Memo to Reporters

April 6, 2009 Contact: Lori Wallach (202) 454-5107

To Clean Up Tax Havens, Panama Must Go Beyond Swiss "Cheese"

Tax havens such as Panama came under intense scrutiny at the G-20 summit last week as the Organisation for Economic Cooperation and Development (OECD) issued a new tax-haven list, including Panama among 30 target countries that agreed to adopt international tax norms years ago but failed to do so.[1] Focus on Panama's tax-haven and money-laundering problems intensified in March when U.S. Trade Representative Ron Kirk suggested at his confirmation hearing that the administration might consider bringing to Congress a controversial Bush-negotiated free trade agreement (FTA) with Panama.

The G-20 London Summit Communiqué committed "to take action against non-cooperative jurisdictions, including tax havens. We stand ready to deploy sanctions to protect our public finances and financial systems. The era of banking secrecy is over. We note that the OECD has today published a list…"

Unfortunately, it would be predictable for Panamanian officials to attempt to sidestep the issue by imitating the recent announcements by the tax-haven nations of Andorra, Liechtenstein and Switzerland (ALS) that they will address certain tax and banking transparency concerns. Why would Panama, a country whose comparative advantage is providing a haven for foreign firms to avoid taxes, consider such an announcement? Because the plans that the other three secrecy jurisdictions rolled out are far from adequate, full of loopholes, and do not represent a meaningful way forward for them – or for Panama (more on that below). Thus, Panama could try to quell the growing controversy without making serious changes to its excessive banking secrecy and policies that waive taxes for foreign firms.

And controversy about Panama's tax-haven practices was already heating up before the G-20 thanks to a recent *New York Times* story describing the attempts by bailed out insurance firm AIG to obtain repayment of $306 million in U.S. taxes related to activities of an AIG-affiliated Panamanian corporation, Starr International Company Inc (SICO).[2] AIG's U.S. court filings include demands to retroactively deduct from its taxable U.S. income a stream of cash payments and shares of AIG stock *paid as compensation to its employees* by the Panama-registered corporation acting on its behalf. The chairman of the Panamanian firm in question, SICO, is Maurice "Hank" Greenberg, the former head of AIG. SICO is AIG's largest private shareholder and an erstwhile provider of reinsurance and other services to AIG, *and operated a compensation pool for AIG's top staff,* according to press reports.

So, it would be expected that Panama would seek a way to get the spotlight off of its tax-haven problem. And agreeing to what Andorra, Liechtenstein and Switzerland just announced would be a painless – and meaningless – way to do so.

Consider what the ALS countries did: They did *not* commit to automatic exchange of tax information – which is the practice necessary to combat tax evasion because it ensures all transactions are transparent. Rather, they only agreed to *consider* exchanging tax information *when U.S. authorities already have substantial evidence that a specific individual likely evaded taxes*, and to have bilateral treaties reflect this. These non-reforms rule out the ability for officials to monitor transactions – which the tax haven countries derogatorily termed "fishing expeditions" – so as to be able to spot tax-evasion problems in the first place. Moreover, the patchwork of existing bilateral treaties on these matters are written like swiss cheese, allowing tax-haven authorities to refuse to share information for a wide-range of self-determined reasons. The Swiss already refuse to share the information on tens of thousands of U.S.-owned individual accounts including with respect to the on-going UBS scandal.

Second, the ALS countries did not agree to require that the beneficial ownership of bank accounts, foundations, and other entities be disclosed in accessible, public records. That is to say that the infamous anonymous "numbered accounts" will still be on offer. The only difference is that the ALS governments can, *at their discretion*, choose to share ownership information. Given that watchdogs have identified Panama's unwillingness to disclose the beneficial ownership of foundations, corporations, shipping vessels, and banking accounts as a major incentive to illicit money laundering and tax evasion,[3] the new ALS policies are not adequate, either for the European nations, or for Panama.

Third, the ALS countries have agreed to take steps to be removed from the OECD and G-7's worst tax-haven blacklists. But since these lists don't carry sanctions for lack of follow through, major tax-haven and money-laundering nations like Panama agree to certain unenforceable principles to stay off of these "worst actor" lists. Panama made such agreements with the OECD in 2002, but this week's OECD report noted that Panama had failed to follow through in actually adopting the internationally agreed tax standard. Indeed, days before the G-20 summit, an OECD official singled out Panama for making no progress on its "commitments."[4] This highlights why such international lists and agreements, while important, are only a first step. In the words of Sen. Carl Levin (D-Mich.), the lead Senate sponsor of the Stop Tax Havens Abuse Act, "You can't rely on the tax treaty to get at names of people that cheated Uncle Sam."[5]

In short, if Panama unsurprisingly announces it will follow Andorra, Liechtenstein and Switzerland in the same so-called "reforms," its serious tax-haven, banking-secrecy and money-laundering problems will not be resolved. Indeed, many priority reforms are not even being discussed. In addition to automatic exchange of tax information and disclosure of beneficial ownership, the Task Force on Financial Integrity and Economic Development (which includes several dozen countries – but not Panama – and the top tax transparency NGOs) calls for accurate intra-corporate and international trade pricing, country-by-country reporting of income, and harmonization of predicate offenses for money laundering charges. The last three areas are not even contemplated in the recent ALS announcements, while the first two areas are left to the discretion of tax-haven authorities.

In early March, 350 U.S. organizations representing tens of millions of Americans called on Panama to do what the ALS countries have not: "eliminate excessive banking secrecy practices, re-regulate the financial sector, and force banks and multinational subsidiaries to pay their fair share of taxes." (This demand was contained in a March 18 letter to USTR Kirk, link below.)

Under the most ambitious version of the ALS plan, Panama and other tax havens would sustain the awful status quo -- a world full of countries that only cooperate with the U.S. authorities under the most restrictive of situations, tons of dirty money remaining in the financial system, and a continuing race to the bottom in taxation. And when it comes to Panama, more than tax evasion is at stake. Year in and year out, Panama is on the State Department's International Narcotics Control Report's list of countries of primary concern.[6] The 2009 reports says:

> "By virtue of its geographic position and well-developed maritime and transportation infrastructure, Panama is a major logistics control and trans-shipment country for illegal drugs to the United States and Europe. Major Colombian and Mexican drug cartels as well as Colombian illegal armed groups use Panama for drug trafficking and money laundering purposes…
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> "The majority of money laundering activity in Panama is narcotics-related or the result of transshipment or smuggled, pirated, and counterfeit goods through Panama's major free trade zone, the Colon Free zone (CFZ). The funds generated from illegal activity are susceptible to being laundered through a wide variety of methods, including the Panamanian banking system, Panamanian casinos, bulk cash shipments, pre-paid telephone cards, debit cards, insurance companies, real estate projects and agents, and merchandise... Panama is an offshore financial center that includes offshore banks and various forms of shell companies that have been used by a wide range of criminal groups globally for money laundering."[7]

The U.S. Department of Justice's National Drug Threat Assessment 2009 paints a similarly grim picture of Mexican and Colombian narcotrafficking funds moving virtually unchecked through Panama.[8]

No new trade agreement with Panama should even be contemplated unless and until the country makes far-reaching commitments on transparency, regulation and taxation. So, a word of advice to Panama: don't try to sell U.S. policymakers and the public any "swiss cheese" tax-haven "reform" announcements.

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For a copy of the March 18 letter to Ambassador Kirk, see http://www.citizen.org/documents/NewDayOnTrade_Final.pdf.

For a list of transparency demands by the Task Force on Financial Integrity and Economic Development, see http://www.gfip.org/storage/gfip/the%20case%20for%20global%20financial%20transparency2.pdf.

ENDNOTES

[1] http://www.oecd.org/dataoecd/38/14/42497950.pdf

[2] Lynnley Browning, "A.I.G. Sues U.S. for Return of $306 Million in Tax Payments", *New York Times*, March 19, 2009

[3] Permanent Subcommittee On Investigations, "Tax Haven Banks and U. S. Tax Compliance," U.S. Senate Committee on Homeland Security, July 2008. See also Matthew Gianni, "Real and Present Danger: Flag State Failure and Maritime Security and Safety," World Wide Fund for Nature, June 2008; Global Forum on Taxation, "Tax Cooperation: Towards a Level Playing Field," OECD, 2008.

[4] Joe Kirwin, "OECD Official Takes Aim at Tax Havens As G-20 Economic Summit Nears Start," BNA, March 31, 2009.

[5] Peter Cohn, "Geithner Outlines Support for Crackdown," *Congress Daily AM,* March 4, 2009.

[6] Bureau of International Narcotics and Law Enforcement Affairs, "International Narcotics Control Report," February 2009. Available at: http://www.state.gov/p/inl/rls/nrcrpt/. Accessed March 5, 2009.

[7] Bureau of International Narcotics and Law Enforcement Affairs, "International Narcotics Control Report," February 2009. Available at: http://www.state.gov/p/inl/rls/nrcrpt/. Accessed March 5, 2009.

[8] National Drug Intelligence Center, "National Drug Threat Assessment 2009," U.S. Department of Justice. Available at: http://www.usdoj.gov/ndic/pubs31/31379/index.htm#Contents. Accessed March 16, 2009.