

Opposition to the Panama Trade Agreement

March 9th, 2009

Dear Representative/Dear Senator:

On behalf of our more than twelve million combined members, we are writing to express our strong opposition to the Panama “Free Trade Agreement” (FTA). This pact reflects the unsuccessful ending point of the past administration’s trade policy and should not serve as the starting point for the new Congress and administration.

Responding to broad public demand for change, more than one hundred candidates from both parties ran on platforms of trade reform in 2008. The past trade model has led to massive American job loss, downward pressure on wages, the loss of nearly 300,000 family farms and massive trade imbalances that have contributed to our current economic crisis. It has given broad, expansive new rights to foreign corporations to challenge our environmental and public health standards, and flooded the United States with unsafe imported food and products. And, it has devastated developing nations where millions of family farmers have been forced off their land and poverty, despair and desperation-driven mass migrations have grown.

We support President Obama’s campaign commitments to create a new American trade agenda that serves the needs of all Americans, not only the special interests who have promoted the past, failed policy. Achieving this goal requires the development of a new model for American trade agreements. President Obama and numerous members of Congress have also committed to ending the perverse incentives for American companies to move jobs overseas, including closing various tax loopholes.

Panama’s economy thrives on banking secrecy, and its “comparative advantage” rests on the ease with which U.S. companies can create subsidiaries there to evade U.S. taxes. A Government Accountability Office study identified Panama as one of 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 both 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 refused to sign any tax information exchange treaties. This international legal instrument allows for a standard exchange of tax-related information between countries, and helps to identify and catch tax cheats.

Given the focus the G-20 Washington Summit and other intergovernmental bodies have given to banking secrecy jurisdictions’ contribution to global economic instability, it is critical that any FTA with Panama be conditioned on the country’s government eliminating excessive banking secrecy, re-regulating its financial sector, forcing banks and multinational subsidiaries to pay taxes, and signing international tax transparency treaties such as the U.S. Tax Information Exchange Agreement and the standard U.S. double taxation/fiscal evasion treaty – which Panama has thus far refused to do.

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As well, serious problems of the Bush negotiated Panama FTA remain unaddressed. Failure to remove such text means the Panama FTA does not even pass the most conservative “do no further harm” test. Some of the most problematic language replicated from NAFTA and CAFTA include:

Extraordinary foreign-investor privileges and private enforcement system that promote offshoring and subject our environmental, zoning, health and other public-interest policies to challenge by foreign investors in foreign tribunals: The Panama FTA’s investment chapters replicate the CAFTA language that provides foreign investors with special rights and privileges. The provisions allow private investors and corporations to directly enforce a new set of special FTA foreign-investor rights and privileges by suing governments in foreign tribunals. The FTA investor-rights terms create incentives for U.S. firms to offshore their U.S. production to foreign jurisdictions where they can operate under privileged FTA foreign-investor status, rather than be forced to deal with that country’s regulatory policy and courts. The FTAs’ investor rules also provide greater rights to foreign firms operating here than are available to U.S. firms. The Panama FTA also allows challenges by foreign investors in foreign tribunals of concession contracts with the U.S. federal government with respect to natural resources (timber, mining) or other assets that a national authority controls;

Procurement Provisions: Language in Bush’s Panama FTA subjects many of our federal and state procurement policies to challenge in trade tribunals, and directly forbids common procurement policies such as Buy American and Buy Local, as well as exposing renewable-source, recycled-content and other environmental safety requirements to challenge.

Limits on Imported Food Safety: The FTA text replicated past agreement’s limits on imported food-safety and inspection, and still contains language requiring the United States to accept imported food that does not meet our safety standards.

Agriculture Provisions: The Panama FTA text does not address the problems in the NAFTA-style agriculture trade rules that have simultaneously undermined U.S. producers’ ability to earn a fair price for their crops at home and in the global marketplace. Continuing with this model is projected to increase hunger, illicit drug cultivation and undocumented migration. It will continue the race to the bottom for commodity prices, pitting farmer against farmer and country against country to see who can produce food the cheapest, regardless of standards on labor, the environment or food safety.

Access to Medicines: While the text removes some of the most egregious CAFTA-based provisions limiting the access to affordable medicines, the Panama FTA still includes NAFTA provisions that undermine the right to affordable medicines for poorer countries, as contained in the WTO’s Doha Declaration.

Completing the May 10, 2007 improvements to environmental and labor standards: While modest improvements were made to the Bush FTAs’ labor and environmental terms in 2007, the revisions have unfortunately proved inadequate, as evidenced by the recent certification of the Peru FTA. That FTA (with the improved FTA labor/environmental language) was implemented in 2009 without Peru improving its labor law to meet ILO standards as required, and after Peru rolled back environmental protections existing prior to the FTA’s signing. Beefed up labor and environmental standards must be added to the FTA’s core text so that signatories are required to enforce the core ILO standards as set forth in the ILO Conventions and Multilateral Environmental Agreements (MEAs), with a requirement that the failure to do so or the weakening of such laws must be made an FTA violation and these terms must be enforced equally to commercial terms. This would bring human-rights matters that directly affect production costs on parity with FTA treatment of patents and other rent-seeking protections unrelated to trade.

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The Bush administration has left us all a failed legacy of pending trade agreements and negotiations. The Obama administration recently indicated they “will conduct extensive outreach and discourse with the public on whether these agreements appropriately advance the interests of the United States and our trading partners.” In particular, they said they “will promptly, but responsibly, address the issues surrounding the Colombia, Korea and Panama Free Trade Agreements . . . and review the implementation of our FTAs and bilateral investment treaties (BITs) to ensure that they advance the public interest.”

The Panama FTA, and the other leftover Bush FTAs with Colombia and Korea, do not advance the public interest.

To develop an agreement that truly serves the interests of the public, we encourage you to consult the *Trade Reform, Accountability, Development and Employment (TRADE) Act* put forward last session by over eighty-five of your House and Senate colleagues. **The TRADE Act**, which will be re-introduced again this year by Sen. Sherrod Brown (D-Ohio) and Rep. Mike Michaud (D-Maine), can serve as a blueprint for amending the Panama FTA, and offer a more balanced way to expand trade.

We are all eager to support trade agreements that benefit a majority of U.S. workers, farmers, small businesses and consumers. We all want trade agreements that work to achieve the larger societal goals of economic justice, poverty alleviation, healthy communities, pollution reduction, human rights and a healthy environment. Unfortunately, the Panama FTA does not meet these goals, and we strongly urge you to oppose the text written by the past administration.

Sincerely,

The Executive Board of the Citizens Trade Campaign

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