR/SMBD	I/CBTS	Any measure in relation to the transport of passengers, rental of commercial vehicles with driver, bus station services. Domestic freight transportation services is reserved to Panamanian transporters.
Fisheries	NT/MFN	I	Measures relating to investment, ownership, control, operation of vessels engaged in fishing and related activities in Panamanian jurisdictional waters.

Note: CBTS: Cross-border trade in services; I: Investment; LP: Local presence requirements; MFN: Restriction to MFN treatment; NT: National treatment restriction; PR: Performance requirements; SMBD: Restrictions affecting senior management and board of directors.

Source: Annex II to the FTT between Costa Rica and Panama.

147. In accordance with Annex III that allows Parties to reserve certain economic activities to the State, services related to postal and telegraph, gambling and betting and the distribution of electrical energy have been reserved by Panama.

148. Table IV.7 below provides the summary of non-conforming measures with respect to financial services listed in annex VI to the FTA. Panama has partial commitments in the financial sector under the GATS, covering both insurance (life, non-life and reinsurance) and banking and other financial services (deposits, lending, leasing, payments and money transmission, guarantees, trading, participation in securities and money broking), with mode 4 unbound for brokers and stock brokers. In the GATS, insurance-related services are normally unbound on modes 1, 2 and 4 and fully liberalized on mode 3, while for banking modes 1, 2 and 3 are fully liberalized and mode 4 is unbound.

149. As in the case of Costa Rica, pension funds and the cross-border trade with respect to all financial services except the provision and transfer of financial information and advisory and other auxiliary financial services remain de facto outside the Treaty's scope given its inclusion in section B of Annex VI. Liberalization in the bank sector is subject to the requirement that two general agents be designated, of which one is to be a national of Panama, and nationality requirements for senior management at two State banks. Insurance companies from Costa Rica are not allowed to cover property and persons in Panama's territory. As for reinsurance, the same requirements as those of the bank sector apply.

**Table IV.7**  
**Financial services: Non-conforming measures listed by Panama in Annex VI**

Sector/Subsector	Obligations	Description/Reduction of Restriction
<b>Section A</b>		
Banks	NT	Foreign banks have to designate at least two agents with general powers and resident in Panama, of which one has to be national of Panama.
Banks	SMBD	Nationality requirement for senior positions of the "Caja de Ahorros" (Saving Bank).
Banks	SMBD	Nationality requirement for senior positions of the "Banco Nacional de Panama".
Insurance companies, Administrative centre of insurance companies, Insurance brokers	CBTS/NT/MFN	All Panamanian-based goods and persons insurance have to be contracted with insurance companies authorized in Panama; exceptions may be granted. Registration requirements. Licence required for insurance broker; reserved to Panamanians resident in Panama or foreigners allowed in the retail trade business. Licence required for insurance broker enterprises; its legal representative and stockholders have to have a insurance broker license (except in case of heritage). Only those persons with an insurance broker license may constitute a company supplying these services.
Reinsurance entities, Managers of reinsurance, Reinsurance brokers	NT	Authorized enterprises have to designate at least two agents with general powers and resident in Panama, of which one has to be national of Panama.
Bank and insurance	CBTS	Only those enterprises registered to operate in Panama with recognized as economically solvent by a government body are allowed to provide secured bonds or guarantees for government procurement.
Financial services — Senior managers, stockbrokers, analysts	NT	Licence required, granted on the basis of residency in Panama and a police statement.
<b>Section B</b>		
Pension funds	Right of establishment CBTS/NT/MFN/SMBD	Any measure with respect to pension funds.
Financial services	New financial services and data processing CBTS/NT	Any measure relating to the cross-border trade in financial services, except for the provision and transfer of financial information, financial data processing and related software, and advisory and other auxiliary financial services (classified as 7.B(1) and (k), respectively, in MTN.GNS/W/120).

Note: CBTS: Cross-border trade in services; MFN: Restriction to MFN treatment; NT: National treatment restriction; SMBD: Senior management and Board of directors restriction.

Source: Annex VI to the Costa Rica-Panama FTT.

## E. REGULATORY PROVISIONS ON TRADE IN SERVICES

### 1. Domestic regulation

150. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards, and licensing requirements do not constitute unnecessary barriers to trade, a best endeavour clause provides that each Party should ensure that such measures: (a) are based on objective and transparent criteria, such as competence and the ability to supply the service; (b) are not more burdensome than necessary to ensure the quality of the service; and (c) are not in themselves a restriction on the cross-border supply of a service (Article 11.07).

### 2. Recognition

151. Annex 11.13 establish the rules for recognition of higher education qualifications. This Annex makes clear that, in cases where a Party grants recognition to titles obtained in another third country, the Treaty does not oblige the Party to extend such recognition to titles obtained in the other Party. In such cases, however, opportunity shall be given for the latter to pursue discussions within that aim. the annex also provides the basis under which recognition is to be granted.

F. SECTOR SPECIFIC PROVISIONS ON TRADE IN SERVICES

1. Financial services

152. The provisions relating to trade in financial services are set out in Chapter 12. According to the definitions contained in Article 12.01, "financial service" means any service of a financial nature, including banking, insurance, reinsurance and any service related or auxiliary to a service of a financial nature. The remaining definitions of Chapter 12 replicate those of Chapters 10 and 11, except that, for this Chapter, a loan granted by a services' provider other than a loan to a financial institution is considered as an "investment".

153. Also in the case of financial services liberalization is done on a "negative list" approach. Chapter 12 covers the four modes of supply defined in the GATS, although liberalization differs by mode. Thus, in Article 12.06, each Party guarantees national treatment for investors of the other Party, and its investments (mode 3). As regards trade in services, national treatment is restricted to those services for which authorization has been granted, which is only guaranteed (Article 12.05) for the consumption of a service in the territory of one Party by a consumer of the other Party (mode 2). Even so, the Parties agree not to increase the degree of non-conformity of their measures relating to cross-border trade in services, except with regard to the measures provided for in section B of Annex VI of each Party. Most-favoured-nation treatment (Article 12.07) is in fact granted in respect of both investments and trade. In Article 12.04, the Parties likewise guarantee the right of establishment (mode 3) under conditions no less favourable than those granted to their own investors.

154. Each Party shall permit financial institutions of the other Party to provide any new financial service that they permit their own institutions to provide, in accordance with most-favoured-nation treatment and national treatment principles (Article 12.13).<sup>41</sup> Moreover, any type of restriction on grounds of nationality is prohibited in respect of the senior management and governing bodies or boards of directors of financial institutions (Article 12.14).

155. The Parties reserve the right to maintain existing measures that are not in conformity with Articles 12.04, 12.05, 12.06, 12.07, 12.13 and 12.14, provided that they are included in section A of Annex VI, and to adopt or maintain measures not in conformity with those articles, in accordance with the provisions of section B of the same Annex. A summary of these reservations for both Parties has been provided above in the section relating to the liberalization commitments. Finally, section C of Annex would contain commitments to liberalize reservations undertaken; these commitments have however not been undertaken by Costa Rica or Panama.

156. In Article 12.09, the Parties reserve the right to adopt or maintain prudential measures. Furthermore, pursuant to paragraph 3 of the Annex on Financial Services to the GATS, each Party is given the possibility of recognizing, where appropriate, the prudential measures of the other Party, when it has recognized the prudential measures of non-Parties (Article 12.08). The provisions of this Chapter do not apply to the activities of monetary authorities, activities that form part of public retirement plans or statutory social security systems, or other activities that have the Party's guarantee or use financial resources of the Party (Article 12.02).

157. The provisions on transfers in the Chapter on investment apply *mutatis mutandis* to the Chapter on financial services (Article 12.17). Other provisions of that Chapter specify the transparency requirements which the Parties undertake to fulfil (Article 12.10), as well as the additional procedures regarding consultations and dispute settlement in the financial services sector,

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<sup>41</sup> "New financial service" means a financial service not provided in the territory of a Party that is provided in the territory of the other Party and includes any new form of delivery of a financial service or sale of a financial product that is not sold in the territory of the first Party.

which partly modify the provisions of Chapter 20 (Articles 12.12 and 12.18). Thus, where a Party suspends benefits in response to a measure affecting the financial services sector in any way, it may suspend benefits only in that sector. This Chapter incorporates section B of Chapter 10 on disputes between an investor and a Party, in addition to other provisions specifically relating to financial investment disputes (Article 12.19).

158. The denial of benefits under this Chapter is provided for in the same way as in Chapter 11, but does not extend to financial investments (Article 12.16).

159. Lastly, a Committee on Financial Services is established. Its functions include overseeing the application of this Chapter and taking part in dispute settlement procedures and facilitating the exchange of information (Article 12.11).

## **V. GENERAL PROVISIONS OF THE TREATY**

### **1. Transparency**

160. Pursuant to Chapter 18, the Parties agree to implement a number of measures to ensure transparency in the administration of the Treaty. Such measures comprise, *inter alia*, the establishment of contact points, the exchange of information, and the provision of safeguards in terms of hearings, legality and due process respecting matters<sup>42</sup> that may affect the operation of the Treaty, as well as the procedures to be followed for the adoption of measures of general application and review and appeal by the Parties of administrative decisions relating to the Treaty.

### **2. Current payments and capital movements**

161. Article 10.10 and 12.17 provide for the transfer of capitals related to investment from the other Party shall be made without restrictions and delays. It provides the possibility, however, for restrictive measures on capital movements to be introduced in case of balance-of-payments (BOP) difficulties faced by any of the Parties (Article 21.04).

### **3. Exceptions**

162. The exceptions applicable to matters concerning trade in goods and trade in services are set forth in Chapter 21. Article XX of the GATT 1994 (General Exceptions) is incorporated in the Treaty for the purposes of trade in goods<sup>43</sup>, and Article XIV, subparagraphs (a), (b) and (c), of the GATS form part of the Treaty for the purposes of trade in services.<sup>44</sup>

163. Article 21.03 specifies the exceptions on national security grounds, which are derived from the security exceptions contained in Article XXI of the GATT 1994. The exceptions relating to BOP difficulties are set forth in Article 21.04. Measures applied under the latter exception shall avoid unnecessary damage to the commercial economic or financial interests of the other Party; not be more burdensome than necessary; be temporary and be phased out gradually; be consistent with the Articles of Agreement of the International Monetary Fund (IMF); and be applied on a most-favoured-nation or national treatment basis, whichever may be more favourable. A Party may maintain a measure that gives priority to its own services essential to its economic programme,

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<sup>42</sup> Laws, regulations, procedures and administrative rulings of general application.

<sup>43</sup> Part Two (Trade in Goods), Part Three (Technical Barriers to Trade), and Chapters 15 (Competition Policy, Monopolies and State Enterprises) and 16 (Government Procurement), to the extent that they affect trade in goods.

<sup>44</sup> Chapters 10-14 (Investment, Cross-Border Trade in Services, Telecommunications, and Temporary Entry of Business Persons, respectively), Parts Two and Three, and Chapters 15 and 16, to the extent that they affect trade in services.

provided that the measure is not being applied for protectionist purposes. Restrictions on transfers must be consistent with Article VIII(3) of the IMF Articles of Agreement where they are imposed on payments for international current transactions, consistent with Article VI of the IMF Articles of Agreement and apply only in conjunction with measures imposed on international current transactions, where they are imposed on international capital transactions, and may not take the form of tariff surcharges, quotas, licences or similar measures.

164. The exception concerning disclosure of information (Article 21.05) reiterates that it is not mandatory to furnish or give access to information, the disclosure of which might run counter, *inter alia*, to the public interest, people's private lives, financial matters, and the bank accounts of individual clients or financial institutions.

165. Lastly, Article 21.06 stipulates that nothing in the Treaty shall apply to taxation measures or affect the rights and obligations of any of the Parties under any tax convention. In the event of inconsistency between any such convention and the Treaty, the convention shall prevail to the extent of the inconsistency. However, the national treatment provisions shall apply to taxation measures to the same extent as does Article III of the GATT 1994; taxation measures are also subject to the export tax provisions.

#### **4. Accession**

166. The Treaty does not contain a provision relating to accession from other countries.

#### **5. Institutional framework**

167. In addition to the Articles establishing bodies concerned with the various spheres of implementation, the institutional framework is laid down in Chapter 19 of the Treaty, which comprises two sections. The first provides for the establishment of the Administrative Commission, Sub-Commission and Secretariat; the second covers matters relating to the committees, sub-committees and groups of experts.

168. The functions of the Administrative Commission, established at ministerial level, encompass monitoring and evaluating the Treaty's implementation; resolving disputes; and supervising the work of committees. It is empowered to establish ad hoc or standing committees and groups of experts, and to modify concessions relating to goods, services, and government procurement. All of the Commission's decisions must be adopted by consensus (Article 19.01). The Administrative Sub-Commission, established under Article 19.02, is responsible for reviewing the technical dossiers necessary for decision-making; following up on the decisions of the Commission, which lays down the procedures of the Sub-Commission; and for helping to oversee the work of the committees, sub-committees and groups of experts. Article 19.03 provides, moreover, that the Commission shall establish a Secretariat in charge of providing support for the Commission and the Sub-Commission; supporting committees, sub-committees and expert groups in their work; assisting arbitral panels in the settlement of disputes; and dealing with such notifications and communications as provided for in Chapter 18.<sup>45</sup>

169. The committees, sub-committees and groups of experts are governed by section B of the Chapter. Each committee has a sphere of competence involving *inter alia*, monitoring implementation of the Treaty, assisting in the decision-making process, and recommending to the

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<sup>45</sup> The Administrative Commission of the Free Trade Treaty between Central America and Panama provided in Decision No. 2 of 7 October 2010 that for Costa Rica, the Secretariat would be composed of the Directorate-General of Foreign Trade of the Ministry of Foreign Trade, and for Panama, of the National Directorate for the Administration of Trade Treaties and Trade Protection.

Commission proposals for modifications and review of measures which, in its view, may be inconsistent with the Treaty (Article 19.05). In addition, the committees may establish their own procedures and create permanent sub-committees, which have the same functions as the committees with respect to the matters referred to them. At the first meeting of the Administrative Commission on 7 October 2010, the Committee on Goods was instructed to establish the Sub-Committee on Origin and the Committee on Investment and Cross-Border Trade in Services to establish the Sub-Committee on Freight Transport, which is due to take place at the first meeting of these Committees. The Committees have not yet convened. Lastly, not only the Commission but also the committees and the sub-committees may establish groups of experts to handle technical matters.

## **6. Dispute settlement**

170. Procedures governing the settlement of disputes are laid down in Chapter 20. They are applicable to the settlement of any dispute regarding application or interpretation of the Treaty, wherever a Party considers that an actual or proposed measure of the other Party might be inconsistent with obligations under the Treaty or, in the case of trade in goods, wherever technical barriers to trade or cross-border trade in services may cause nullification or impairment of benefits expected (without infringement). Any dispute arising under the Treaty or the WTO Agreement or conventions negotiated in accordance with the latter may be heard by either forum at the discretion of the complaining Party, although once an arbitral panel has been established, the forum selected excludes recourse to any other.

171. The Treaty provides that the Parties are to consult prior to the establishment of an arbitral panel (AP), for which they may call on the committees and sub-committees, and, failing agreement, on the Commission, in accordance with the procedures set forth in Articles 20.06 and 20.07, as well as Article 19.04(4-5). Thirty days after the Commission has convened, or if no such meeting has taken place, the Party that requested the meeting of the Commission may request the establishment of an AP (Article 20.08), *inter alia*. In the event that more than one Party requested the meeting and a single Party requests the establishment of an AP, all Parties must be duly informed and given the possibility of participating as complaining Parties. Details concerning the roster of panellists, their qualifications, and the composition and establishment of the AP are set out in Articles 20.09-20.11. A third party has the right to be heard by the AP and to submit written comments.<sup>46</sup>

172. No later than 90 days following its establishment, the AP is required to issue its initial report, on which the disputing Parties may make comments. Within the next 30 days, notification must be given of the final report, which the Parties are required to implement within a maximum period of six months following the notification. The report contains a finding of consistency or inconsistency of the measure, in which latter case the measure must not be implemented or must be revoked, and the level of nullification or impairment; it may suggest the recommendations considered necessary. If the Parties fail to notify the Commission of satisfactory implementation of the final report, it is for the AP to determine whether the Party complained against has complied with the report. If the AP finds that the Party complained against has not complied or the Parties fail to reach agreement in the case of a measure causing nullification or impairment of benefits without infringement, the complaining Party may suspend benefits of equivalent effect to those which it has ceased to receive, in accordance with Article 20.18.

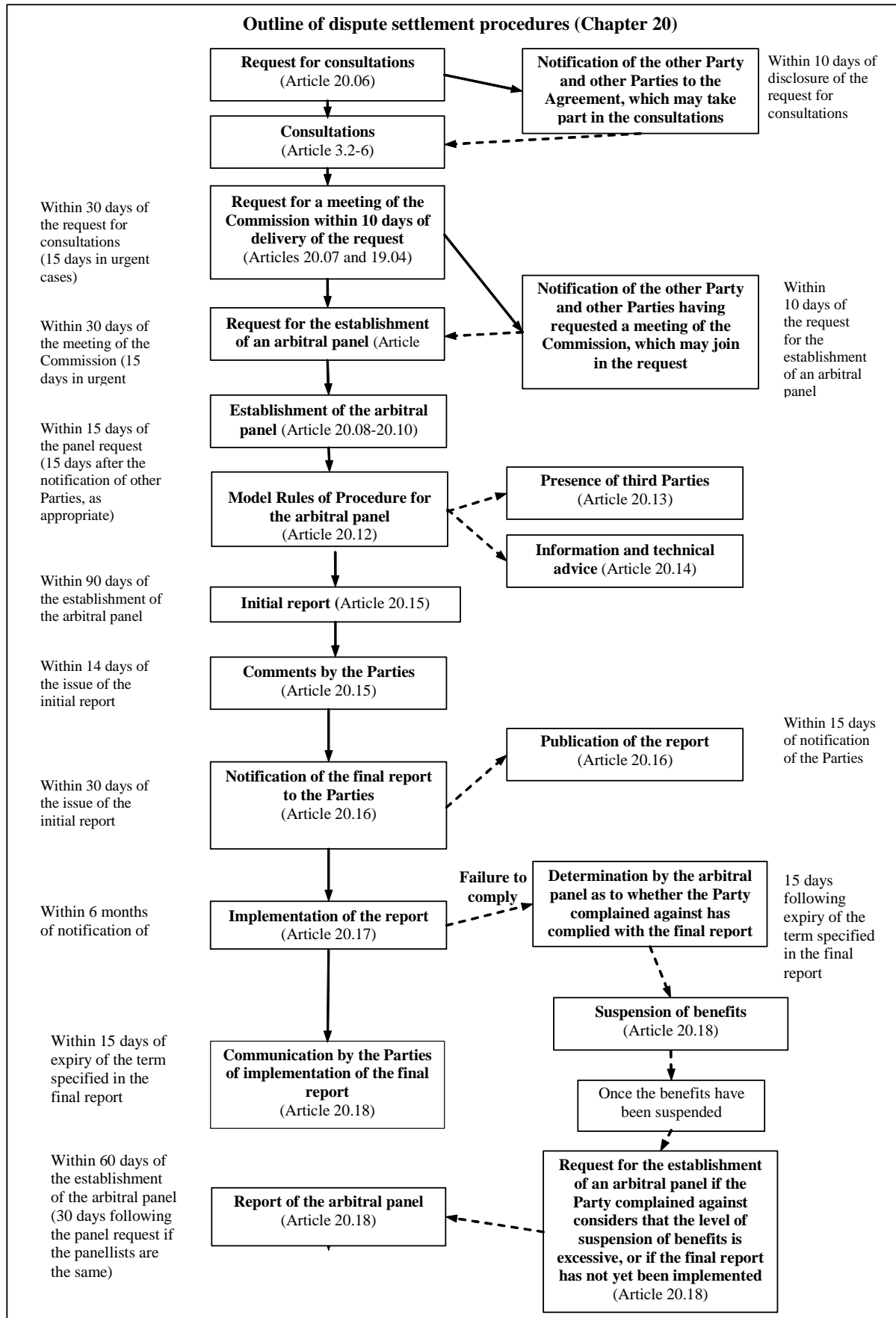
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<sup>46</sup> A Party entitled to participate as a complaining Party which decides to abstain from doing so may participate as a third Party, provided that it notifies its intention within the relevant time period. A Party that decides to participate neither as a complaining Party nor as a third Party foregoes its right to institute proceedings regarding the same matter, other than in the event of a significant change in economic circumstances.

173. Article 20.20 stipulates that a Party may not provide for right of action in its legislation against the other Party, and Article 20.21 encourages the Parties to promote alternative means for dispute settlement, in that it provides for the establishment, at the Commission's behest, of an Advisory Committee on Private Disputes to examine matters relating to the resolution of disputes among private parties.

174. Article 20.19 of the Treaty stipulates that the Commission shall endeavour to agree on a non-binding interpretation, where a Party so requests, on questions of interpretation in a judicial or administrative proceeding. Failing consensus within the Commission, any Party may interpret the situation according to its own views.





## 7. Relationship with other agreements concluded by the Parties

175. Article 5 of the Protocol provides that as of the Treaty's entry into force, the preferential Treaty of 1973 between Costa Rica and Panama ceased to apply. Transition measures have been foreseen; they provide that the certificates of origin would remain valid until the importation actually takes place, and that quotas granted in the context of these preferences would remain valid up to eight days prior to the Treaty's entry into force.

176. In 1963 Costa Rica signed the General Treaty which established the CACM; it has also signed the two legal instruments that updated the General Treaty, namely the Tegucigalpa Protocol – which created the Central American Integration System, aimed at achieving effective Central American integration – and the Guatemala Protocol – defining the objectives, principles and measures for achieving a Central American Economic Union.<sup>47</sup> As of July 2009, intra-trade was free with respect to all products except those included in Annex A to the General Treaty<sup>48</sup>; the common external tariff – which includes 6392 tariff lines excluding vehicles and provides for tariff levels at rates of 0, 5, 10, and 15% – was harmonized for 96% of the items with exceptions applying to products such as medicines, metals, petroleum, agricultural products and others.<sup>49</sup>

177. The Treaty on Investment and Trade in Services between the Republics of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua was signed on 24 March 2002, and entered into force on 6 January 2006. The objectives of the Treaty are to (a) establish a legal framework for the liberalization of trade in services and for investments, consistent with the General Treaty, the GATS, and other relevant bilateral and multilateral instruments; (b) encourage the expansion and diversification of trade in services and investment; (c) facilitate the circulation of services; (d) promote, protect and increase substantially investments in each Party; and (e) create efficient procedures for the Treaty's application, administration and for solving disputes. The Treaty liberalized services through a negative list approach, and the Parties agreed to complete the lists of reservations following its signing; however, at entry into force, these had not yet been completed.

178. Five years after, on 22 February 2007, a Protocol amending the Treaty was signed by the same parties. The Protocol was drafted in order to adapt the previously negotiated instrument to other related instruments concluded after the Treaty; it also includes the lists of exceptions and reservations of all Parties. As of August 2010, the Protocol was in force for Guatemala, El Salvador and Honduras. In the case of Costa Rica, the Treaty and its Protocol are currently before the Legislative Assembly for approval.

179. As already indicated, Panama has signed bilateral Protocols under this Treaty with the other signatories; from November 2009, all of these legal instruments were in force (see paragraph 20 above).

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<sup>47</sup> Both instruments were also signed by Panama but to date that country has ratified and put into force only the Tegucigalpa Protocol.

<sup>48</sup> Sugar and unroasted coffee for all five countries, petroleum derivatives between El Salvador and Honduras, ethylic alcohol between El Salvador with Honduras and with Costa Rica, distilled alcohol beverages between El Salvador and Honduras, and roasted coffee between Costa Rica and the other countries.

<sup>49</sup> Figures extracted from the report of the Central American Economic Integration Secretariat on the Central American Customs Union, available online at <http://www.sieca.org.gt/site/VisorDocs.aspx?IDDOC=Cache/17990000003052/17990000003052.swf>.

180. All RTAs signed by Costa Rica and Panama which are in force as of August 2010 are listed in table V.1 below.

**Table V.1**

**Costa Rica and Panama: Participation in other RTAs (notified and non-notified in force), as of August 2010**

Costa Rica and Panama: Participation in other FTAs (domestic and non notified in force), as of 01 August 2010				
Partner / Agreement	Date of entry into force	Type of agreement	GATT/WTO Notification	
			Year	WTO Provision
COSTA RICA				
DR-CAFTA	01.01.09 (CR)	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
Canada	07.11.02	Goods	2003	GATT Art. XXIV
Chile	15.02.02	Goods & Services	2002	GATT Art. XXIV & GATS Art. V
Mexico	01.01.95	Goods & Services	2006	GATT Art. XXIV & GATS Art. V
CACM	04.06.61	Goods	1961	GATT Art. XXIV
Dominican Republic	07.03.02	Goods & Services		Not notified
CARICOM	15.11.05	Goods & Services		Not notified
CACM	06.01.06	Investment & Services		Not notified
PANAMA				
Singapore	24.07.06	Goods & Services	2007	GATT Art. XXIV & GATS Art. V
El Salvador (Central America)	11.04.03	Goods & Services	2005	GATT Art. XXIV & GATS Art. V
Chile	07.03.08	Goods & Services	2008	GATT Art. XXIV & GATS Art. V
Honduras (Central America)	08.01.09	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Chinese Taipei	01.01.04	Goods & Services	2009	GATT Art. XXIV & GATS Art. V
Colombia	18.01.95	Goods		Not notified
Dominican Republic	08.06.87	Goods		Not notified
Guatemala (Central America)	20.06.09	Goods & Services		Not notified
Mexico	24.04.86	Goods		Not notified
Nicaragua (Central America)	21.11.09	Goods & Services		Not notified

DR-CAFTA: Dominican Republic-Central America-United States Free Trade Agreement.  
CACM: Central American Common Market.  
CARICOM: Caribbean Community and Common Market.

Source: WTO Secretariat.

## 8. Government procurement<sup>50</sup>

181. Government procurement aspects are addressed in Chapter 16; it entered into force jointly with the rest of the Treaty.<sup>51</sup> As stipulated in Article 16.01, the Chapter covers government procurement of goods, public works and services, subject to the Annexes to Chapters 11 (Cross Border Trade) and 12 (Financial Services). Excluded from the coverage are (a) procurement by entities listed in Annex to Article 16.01<sup>52</sup>; (b) subsidies accorded by the Parties or State enterprises; (c) government services or functions; (d) procurement made by the Authority of the Panama Canal; and, (e) in accordance with Annex 16.02, the following forms of

<sup>50</sup> Neither Panama nor Costa Rica is party to the WTO Agreement on Government Procurement, although Panama is in the process of acceding thereto.

<sup>51</sup> The Parties have agreed, in Article 3 of the Protocol, to waive the 18 months transition period foreseen in Article 16.15.

<sup>52</sup> These are, for Costa Rica, the State enterprise of water supply and sewage and of electricity, and for Panama, the Authority of the Panama Canal and the State enterprise of water supply and sewage. Article 16.08 provides for their potential dismantling, with the exception of the Panama Canal. As at December 2010, no liberalization had taken place.

government procurement: that related to national security, that made by staff in the fulfilment of their enterprise's duties, that for which the entity or person financing provides conditions not compatible with the Chapter, and concessions. A Party may deny the benefits accruing under this Chapter to a service provider of the other Party, where it determines that the provider has no substantial business activity in the territory of the other Party and, in accordance with the law of that other Party, is owned or controlled by persons of a non Party (Article 16.06).

182. In Article 16.03, the Parties undertake to apply measures relating to government procurement that are non-discriminatory and non-arbitrary and that provide for transparency and equal access among the Parties. Each Party accords to goods, services and suppliers of the other Party national treatment for any government contracting procedure other than direct contracting (Article 16.04). The Parties agree to implement appeal procedures permitting review of administrative decisions affecting government procurement for suppliers of the other Party (Article 16.07). Neither Party may demand compensation from the other in cases where privatization occurs (Article 16.09).

183. A Committee on Government Procurement is established under Article 16.11. Its functions include review and expansion of content in this sphere. This Chapter takes precedence in the event of inconsistency with any other provision of the Treaty and is not subject to Chapter 20 (Dispute Settlement) (Articles 16.13 and 16.14).

184. Other provisions cover the use of information technology (Article 16.10), and cooperation and technical assistance (Article 16.12).

## **9. Intellectual property rights**

185. Intellectual property matters are governed by Chapter 17 of the Treaty, in which the Parties confirm their rights and obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). A Committee on Intellectual Property is established under Article 17.05. Its main function is to review the implementation of rights and obligations under the TRIPS Agreement. Article 17.06 clarifies that whenever disputes cannot be solved through consultations, the dispute settlement mechanism provided for in Chapter 20 can be used.

## **10. Competition policy**

186. Chapter 15 of the Treaty contains the provisions on competition policy and those relating to monopolies and State enterprises.

187. As regards competition policy, the Parties intend to cooperate in establishing mechanisms to facilitate and promote the development of competition policies and ensure the application of rules governing free competition. The Parties set themselves a period of two years in which to examine the possibility of elaborating on the content of Chapter 15. At the First Meeting of the Treaty's Administrative Sub-Commission on 13 August 2010, the Parties agreed to decide on the proper time to discuss these matters more in depth.

188. Under Article 15.03, the Parties may designate or maintain monopolies or State enterprises; this provision further establishes that the Party designating a new monopoly is required to endeavour, if its legislation so permits, to introduce in the operation of the monopoly such conditions as will minimize any impairment of benefits, and to notify the other Party of the designation. Except in the case of procurement by government agencies of goods or services for non-commercial purposes, the Parties must ensure, within the limits of their respective legislation, that monopolies and State enterprises act in a manner consistent with the Treaty, do not discriminate between investors and service providers and are not used to engage in anti-competitive practices.

## ANNEX I

1. A comparison between preferential tariffs applied under the scheduled elimination programmes of each Party and the MFN applied duties, by total, agricultural (WTO definition) and non-agricultural products, is shown in Tables AI.1 (Costa Rica) and AI.2 (Panama). Applied MFN duty rates in 2009 serve as a comparison.

2. In 2009, Costa Rica had a variable tariff structure and 116 tariff lines – all non-agricultural – were duty free on an MFN basis. Its (unweighted) average MFN rate was 6.9% on all goods, with the average tariff for agricultural goods being almost three times that for non agricultural products. On entry into force of the Treaty, Panama's exporters enjoyed a relative margin of preference of 59.3% on agricultural products *vis-à-vis* the prevailing average MFN tariff in 2009, and a relative margin of preference of 83.9% on non-agricultural goods; these figures will increase to respectively 85% and 98.2% in 2025. At entry into force, the share of duty-free lines increased to 77.5% and 92.8% for agricultural and non-agricultural products, respectively. By the end of the transition period in 2025, the average tariff faced by Panama's exporters on all products is set to be 0.4%, with the share of duty-free tariff lines increasing to 93.2% and 99.1% for agricultural and non-agricultural products, respectively. By 2025, the average applied tariff on dutiable rates will be 20.7%, with an average rate of 31.6% for agricultural products and 5.9 to non-agricultural products.

Table AI.1

Costa Rica: Indicators of MFN tariff rates and preferential rates for imports from Panama

Origin of goods	Year	ALL PRODUCTS			Agricultural products <sup>a</sup>			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2009	6.9	7.0	1.8	14.0	14.0	0.0	5.6	5.7	2.0
Panama	2009	1.6	16.6	90.6	5.7	25.3	77.5	0.9	11.9	92.8
	2010	1.4	15.0	90.6	5.2	23.3	77.5	0.8	10.5	92.8
	2011	1.3	13.6	90.7	4.8	22.1	78.2	0.7	9.2	92.8
	2012	1.1	12.1	90.7	4.4	20.2	78.2	0.6	7.8	92.8
	2013	1.0	12.2	92.0	4.0	23.6	83.2	0.5	7.1	93.5
	2014	0.9	10.8	92.0	3.7	22.0	83.2	0.4	5.8	93.5
	2015	0.8	9.4	92.0	3.4	20.4	83.2	0.3	4.5	93.5
	2016	0.6	8.3	92.2	3.2	19.4	83.7	0.2	3.3	93.7
	2017	0.5	6.9	92.2	2.9	17.8	83.7	0.1	2.1	93.7
	2018	0.4	18.1	97.6	2.6	24.1	89.1	0.1	5.6	99.1
	2019	0.4	18.0	97.7	2.5	23.7	89.5	0.1	5.9	99.1
	2020	0.4	19.4	98.0	2.3	27.0	91.3	0.1	5.9	99.1
	2021	0.4	18.8	98.0	2.3	26.1	91.3	0.1	5.9	99.1
	2022	0.4	19.2	98.1	2.2	27.5	92.0	0.1	5.9	99.1
	2023	0.4	19.8	98.2	2.1	29.0	92.6	0.1	5.9	99.1
	2024	0.4	20.0	98.2	2.1	29.8	92.8	0.1	5.9	99.1
	2025	0.4	20.7	98.3	2.1	31.6	93.2	0.1	5.9	99.1

a WTO Definition.

Source: WTO Secretariat estimates based on data provided by Costa Rica.

3. In 2009, Panama had a variable MFN tariff structure. Its (unweighted) average MFN tariff (2009) was 8.3%, with the average for agricultural products being twice that of non-agricultural – i.e. 14.6% and 7.1%, respectively. On entry into force of the Treaty, Costa Rica's exporters enjoyed a relative margin of preference of 62.4% on agricultural products *vis-à-vis* the prevailing average MFN tariff in 2009, and a relative margin of preference of 80.3% on non-agricultural goods. The share of duty-free lines at the MFN level increased to 78.5% for agricultural products and 88.3% for non agricultural products (from respectively 22.4% and 32.8%). By the end of the transition period in 2026, the corresponding figures will be 94.9% and 98%. At that date, the average tariff

faced by Costa Rica's exporters on all products is set to be 0.6%; on its turn, the average applied tariff on those lines which remain dutiable will be 24.2%, and 49.1% for agricultural products.

Table AI.2

**Panama: Indicators of MFN tariff rates and preferential rates for imports from Costa Rica**

Origin of goods	Year	ALL PRODUCTS			Agricultural products <sup>a</sup>			Non-agricultural products		
		Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)	Average applied tariff		Share of duty-free tariff lines (%)
		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)		Overall (%)	On dutiable (%)	
MFN	2009	8.3	12.1	31.3	14.6	18.9	22.4	7.1	10.6	32.8
Costa Rica	2009	2.0	15.2	86.8	5.5	25.8	78.5	1.4	11.6	88.3
	2010	1.8	13.9	86.8	5.1	23.9	78.5	1.2	10.4	88.3
	2011	1.7	12.6	86.9	4.7	22.5	79.1	1.1	9.3	88.3
	2012	1.5	11.2	86.9	4.3	20.7	79.1	0.9	8.1	88.3
	2013	1.3	11.4	88.6	3.9	25.1	84.3	0.8	7.7	89.4
	2014	1.2	10.3	88.6	3.7	23.6	84.3	0.7	6.6	89.4
	2015	1.0	9.1	88.6	3.5	22.1	84.3	0.6	5.5	89.4
	2016	0.9	8.2	88.9	3.3	21.4	84.8	0.5	4.6	89.6
	2017	0.8	7.1	88.9	3.0	19.9	84.8	0.4	3.5	89.6
	2018	0.7	21.2	96.9	2.8	32.9	91.5	0.3	12.3	97.9
	2019	0.6	21.4	97.0	2.7	33.2	91.8	0.3	12.5	98.0
	2020	0.6	22.4	97.2	2.6	37.8	93.0	0.3	12.5	98.0
	2021	0.6	23.2	97.3	2.6	42.3	93.9	0.3	12.5	98.0
	2022	0.6	23.1	97.3	2.6	41.9	93.9	0.3	12.5	98.0
	2023	0.6	23.3	97.4	2.5	43.5	94.2	0.3	12.5	98.0
	2024	0.6	23.6	97.4	2.5	45.0	94.4	0.3	12.5	98.0
	2025	0.6	24.0	97.5	2.5	47.9	94.7	0.3	12.5	98.0
	2026	0.6	24.2	97.5	2.5	49.1	94.9	0.3	12.5	98.0

<sup>a</sup> WTO Definition.

Source: WTO Secretariat estimates based on data provided by Panama and the WTO-IDB.

4. Table AI.3 shows the market access conditions in Costa Rica for Panama's top 25 exports, covering 62 tariff lines, which in 2006-2008 accounted for three fourths of its global exports. The vast majority of the top export products will benefit from full liberalization at entry into force – i.e. 55 tariff lines and 74.5% of Panama's global exports; none of these lines were duty-free on a MFN basis. Two other products – fresh or chilled boneless bovine meat and paper cartons – accounting each for 1 tariff line and around 1% of global exports, will be fully liberalized in 2011 and 2018. Finally, at the end of the transition period in 2025, sugar cane and not decaffeinated coffee will remain subject to duties at 46% and 10% or 15% respectively; these two products accounted for five tariff lines and 3% of Panama's global exports. The margin of preference granted to Panama by Costa Rica under the Treaty ranges from 1% to 15%.

Table AI.3 – Costa Rica: Market access opportunities under the Treaty for Panama's top 25 exports

Panama's top export products in 2006-2008			Access Conditions to Costa Rica's import markets					
			MFN (2009)		Duty-free in			Remain Dutiable
			HS number and description of the product	Share in global exports	MFN average	No. of dutiable tariff lines	2009	
080719	Other	10.0	15.0	1	1			
080300	Bananas, including plantains, fresh or dried.	9.8	15.0	4	4			
030410	Fresh or chilled	7.8	15.0	1	1			
080711	Watermelons	7.7	15.0	1	1			
030342	Yellowfin tunas (Thunnus albacares)	7.4	1.0	1	1			
030219	Other	5.3	10.0	1	1			
030613	Shrimps and prawns	4.5	10.0	3	3			
080430	Pineapples	3.5	15.0	1	1			
030749	Other	2.6	5.5	2	2			
030420	Frozen fillets	2.2	15.0	8	8			
070990	Other	2.1	15.0	5	5			
720410	Waste and scrap of cast iron	1.8	1.0	1	1			

Panama's top export products in 2006-2008			Access Conditions to Costa Rica's import markets				
			MFN (2009)		Duty-free in		Remain Dutiable
HS number and description of the product	Share in global exports	MFN average	No. of dutiable tariff lines	2009	2011	2018	
170111 Cane sugar	1.6	46.0	1				1
010210 Pure-bred breeding animals	1.4	1.0	1	1			
030269 Other	1.4	15.0	8	8			
090111 Not decaffeinated	1.4	13.8	4				4
020130 Boneless	1.2	15.0	1		1		
300490 Other	1.2	3.5	6	6			
071490 Other	1.1	15.0	5	5			
760200 Aluminium waste and scrap.	1.1	1.0	1	1			
481910 Cartons, boxes and cases, of corrugated paper or paperboard	1.1	10.0	1			1	
711291 Of gold, including metal clad with gold but excluding sweepings containing other precious metals	1.0	1.0	1	1			
030379 Other	1.0	10.0	1	1			
230120 Flours, meals and pellets, of fish or of crustaceans, molluscs or other aquatic invertebrates	0.8	3.5	2	2			
030232 Yellowfin tunas (Thunnus albacares)	0.8	1.0	1	1			
<b>Total of above</b>	<b>79.8</b>		<b>62</b>	<b>55</b>	<b>1</b>	<b>1</b>	<b>5</b>

Source: WTO estimates based on data provided by the Costa Rica and UNSD, Comtrade database.

5. Table AI.4 shows the market access conditions in Panama for Costa Rica's top 25 exports, covering 91 tariff lines, which in 2006-2008 accounted for 63% of its global exports. Out of these 91 lines, 29 were already duty-free prior to the entry into force of the Treaty. None of these products will be subject to a longer transition period than 10 years; however, two products, accounting for 4.1% of global exports – not decaffeinated coffee and crude palm oil – will remain subject to MFN duties at rates of 30% and 20%, respectively. At entry into force, 56 tariff lines, out of the 62 dutiable, will be fully liberalized: in total, in 2009, 57.4% of Costa Rica's global exports could enter Panama on a duty-free basis. The remaining two products, accounting for 4 tariff lines and 1.5% of global exports, will become duty-free in 2018. The margin of preference granted to Costa Rica by Panama under the Treaty ranges from 0 to 15%.

Table AI.4 – Panama: Market access opportunities under the Treaty for Costa Rica's top 25 exports

Costa Rica's top export products in 2006-2008			Access Conditions to Panama's import markets				
			MFN (2009)		Duty-free in		Remain Dutiable
			Share in global exports	MFN average	No. of lines		
duty-free	dutiable						
847330	Parts and accessories of the machines of heading 84.71	10.4	3.0		1	1	
080300	Bananas, including plantains, fresh or dried.	7.9	13.8		4	4	
854221	Digital	6.5	10.0		1	1	
080430	Pineapples	5.8	15.0		2	2	
901839	Other	5.4	10.0		1	1	
090111	Not decaffeinated	3.2	30.0		1		1
300490	Other	2.6	0.0	5			
854229	Other	2.5	10.0		1	1	
854260	Hybrid integrated circuits	2.3	10.0		1	1	
854890	Other	2.3	5.0		1	1	
210690	Other	1.7	6.6	9	13	13	
901890	Other instruments and appliances	1.7	6.3	2	2	2	
902190	Other	1.2	0.0	1			
854449	Other	1.1	13.3		3	3	
401110	Of a kind used on motor cars (including station wagons and racing cars)	1.1	10.0		1	1	
151110	Crude oil	0.9	20.0		1		1
080719	Other	0.9	15.0		1	1	

Costa Rica's top export products in 2006-2008			Access Conditions to Panama's import markets				
			MFN (2009)		Duty-free in		Remain Dutiable
			MFN average	No. of lines		2009	2018
HS number and description of the product	Share in global exports			duty- free	dutiable		
610821 Of cotton	0.8	15.0			2		2
401693 Gaskets, washers and other seals	0.7	0.0		1			
481840 Sanitary towels and tampons, napkins and napkin liners for babies and similar sanitary articles	0.7	11.0			5	5	
620711 Of cotton	0.7	15.0			2		2
060491 Fresh	0.7	10.0			2	2	
271019 Other	0.6	9.6		4	8	8	
701090 Other	0.6	8.0		7	8	8	
200919 Other	0.6	15.0			1	1	
<b>Total of above</b>	<b>63.0</b>			<b>29</b>	<b>62</b>	<b>56</b>	<b>4</b>
							<b>2</b>

Source: WTO estimates based on data provided by Panama, WTO-IDB and UNSD, Comtrade database.



## ANNEX II

### Tariff-Rate Quotas under the Treaty

1. The various schemes for the application of preferential tariff-rate quotas between the Parties, provided for upon the conclusion of the Protocol, are described in Table AIII.1 below.

**Table AIII.1**

**Tariff-rate quotas of Costa Rica and Panama for products originating in the other Party**

HS Code (description)	Category	In-quota rate	Out-of-quota rate	Quantity (annual) as of 1.1.2009
<b>Bovine meat</b> 0201.10.00; 0201.20.00; 0201.30.00; 0202.10.00; 0202.20.00; 0202.30.00	B3	Duty-free	As B3	500 metric tons, simple annual increase of 5%. Duty-free on 1.1.2011.
<b>Pigmeat</b> <u>CR</u> : 0203.11.00; 0203.12.00; 0203.19.00; 0203.21.00; 0203.22.00; 0203.29.00; 0210.11.00; 0210.19.00 <u>Pan</u> : 0203.11.10; 0203.11.20; 0203.12.10; 0203.12.90; 0203.19.10; 0203.19.20; 0203.19.90; 0203.21.10; 0203.21.20; 0203.22.10; 0203.22.90; 0203.29.10; 0203.29.20; 0203.29.90; 0210.11.11; 0210.11.19; 0210.11.90; 0210.19.10; 0210.19.21; 0210.19.29; 0210.19.90	EXCL	Duty-free	As EXCL (MFN) <u>CR</u> : MFN of 46% in 2009  <u>Pan</u> : MFN of 70% in 2009, except for 3 tariff lines	170 metric tons, simple annual increase of 6%. As of 1.1.2019, indefinite annual increase of 10.2 metric tons.
For <u>CR</u> only, in addition for 0203.11.00; 0203.12.00; 0203.19.00; 0203.21.00; 0203.22.00; 0203.29.00; 0210.11.00; 0210.19.00	EXCL	15%	As EXCL (MFN)	Additional quota of 130 metric tons.
<b>Milk, pasteurized and chilled</b> <u>CR</u> : 0401.10.00; 0401.20.00 <u>Pan</u> : 0401.10.00; 0401.20.90	C12	Duty-free	As C12	547,500 litres. Compound annual increase of 5%. Duty-free on 1.1.2020.
<b>Milk, UHT</b> <u>CR</u> : 0401.10.00; 0401.20.00 <u>Pan</u> : 04011000; 04012010; 04012090	C12	Duty-free	As C12	547,500 litres. Compound annual increase of 5%. Duty-free on 1.1.2020.
<b>Skimmed milk powder</b> <u>CR</u> : 0402.10.00 <u>Pan</u> : 0402.10.91; 0402.10.99	C12	Duty-free	As C12	340 metric tons. Compound annual increase of 5%. Duty-free on 1.1.2020. Up to 25% of the quota may be imported in packs of less than 25kg, packed for retail sale.
<b>Whole milk powder, in bulk</b> <u>CR</u> : 0402.21.22 <u>Pan</u> : 0402.21.99; 0402.29.99	C12	Duty-free	As C12	125 metric tons. Compound annual increase of 5%. Duty-free on 1.1.2020.
<b>Palm oil, crude</b> 1511.10.00	EXCL	Duty-free	As EXCL (MFN) In 2009, MFN of 6% for <u>CR</u> and 20% for <u>Pan</u>	450 metric tons, not increased.
<b>Palm oil, refined</b> <u>CR</u> : 1511.90.10; 1511.90.90 <u>Pan</u> : 1511.90.00	EXCL	Duty-free	As EXCL (MFN) In 2009, MFN of and 6% (15119010) -15% (15119090) and 20% for <u>Pan</u>	200 metric tons, not increased.
<b>Sausages</b> <u>CR</u> : 1601.00.10; 1601.00.20; 1601.00.30; 1601.00.80; 1601.00.90 <u>Pan</u> : 1601.00.11; 1601.00.19; 1601.00.21; 1601.00.29; 1601.00.31; 1601.00.39; 1601.00.41; 1601.00.49; 1601.00.91; 1601.00.99	C13	Duty-free	As C13	50 metric tons, not increased. Duty-free on 1.1.2021.

HS Code (description)	Category	In-quota rate	Out-of-quota rate	Quantity (annual) as of 1.1.2009
<b>Prepared meat of fowls</b> 1602.32.10; 1602.32.90	B8	Duty-free	As B8	50 metric tons, not increased. Duty-free on 1.1.2016.
<b>Ham</b> <u>CR</u> : 1602.41.00 <u>Pan</u> : 1602.41.11	C13	Duty-free	As C13	150 metric tons, not increased. Duty-free on 1.1.2021.
<b>Other prepared meat of swine</b> <u>CR</u> : 1601.00.30 <u>Pan</u> : 1602.49.13	C13	Duty-free	As C13	50 metric tons, not increased. Duty-free on 1.1.2021.
<b>Other tomato sauces</b> <u>CR</u> : 2103.20.00 <u>Pan</u> : 2103.20.91; 2103.20.99	A	Duty-free	As A, but with a more stringent rule of origin (see next column)	1,000 metric tons, subject to a specific rule of origin requiring change of tariff sub-heading (Section C of Annex 4.03). Simple annual increase of 2%, with indefinite duration.  Out of the quota, the benefits of the TEP for other tomato sauces under category A (duty-free at entry into force) are only provided for products which conform with the rule of origin of 50% domestic content.
<b>Toilet paper</b> 4818.10.00	F	Duty-free	As F (MFN up to 31.12.2012, reduced as of 1.1.2013)  In 2009, MFN of 15% for <u>CR</u> and <u>Pan</u>	440 metric tons, not increased. Duty-free on 1.1.2019.
<b>Paper tablecloth</b> <u>CR</u> : 4818.20.00 <u>Pan</u> : 4818.20.20	F	Duty-free	As F (MFN up to 31.12.2012, reduced as of 1.1.2013)  In 2009, MFN of 15% for <u>CR</u> and <u>Pan</u>	16 metric tons, not increased. Duty-free on 1.1.2019.
<b>Paper handkerchiefs</b> <u>CR</u> : 4818.30.00 <u>Pan</u> : 4818.30.10	F	Duty-free	As F (MFN up to 31.12.2012, reduced as of 1.1.2013)  In 2009, MFN of 15% for <u>CR</u> and <u>Pan</u>	44 metric tons, not increased. Duty-free on 1.1.2019.
<b>Women's panty hoses</b> 6115.20.00; 6115.93.90	B8	Duty-free	B8	6,000 dozens of pairs of panty hoses. Duty-free on 1.1.2016.
<b>Other men's, women's and children's hoses and socks</b> <u>CR</u> : 6111.20.00; 6115.91.00; 6115.92.00; 6115.93.90; 6115.99.00 <u>Pan</u> : 6111.20.90; 6115.91.00; 6115.92.00; 6115.93.10; 6115.93.90; 6115.99.10; 6115.99.90	B8	Duty-free	B8	20,000 dozens of pairs of hoses/socks. Duty-free on 1.1.2016.

Source: Appendix I to Annex 3.04 of the Protocol.

### ANNEX III

**Table AIII.1**

**Activities for which business visitors may be granted entry**

<b>Research and design</b>	Technical, scientific and statistical researchers conducting independent research or research for an enterprise located in the territory of the other Party.
<b>Growth, manufacture and production</b>	Purchasing and production management personnel conducting commercial transactions for an enterprise located in the territory of the other Party.
<b>Marketing</b>	Market researchers and analysts conducting research independently or for an enterprise located in the territory of the other Party.  Trade fair and promotional personnel attending a trade convention.
<b>Sales</b>	Sales representatives and agents taking orders or negotiating contracts for goods or services for an enterprise located in the territory of the other Party but not delivering goods or providing services.  Buyers purchasing for an enterprise located in the territory of the other Party.
<b>After-sales service</b>	Installers, repair and maintenance personnel, and supervisors, possessing specialized technical knowledge essential to a seller's contractual obligation, performing services or training workers to perform services, pursuant to a warranty or other service contract incidental to the sale of commercial or industrial equipment or machinery, including computer software, purchased from an enterprise located outside the territory of the Party into which temporary entry is sought, during the life of the warranty or service agreement.
<b>General service</b>	Consultants engaging in a business activity involving the cross-border provision of services.  Management and supervisory personnel engaging in a commercial transaction for an enterprise located in the territory of the other Party.  Financial services personnel engaging in commercial transactions for an enterprise located in the territory of the other Party. In the case of Panama and Honduras, this category shall be defined as: specialized professional personnel providing advice in the area of financial services for an enterprise established in the territory of the other Party.  Public relations and advertising personnel consulting with business associates, or attending or participating in conventions.  Tourism personnel (tour and travel agents, tour guides or tour operators) attending or participating in conventions or conducting a tour that has begun in the territory of the other Party.

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