

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

Summary: Panama's tiny economy provides no prospects for significant U.S. economic gains. Panama's total annual GDP is about 6 percent of Washington, D.C. However, implementing the Panama FTA poses significant downsides. Panama is one of the world's major tax havens where 400,000 foreign firms and numerous wealthy individuals use its dual tax system, banking secrecy and shady incorporation laws to dodge taxes. Panama is also listed by the State Department as a major venue for Mexican and Colombian cartels' money laundering operations. Yet, the Bush-signed FTA's investment and financial services provisions would undermine U.S. policies used to combat offshore tax dodging, even as the U.S. budget deficit has intensified pledges to crack down on tax cheating.

- Panama is one of the world's worst tax havens, allowing rich U.S. individuals and corporations to dodge the taxes that our communities desperately need and that are required to decrease the U.S. budget deficit. Panama's "competitive advantage" as a tax haven was intentionally designed with corporate and tax 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 tax-free status for foreign firms. Over 400,000 corporations, including many U.S. firms, are incorporate, avoiding their obligations at home. None of these policies have been changed as a condition of entering the FTA.
- Panama has consistently been criticized by tax and financial crime transparency watchdogs, such as the Organization for Economic Cooperation and Development. It is also a main site of drug money laundering by Mexican and Colombian drug kingpins, according to the State Department.
- The tax treaty Panama signed with the U.S. in spring 2011 does not remedy these problems. This "Tax Information Exchange Agreement (TIEA)" merely requires Panama to stop refusing to provide information to U.S. officials on specific cases *if U.S. officials know to inquire*. This is NOT an automatic tax information exchange treaty, for instance like the TIEA we have with Canada, which requires U.S. firms and individuals to provide tax ID information and provides automatic transfer of related financial data to U.S. agencies. And, the 2001 Panama TIEA includes a major exception that allows Panama to reject specific requests if it is "contrary to the national interest." This is an interesting concept for a country that derives most of its income from being a tax haven.
- Worse, the FTA would undermine existing U.S. policy tools against tax haven activity. The FTA's Services, Financial Services and Investment Chapters include provisions that forbid limits on transfers of money between the U.S. and Panama. Yet, such limits are the strongest tools that the United States has to enforce policies aimed at stopping international tax avoidance. For instance, the "Stop Tax Haven Abuse" bill that was sponsored by President Obama when he was a Senator lists Panama as a target nation and includes escalating sanctions that ultimately lead to cutting off access between Panamanian and U.S. financial firms.
- Proponents of the FTA dismiss the notion that the Panamanian government would ever use the new FTA rights to challenge U.S. policies, noting that "foreign policy" considerations would stop such attacks. Yet, the FTA allows private enforcement of these rules by Panamanian financial firms, including subsidiaries of U.S. firms incorporated in Panama. Thus, even if the Panamanian government would not use the FTA's government-government enforcement system, the scores of financial firms cross-incorporated in the U.S. and Panama could bring their own actions using the investor-state enforcement system. Under this system, investor can skirt U.S. courts and directly sue

the U.S. government before 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, Panama has threatened trade pact cases relating to the right of free transfers against Ecuador and other countries that have implemented tough measures relating to Panama’s tax haven status.

- 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. Either out of ignorance or dishonesty, some U.S. firms have touted great opportunities to obtain contracts related to the project. In reality, Panama took broad exceptions to 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 9.1-16 Section D reveals that Panama only provides five days notice for U.S. firms to make bids on Panama Canal-related procurement contracts. (Annex 9.1-16-7) The standard notice requirement in the 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.
- The Panama FTA would require the U.S. to waive Buy America requirements for all Panamanian-incorporated firms, including the many Chinese and other foreign firms incorporated there to exploit the tax system. What would the U.S. get in exchange? Panama’s entire GDP in 2010 was \$27 billion and its FTA commitments only cover 16 federal government agencies. The U.S. FTA procurement commitments cover 78 federal agencies. Just one U.S. stimulus package procurement contract – the medical electronic transcription project – was \$20 billion. Already we saw this stimulus money go offshore because of trade agreement procurement rules that are repeated in this FTA which forbid Buy America preferences requiring U.S. employees perform the contract work. 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 that 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 for any corporation established in Panama and in exchange would get almost no new procurement contract opportunities in Panama for U.S. firms.
- Opposition to all three Bush-signed FTAs is strong among unions, consumer, environmental, family farm, faith and other groups. 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, it 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.

For More Information, Contact: Public Citizen’s Global Trade Watch www.tradewatch.org
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