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March 3, 2009

Dear Representative:

I am writing to thank you for your co-sponsorship of H.R. 2136 – the Stop Tax Haven Abuse Act – in the previous Congress, and to bring to your attention a lingering Bush administration initiative that could undermine the commitment you and President Obama, who was a sponsor of the companion Senate bill, have made to dealing with the pervasive tax-haven problem. This hangover Bush administration project also runs counter to the goal of closing the tax loopholes that promote offshoring of U.S. jobs that many in Congress and President Obama made prominent features of their 2008 election. Further, the November 2008 G-20 Communiqué that was issued after the initial Washington summit on countering the global financial crisis explicitly enumerated the role of such banking secrecy havens in the crisis, and the need to end such practices as a critical aspect of re-stabilizing the global financial system.

Namely, Bush signed a U.S.-Panama Free Trade Agreement (FTA) in mid-2007 despite this country's inclusion in the initial list of "Offshore Secrecy Jurisdictions" listed in the Stop Tax Haven Abuse Act, and that agreement remains lurking with Fast Track authority still attached to it. The Panamanian government and various corporate interests who have taken advantage of Panama's "comparative advantage" in banking secrecy, tax evasion and money laundering are expected to push President Obama and Congress to approve Bush's Panama agreement.

These proponents of a Panama FTA have peddled this agreement as "non-controversial." Unless advocates of tax-haven reform ensure that Panama's role as a poster child for the problem is raised, this falsehood could gain momentum. Bush never used the Fast Track authority attached to this FTA to try to force a vote on it. This is because, on top of everything else, Pedro Miguel González Pinzón, who is under indictment in the United States for murdering a U.S. soldier, Zak Hernández, during President George H.W. Bush's 1992 visit to Panama, was elected as the President (Speaker) of the unicameral Panamanian National Assembly. This outrage effectively shut down examination of other aspects of this Bush FTA proposal, which is opposed by many labor and other organizations because it also replicates much of Bush's trade-agreement model, premised on the Central America Free Trade Agreement (CAFTA).

Probably many in Congress are unaware that Panama was one of the 34 tax-haven jurisdictions identified in H.R. 2136. The country's economy thrives on banking secrecy, and its advantage rests on the ease with which U.S. and other companies can create subsidiaries there. Moreover, the State Department and Drug Enforcement Agency have consistently identified Panama's financial sector as a conduit for Colombian and Mexican narco-trafficking funds. A Government Accountability Office study identified Panama as one of only eight countries – and **the only current or prospective FTA partner – that was listed on all of the major tax-haven watchdog lists.** Panama has long been a key target of the Organisation for Economic Co-operation and Development and other tax transparency entities for its resistance to international norms in combating tax evasion and money laundering. Indeed, Panama is one

of few countries that have refused to sign any tax information exchange treaties (TIEAs). This international legal instrument allows for a standard exchange of tax-related information between countries, and helps catch and prevent tax evasion, money laundering and funding for terrorists.

As President Obama said during the campaign, “It’s time to close corporate loopholes, shut offshore tax havens, and restore balance and fairness to the tax code.” **Towards that end, no FTA with Panama – even one not premised on CAFTA – should be contemplated until the country eliminates its excessive banking secrecy practices, re-regulates its financial sector, and forces banks and multinational subsidiaries to pay their fair share of taxes.**

The FTA not only fails to remedy these problems – at what is probably an all-time peak of U.S. leverage over Panama – but actually makes things worse. Specifically, the FTA would extend expansive NAFTA-style investor rights to the over 350,000 subsidiaries of large and small companies based in Panama. These FTA investor privileges would provide an array of new rights to these firms and limit U.S. government policy space regarding how to deal with their bad conduct. For instance, these subsidiaries – whose parent corporations are owned by investors ranging from the Chinese government to troubled financial firms of all nationalities – would obtain rights under the FTA to challenge U.S. public-interest, financial-service and other laws that affected their expectations of future profit in the U.S. market.

If the FTA were passed, U.S. taxpayers would be opened up to a triple fleecing by multinational companies: once, through the initial tax evasion; second, through the various bailouts passing through Congress to save some of these very tax-evading firms; and, third, by the potential for these and other corporations to use the FTA investment rights to sue taxpayers for cash damages for measures that would not be considered compensable under U.S. domestic law.

The Senate Homeland Security Committee estimates that tax evasion in offshore tax havens costs the U.S. taxpayer \$100 billion a year. This revenue is desperately needed to fund domestic infrastructure projects and get our own fiscal house in order. Please let your colleagues and the administration know that an FTA with one of the world’s leading tax havens – not to mention one negotiated by President Bush and based on the failed NAFTA model – should not be considered at this time.

If you would like more information on this or related matters, please do not hesitate to contact Bill Holland in my office at 202-454-5190 or bholland@citizen.org.

Sincerely,



Lori Wallach
Public Citizen’s Global Trade Watch division, Director