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Oppose the U.S.-Panama Free Trade Agreement (FTA)

October 11, 2011

Dear Representative,

Panama's tiny economy provides no prospects for significant U.S. economic gains from a Free Trade Agreement (FTA). Panama's total annual GDP of \$27 billion is about six percent of Washington, D.C. metro area. However, implementing the Panama FTA poses significant downsides.

The Panama FTA would require the United States to waive Buy America requirements for procurement bids from the thousands of foreign firms, including many Chinese firms, incorporated in this major tax haven. In exchange for access by "Panamanian" firms to our massive procurement market, we would get access to Panama's tiny government contracting, from which much of the Panama Canal work is excluded. The FTA, which forbids limits on transfers of capital between the two countries, would also undermine the U.S. government's ability to crack down on the tax dodgers who now use Panama to avoid paying their fair share, even as the looming U.S. budget deficit has intensified pledges to crack down on tax cheating.

Approximately 400,000 firms and numerous wealthy individuals use Panama's offshore financial services industry, many to dodge paying their taxes. Panama is also listed by the State Department as a major venue for the Mexican and Colombian drug cartel money laundering. Panama's "competitive advantage" as a tax haven was intentionally designed with shady corporate laws that shield information on actual owners of assets, such as paper bearer share corporations, strict banking secrecy and a dual tax system that provides foreign firms tax-free status. None of these policies have been changed as a condition of entering the FTA.

The tax treaty Panama signed with the United States in spring 2011 does not remedy these problems. This "Tax Information Exchange Agreement" (TIEA) only requires Panama to stop refusing to provide information on specific cases *if U.S. officials know to inquire*. This is NOT an automatic TIEA, like our treaty with Canada, which requires Canada to provide automatic, regular transfer of financial data relating to its U.S. customers' to U.S. agencies. And, the 2011 Panama TIEA includes a major exception that allows Panama to reject specific requests if it is "contrary to the public policy" of Panama. This is an interesting concept for a country that derives a significant national income from activities related to be a tax haven.

Worse, the FTA would undermine existing U.S. policy tools against tax haven activity. The FTA's Cross-Border Services, Financial Services and Investment Chapters include terms that forbid limits on financial transfers between the United States and Panama. Yet, such limits are the best tools that we have to enforce policies to stop international tax avoidance. For instance, the "Stop Tax Haven Abuse" bill that was cosponsored by President Obama as a Senator lists Panama as a target nation and includes escalating sanctions that ultimately lead to cutting off certain transfers between Panamanian and U.S. financial firms.

Panama FTA proponents argue that "foreign policy" considerations would stop Panama from using the FTA to challenge our policies. But the FTA allows private enforcement of these rules by Panamanian financial firms, including subsidiaries of U.S. firms incorporated in Panama. Thus, the scores of financial firms cross-incorporated in the United States and Panama could bring their own cases using the FTA's

investor-state enforcement system. Under this system, investors can skirt U.S. courts and directly sue the U.S. government at World Bank and United Nations tribunals, demanding U.S. taxpayer compensation for U.S. policies that conflict with their FTA right to “free transfers.” It is also worth noting that, even as the G-20 has issued escalating policies against tax havens in the past several years, the government of Panama has threatened trade pact cases relating to the anti-tax haven policies of Ecuador and other countries.

While the risks of associating with such a financial crime center are clear, the potential U.S. economic benefits are not. The only potential significant economic opportunity for U.S. firms in Panama would have been related to the major project to widen the Panama Canal. However, Panama took broad exceptions to the FTA’s Procurement Chapter so that it does not have to provide U.S. construction and other firms equal access to work on this project. A close read of FTA Annex 9.1 Section D reveals that Panama only provides five days notice for U.S. firms to make bids on Panama Canal-related procurement contracts (See Annex 9.1-16 and 9.1-17). The standard notice requirement in this FTA’s procurement chapter is 40 days. With five days notice, no U.S. firms would be able to conduct the analysis and engineering to prepare a successful bid. Moreover, this Annex altogether excludes dredging work and imposes set asides for domestic firms on other aspects of the project, among other limitations.

However, the Panama FTA would require the U.S. to waive Buy America requirements for procurement bids from the many foreign firms incorporated in Panama, including many Chinese firms. In exchange, we would get access to procurement contracts for a country whose entire GDP in 2010 was \$27 billion. Panama’s FTA procurement commitments only cover 16 federal government agencies, while the U.S. procurement commitments cover 78 federal agencies. In comparison, just one U.S. stimulus package procurement contract – the medical electronic transcription project – was \$20 billion. Already we saw stimulus money go offshore because of trade agreement procurement rules (repeated in this FTA) that forbid Buy America preferences. Further, the thresholds for federal procurement contracts to be covered by the FTA are for goods and services \$193,000 and for construction \$7,407,000. The sub-federal thresholds are \$526,000 and \$7,407,000. Many U.S. contracts will meet those thresholds. But for a tiny country like Panama, many contracts will be under these thresholds. Thus, the U.S. would waive Buy America requirements for trillions in U.S. government contracts allowing bids from the numerous corporations established in Panama. In exchange U.S. firms would get treated the same as domestic Panamanian bidders for a subset of the contracts for the small value of Panamanian government procurement activity.

Opposition to all three Bush-signed FTAs is strong among unions, consumer, environmental, family farm, faith and other groups. The AFL-CIO will score the Panama FTA vote. All three pacts are based on the North American Free Trade Agreement (NAFTA) model and largely replicate the actual text of that pact and that of the Central America Free Trade Agreement (CAFTA). Thus, the Panama FTA includes the extreme foreign investor privileges and offshoring protections and their private enforcement in foreign tribunals; limits on financial and other service sector regulation; a ban on Buy America procurement preferences; limits on environmental safeguards and imported food and product safety; drug patent rules that limit generics; and other provisions that conflict with Democrats’ domestic policy goals. And, this agreement still includes the ban on reference to the ILO Conventions in enforcement of the pact’s labor chapter that President George W. Bush added for the Chamber of Commerce in 2007.

Please oppose the Panama FTA.

Sincerely,



Lori Wallach
Director, Public Citizen’s Global Trade Watch