

Why are we negotiating a Free Trade Agreement with Tax Haven Panama?

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In the last couple months, Congress and the Bush administration have gone back and forth on four proposed bilateral trade deals. Pending agreements with Korea and Colombia have received the most press attention-and the strongest sell job by the White House.

Two other agreements are already in the queue, awaiting a date to be set for Congressional consideration. Public statements by members of the House and Senate suggest that these two pending agreements-with Peru, and with Panama-are relatively non-controversial and will probably pass.

Indeed, the proposed bilateral trade agreement with Panama has skated through without much attention at all. But the agreement with Panama is highly significant. The problem is, the trade agreement with Panama isn't really about trade. It's about foreign investor rights, money laundering, and tax dodging. And the United States should in no way reward this notorious offshore tax haven with a "gold star" Free Trade Agreement.

To begin with, the United States has greater foreign investment in Panama than it does in the five Central American countries in the CAFTA agreement. CAFTA was ratified by just two votes in the House after rancorous debate-but Panama's greater economic slice hasn't occasioned much attention. So just from the perspective of investment alone, the Panama agreement is more significant than CAFTA.

Second, what's the external economic environment of Panama actually like? The vast majority of US goods already flow into Panama with low tariffs. Panama is a huge reshipment zone because of the Canal, and so it doesn't maintain very high tariffs compared to its Latin American neighbors. And the main manufacturing area of Panama-responsible for 10% of the country's GDP-is a tax and tariff-free zone.

So you can't even make the "market access" argument for Panama-that US businesses will suddenly be able to sell into new markets-the way you can for, say, the proposed Peru FTA.

Panama has two major areas of "economic comparative advantage" in the region. One, obviously, is the Canal. But the other is much more insidious-and major U.S. corporations are hoping that no one draws any attention to it.

Panama's other economic comparative advantages are in the area of tax and banking secrecy, and the ease with which U.S. companies can create subsidiaries in Panama for

purposes of dodging taxes.

Panama is already home to a lot of U.S. corporate subsidiaries. How many? Tens of thousands of U.S. corporations have hung out a shingle-or should we say, set up an email box-in that country.

Panama boasts a total of 400,000 registered corporations-second only to Hong Kong as a home to corporations and corporate subsidiaries. Subsidiaries whose sole purpose, in many cases, is to help transnational companies avoid taxes.

In recent years, Panama has been implicated by both the OECD and the G7-created Financial Action Task Force as a country resisting international norms in combating tax evasion and money laundering. During the 1990s, the United States repeatedly and vigorously expressed its concern about loose corporate accountability standards in Panama, and the murkiness of the Panamanian banking sector.

A few years ago, the U.S. government announced with great fanfare that it was negotiating an international tax treaty to cut down on tax evasion and money laundering.

Oops. Guess that announcement was a bit premature. Panama was having none of it.

The Government of Panama subsequently refused to sign this standard Tax Disclosure treaty with the United States. This international legal instrument allows for a standard exchange of tax-related information between countries. Such treaties-agreements to work together to catch tax cheats and prevent money laundering and funding for terrorists-came out of the OECD and G7 task forces.

So, *unlike all of others FTA partner-countries*, Panama has no tax transparency treaty with the United States. Why would the United States want to reward Panama with FTA terms before it had been able to insist that the murky banking system be cleaned up?

Is money-laundering through Panama still happening? Sure it is. Domestic press reports mention Colombian drug dealers coming through the jungle provinces into southern Panama and then up the highway to the Panama City, intent on finding "legal" investment opportunities for disposing of those suitcases of cash. Panama City has one of the hottest real estate markets in Latin America. The amount of sloshing around the system is making the place into an economic wild-west. Maybe the cocaine smugglers feel at home there.

Why would the Government of Panama categorically refuse to conclude a tax agreement with the United States? Are we to believe that without international tax cooperation, Panama has somehow managed to solve this vexing regional problem of drug-money laundering-all by itself? Who's buying that argument? Congress shouldn't.

A final consideration is this-with the text of the Free Trade Agreement as it now stands, Panamanian investors would get new rights in the United States, with no new disclosure

responsibilities at home. We have a situation where it is very, very easy to set up a business subsidiary in Panama. Panama's "corporate" specialists advertise the country has having the most favorable and flexible incorporation laws in the world, in addition to some of the strictest banking secrecy laws available.

So the FTA will just encourage more U.S. businesses to pursue a strategy for tax purposes, designed solely to evade taxes in the United States. But then the text of the Panama agreement allows corporations and investors with a "substantial business presence" in Panama-that is, registered subsidiaries of multinational corporations-to use provisions found in Chapter 10 of the agreement to bring a claim against U.S. laws using an international investor tribunal. Panamanian-registered corporations would be able to bypass the U.S. courts system altogether in the case of an investment dispute involving the United States.

That's right, Panamanian corporations-*as well as Panamanian subsidiaries of U.S. corporations*-would be able to bypass the U.S. legal system, and take their claims to an international investor tribunal. Historically, these tribunals have proven much more sympathetic to corporate interests than they have to public-interest regulation.

The case is heard before an ad-hoc panel of three international investment lawyers, working without a system of formal legal precedent. Panamanian investors would be empowered to challenge U.S. federal, state, or local laws, citing an "expropriation" of expected profits or a failure to provide Panamanian investors with a "minimum standard of treatment."

Most incredibly, the U.S. did have a chance, in the text of the agreement, to carve out *all* tax measures from review by international tribunals. But they didn't do it. They left a set of loopholes that are mind-numbing in their complexity. Guess you need to be a practicing tax lawyer, or a "corporate tax haven specialist", to figure it all out.

In sum: the White House has presented to Congress for ratification a trade treaty that includes provisions that would allow subsidiaries of U.S. corporations, incorporated in a tax haven destination with minimal disclosure requirements, to use an ad-hoc international legal process to challenge laws passed by elected officials in the United States.

This isn't economic development through trade. This is an expansion of opportunities for irresponsible corporate behavior, and the weakening of government efforts to reign in the bad behavior of tax havens and money-laundering centers.

The proposed US-Panama Free Trade Agreement would reward Panama with new trade and investment privileges in the United States despite on-going evidence of money laundering and tax evasion via its banking sector and lax border policies.

Congress should look carefully at this agreement. It should ask why Panama has refused to sign a tax disclosure treaty. It should ask what U.S. interests are being served by

agreeing to a free trade agreement with a country that harbors tax cheats, refuses to cooperate with international tax authorities, and encourages U.S. corporations to offshore profits.

Congress should reject the US-Panama Free Trade Agreement.

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