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New Report: Panama FTA Would Undermine U.S. Efforts to Stop Offshore Tax-Haven Abuse and Regulate Risky Financial Conduct

Trade Deal Would Leave Tax Shelters for AIG and Narcotraffickers Intact While Removing Existing U.S. Tools to Combat Tax Evasion and Other Financial Crimes

WASHINGTON, D.C. – President Obama’s ability to deliver on his campaign commitments to close tax loopholes that promote offshoring and re-regulate the financial sector would be dealt a sharp blow if the U.S.-Panama Free Trade Agreement (FTA) is passed, according to a Public Citizen report released today.

The new report details how Panama explicitly created an industrial policy designed to create a “comparative advantage” in tax-evasion and money-laundering services for entities such as the bailed-out American International Group (AIG) and Mexican and Colombian narcotraffickers. The report also examines how specific FTA rules would remove key policy tools – such as limitations on transfers from tax-haven countries that are used to combat financial crimes – and would also conflict with U.S. government efforts to combat the global economic crisis by re-regulating finance.

“Members of Congress wouldn’t vote to let AIG not pay its taxes or to give Mexican drug lords a safe place to hide their proceeds from selling drugs to our kids, but that’s in essence what the Panama FTA does,” said Lori Wallach, director of Public Citizen’s Global Trade Watch division. “The Obama administration has discarded or altered many leftover Bush initiatives, so why would it push a Bush trade pact that directly conflicts with its priority campaign goals of closing tax loopholes and regulating finance?”

The Panama deal, negotiated by the Bush administration, is modeled on the controversial North American Free Trade Agreement (NAFTA) template. It includes the controversial private “investor-state” enforcement system, which would give new powers to hundreds of thousands of private investors from around the world that are registered and have operations in Panama. This includes the right to challenge U.S. anti-tax haven policies and financial service regulations in foreign tribunals to demand taxpayer-funded compensation.

Among the key findings:

- Some of the largest recipients of U.S. federal procurement contracts and money under the Troubled Asset Relief Program – including Citigroup and AIG – have a combined dozens of subsidiaries in Panama that would be empowered with expansive new rights if the FTA is implemented. These firms have been among the top advocates for the Panama FTA;

- Panama is one of only 13 countries – and the only current or prospective FTA partner – that is listed on *all* of the major tax-haven watchdog lists that also does not have U.S. tax transparency treaties.
- In the face of recent pressure to reform related to the G-20 Financial Crisis summit process, Panama wrote to the Organisation of Economic Cooperation and Development (OECD) defiantly outlining its refusal to adopt key reforms, such as lifting the veil of secrecy on beneficial ownership of bank accounts and automatic exchange of tax information;
- The April 2009 OECD tax-haven watch-list includes Panama among 30 countries that agreed to conform to international tax norms but failed to do so. Indeed, the OECD report notes that Panama made its commitment in 2002 and since has completed not a single agreement to implement its promise. In contrast, other countries on the list have completed as many as eight compliance agreements – which is still not adequate to be taken off this list.
- According to the U.S. Department of Justice and other entities, Panama is also a major financial conduit for Mexican and Colombian narcotraffickers’ money laundering activities;
- According to the U.S. State Department, Panama has more than 350,000 foreign-registered companies, all of which face low to no taxes and regulation. This high rate of foreign incorporation – Panama is reportedly second only to Hong Kong – makes the country a magnet for tax evasion. According to a Panamanian law firm’s advertisement touting Panama’s lax standards: “Even Switzerland cooperates on income tax cases if the return is filed falsely like all income was not declared, things were omitted or so the complaining government says. Belize has tax treaties, as do most of the so-called ‘tax havens.’ There is no better jurisdiction than Panama today!!!!!!”

“At a time of massive public anger at Wall Street, the Panama FTA is the wrong handout for the wrong interests,” said Todd Tucker, research director of Public Citizen’s Global Trade Watch division. “President Obama campaigned on the need for a change in our trade policies and a crack-down on tax loopholes that promote offshoring, so implementing a Bush NAFTA-style trade agreement with one of the world’s major tax havens is pretty obviously not the way to go.”

To remedy the tax-haven, banking-secrecy and money-laundering problems with the FTA outlined in this report, the Obama administration should renegotiate the pact to:

1. Eliminate the FTA provisions that ban limits on transfers, which would remove from the United States the key policy tool for acting against banking secrecy, tax-haven policies and money laundering;
2. Remove the investor-state enforcement system, which would allow hundreds of thousands of private investors from around the world that are registered and have operations in Panama to challenge U.S. anti-tax haven policies for cash compensation;
3. Remove the FTA’s restrictions on financial regulations, including those that forbid limits on financial service firms’ size or establishment of firewalls between different financial service businesses, and add to FTA’s financial services text a set of required minimum financial regulatory standards that signatories to the agreement would agree to adopt in domestic law and enforce that could be based on the re-regulation proposals now being formulated in multilateral and domestic forums; and
4. Require that the FTA be terminated if Panama fails to maintain the transparency standards outlined below, which should be passed before the FTA goes into effect. (As a related measure, the Obama administration should create an independent regulatory agency, perhaps along the lines of the Financial Product Safety Commission proposed by Sen. Dick Durbin (D-Ill.) and others, and authorize this body to perform regular evaluations of Panama’s maintenance of these

new standards. These evaluations would form the basis for the invocation of the FTA termination measure.)

The report additionally outlines a series of steps Panama must take domestically before any FTA with the country should even be considered. Among the top reforms are signing an automatic tax information exchange agreement with the United States, full disclosure of the beneficial ownership of corporations and other entities, and a ban on bearer shares (securities that allow the holder to conceal their identity).

“This agreement is a throwback to a past era, as highlighted by the agreement’s expansive limits on financial service regulation. The pact was signed by President Bush in 2007 and clearly predates the bipartisan consensus created by the meltdown that better regulation of financial service is necessary for markets to work productively,” said Wallach.

To read the report, go to <http://www.citizen.org/documents/PanamaTaxEvasionReportApril2009-FINAL.pdf>

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Public Citizen is a national, nonprofit public interest organization based in Washington, D.C. For more information, please visit www.citizen.org.