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FTAs Spur New Infrastructure Interest In Panama, Colombia

By **Melissa Lipman**

Law360, New York (January 27, 2012, 6:52 PM ET) -- With infrastructure that has failed to keep pace with their booming economies, Panama and Colombia are expected to be hotbeds of opportunity for project developers as they seek to take advantage of incentives from new free trade agreements struck with the U.S., experts say.

Though trade officials are still in the process of making the recently-ratified trade deals' promises of lifted tariffs a reality, everything from ports and roads to electric grids and telecom systems in Panama and Colombia need to be either built or revamped if the two Latin American nations are to reap the benefits of much-broadened access to the U.S. market, project finance attorneys say.

While some projects, like the $5.25 billion deal to expand the Panama Canal, are already under way, the two countries' governments have identified tens of billions of dollars worth of infrastructure projects needed in the coming years. That means more chances for project finance deals, attorneys say.

"They need to update their infrastructure to be able to compete and receive the kind of investment that they are expecting, so there should be work there," Holland & Knight LLP partner Enrique Gomez-Pinzon said. "Probably private parties are going to be coming again and project finance is going to be a big player as opposed to only the multilateral institutions … which have been doing the majority of financing for infrastructure in the last 10 years."

Though the free trade agreements — two separate pacts between the U.S. and Panama and the U.S. and Colombia — were originally reached about five years ago under the Bush administration, U.S. lawmakers did not actually sign off on the deals until October as the Obama administration sought to renegotiate for worker rights protections in Colombia and greater tax transparency and labor rights in Panama.

The U.S. trade representative is still receiving and analyzing materials from both countries about the steps they must take before those agreements will actually come into force, the agency said Wednesday.

Even without the trade deals, both Colombia and Panama have experienced strong growth over the past years and both countries' governments have already highlighted major infrastructure needs.

Panama has pointed to nearly $10 billion worth of other major projects aside from the Panama Canal expansion, according to the USTR. And Colombia recently replaced its old agency that had overseen government concessions with a new national infrastructure agency, known as ANI.

In November, ANI President Luis Fernando Andrade said the country expected investment in its transportation infrastructure to jump from $4 billion in 2010 and 2011 to $14 billion a year between 2014 and 2016.

While negotiators originally came to terms on the trade agreements in 2006 and 2007, the countries still do not have all the infrastructure they need to take advantage of the increased U.S. market access the deals provide, attorneys say.

"There has been a lot of criticism in Colombia because of the fact that the U.S. free trade agreement was just approved by the U.S. Congress and people are opening their eyes and saying, 'We are not ready, we do not have the infrastructure, it has not been built,'" Gomez-Pinzon said. "They need to be able to take the products from the inside of the country to the coasts, and they need to be able to do it at a competitive rate. Infrastructure is a key component of being able to take advantage of what they negotiated in the free trade agreement."

In particular, Colombia needs new highways, updated airports and increased capacity at its ports, according to Gomez-Pinzon.

Most of the investment in Colombia's ports is expected to come from the private sector, as the government expects the country's shipping traffic to jump from 132 million tons of cargo in 2011 to 182 million in 2014 and 253 million in 2018, according to Andrade.

Still most of the projects in Colombia are being developed by local sponsors and financed by local banks, as well as by investors from nearby Chile and Brazil, according to Clifford Chance LLP partner Fabricio Longhin.

That is partly due to the government's management of the exchange rate on its peso, which makes it more expensive for foreign banks to get involved, and partly because projects like toll roads are perceived as being politically complicated given the need for developers to deal with local governments and concerns, Longhin said.

"The fact that you have a healthy Latin American banking sector plus these Colombian banks that are very strong and converting into investment banking powerhouses, that makes investment by foreign banks much harder," Longhin said. "They will go into big, big projects … which are too big for local banks, but [where] the local banks can foot the bill, they will be the first option."

The energy sector, however, has been more welcoming for international lenders in Colombia, according to attorneys. In one major deal, for example, the Export-Import Bank of the U.S. agreed in April to lend a unit of Ecopetrol — Colombia's national oil company — about $2.84 billion to back the purchase of supplies and services from U.S. companies in a $5.18 billion project to upgrade and expand a refinery in Cartagena.

"Those are big projects and being financed on traditional project finance basis by agencies and [export trade agencies]," Longhin said. "Everything seems to indicate that that relationship will be further strengthened by the treaty."

Panama, on the other hand, has generally been more open to foreign investment, and renewable energy, road and real estate projects are booming in the country right now, attorneys say.

"I have been working with clients which are exploring the possibilities of building ports in Panama with public-private partnerships, so there is a lot of interest in Panama," Gomez-Pinzon said.

Projects are often also developed and built by local groups, and then sold to U.S. or European energy funds interested in holding onto the assets over the long-term. Much of the financing has also come from local banks and development finance institutions from the Netherlands, Germany and Scandinavia, according to Longhin.

Colombia first took off as a destination for foreign investment in the late 1990s, but interest then shifted to Brazil, according to Akin Gump Strauss Hauer & Feld LLP partner Dino Barajas. Now that investors are once again focusing on Colombia, particularly for mining and power project finance deals, it will be important for some of the players who were involved in the original boom to return to apply the lessons they learned the first time around, Barajas says.

"Most important … is going to be that the lender has in-country experience," Barajas said. "Lenders that have been active in Colombia and Panama, the easiest way to structure these deals is simply to reach out to them again and get them interested in your deal because they already have the recipe that works."

And lenders or developers new to the markets should strive to assemble a team of experienced advisers to avoid the mistakes of the past and get the deal done quickly, according to Barajas.

"The more time you spend first trying to cobble your deal together in-country, and then turn to the finance community and find that the needs of the finance community are such that you need to restructure your deal … that time you need to restructure may be the difference between your deal failing and your deal ultimately getting financed," Barajas said.

Still, attorneys caution that despite the ongoing interest in energy projects in the countries, a boost in infrastructure building from the free trade agreements would likely take some time to unfold.

Moreover, the broader global economic downturn may keep trade in both countries slower than it would otherwise be. That may mean that some of the countries' existing ports might not be overtaxed right away, delaying investment in expansion or upgrade projects until the current facilities are operating at or near capacity, according to Baker Botts LLP partner Bill Giusti.

"[The agreements] will create investment opportunities for U.S. and other investors, as well as export opportunities for many manufacturers of equipment and components that will be necessary for construction and operation of these projects," Giusti said. "But it will take some time for the free trade agreements to take full effect."

--Additional reporting by Ryan Davis. Editing by Christie Smythe and Andrew Park.