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## **Buy American Would Be Gutted under the Trans-Pacific Partnership: Unraveling the Spin from the Office of the U.S. Trade Representative**

In a bipartisan letter sent to President Obama on July 30, 2014, 121 members of Congress warned that popular, job-creating Buy American policies would be undermined by proposed terms for the Trans-Pacific Partnership (TPP), the sweeping “trade” deal that President Obama says he wants to sign this year with 11 Pacific Rim nations.<sup>1</sup>

**Buy American is supported by four out of five U.S. voters** – Republicans, Democrats and Independents alike.<sup>2</sup> From the workers who manufacture the materials to upgrade America’s bridges and highways to those who build the cars driven by our government officials, Buy American creates U.S. jobs by recycling U.S. tax dollars back into our economy.<sup>3</sup>

**But Buy American would be gutted, and American jobs lost, under proposed TPP rules** requiring “national treatment” in government procurement.<sup>4</sup> The 121 members of Congress carefully spotlighted this problem in their letter: *“We have seen that Buy American requirements have had a strong impact in creating good middle class jobs here in the United States...Any prospective TPP agreement must not provide firms operating in the other TPP nations “national treatment” access to U.S. government procurement, since doing so would undermine the standards that Congress has set to support a strong domestic manufacturing sector.”*<sup>5</sup>

**The Obama administration chose to respond to Congress’ concerns with word games.** In a blog post on the afternoon that the letter was sent, the administration’s Office of the U.S. Trade Representative (USTR) sidestepped Congress’ specific concerns and equivocated with misleading half-truths about the TPP’s prospective impact on Buy American.<sup>6</sup> Here are five examples of USTR’s spin, alongside the inconvenient TPP realities that USTR has sought to avoid.

**Reality: The TPP would undermine the original Buy American Act preferences in place since 1933 as well as additional Buy America preference programs established more recently.**

**USTR Spin:** *“There is nothing in TPP that will ban federal, state, or local governments from buying American.”*

No one claimed that TPP would *forbid* government purchases of American goods. To avoid admitting that the Buy American Act and other laws noted in the congressional letter that *require* purchase of U.S. goods would be undermined by the TPP, USTR changes the topic to the vague notion of “buying American” and responds to a concern that no one voiced. The 1933 Buy American Act *requires* all U.S. federal agency purchases of goods for domestic use above a minimum value to be substantially produced or manufactured in the United States, unless the goods cannot be found here, the price is unreasonably high or it is not in the public interest. More recent Buy America preference programs have established similar, and often stronger, requirements for federal agencies to purchase made-in-

America goods.<sup>7</sup> These *required* preferences for U.S.-produced goods in federal purchases are what the TPP would undermine: the TPP would require bids from other TPP countries to be treated as if the goods were made here. USTR's straw-man argument seems to be that the federal government could still *choose* to buy American-made products, but the reality is that the TPP would forbid what is now mandatory: Buy American preferences with respect to most government agencies' largest purchases. Only if the U.S. goods were cheaper than bids from firms in TPP countries like Vietnam, where minimum wages are a fraction of those paid in China, would the U.S. goods win the procurement opportunity.

**Reality: To comply with the TPP's proposed requirement for "national treatment" in government procurement, the United States would waive Buy American policies for all firms operating in TPP countries, as has been done for past "free trade" agreements (FTAs).**

**USTR Spin: "TPP will make NO CHANGES to our procurement laws on the federal, state, or local level or undermine existing requirements."**

Using two sneaky language tricks, USTR tries to obscure the erosion of Buy American that would occur under the TPP. First, changes to U.S. law would not, in fact, be made *within the text of the TPP itself*. The congressional letter rightly stated, "It is our understanding that... U.S. TPP negotiators have agreed to provisions that would require all firms operating in any TPP signatory country to be treated the same as U.S. firms with respect to granting them U.S. government procurement contracts over a certain dollar threshold."<sup>8</sup> Second, this obligation is not implemented by changing the underlying Buy American laws. Rather the Obama administration would issue a regulation that waives *application* of the laws to the TPP countries. (Such a waiver regulation is how Buy American rules have been undermined to conform with past U.S. FTAs.<sup>9</sup>) The fact that Buy American would be gutted by regulation rather than by a law change or the TPP text itself does not matter to the U.S. workers who would lose their jobs as a result.

**Reality: The TPP could also undermine Buy American and Buy Local policies used by state and local governments to stimulate local job creation.**

**USTR Spin: "TPP will not cover state or local government procurement."**

This marks the first public statement by USTR, after six years of TPP negotiations, that it will seek to exclude state and local government procurement from TPP restrictions.<sup>10</sup> Given the secrecy of the negotiations and USTR's refusal to honor repeated congressional and civil society requests to release negotiating texts, the public has no way to verify such a claim.<sup>11</sup> If USTR would succeed in keeping sub-federal government procurement off the TPP negotiating table, it would be good news for the state and local governments seeking to stimulate local jobs. However, that is not a position that other TPP negotiating countries, such as Canada, are likely to accept. In response to USTR's blog post, *Inside U.S. Trade* explained, "[USTR's] position could raise the ire of Canada, which is seeking greater access to the U.S. government procurement market in the context of TPP, in part by ensuring that U.S. federal money provided to sub-central entities is not subject to Buy American requirements."<sup>12</sup> Indeed, Canada has proposed specific TPP language that would bar state and local governments from giving preferential treatment to local or domestic firms in awarding state and local contracts funded by the federal government.<sup>13</sup> Unless and until USTR publishes a TPP negotiating text showing that all TPP

parties have agreed to exclude U.S. sub-federal procurement, the TPP's threat to state and local governments' job-creating procurement preferences cannot, and should not, be brushed aside.

**Reality:** Some corporate TPP proponents argue that waiving Buy American preferences is a worthwhile price to pay for obtaining equal access for U.S. firms to procurement contracts in other TPP countries. But the *combined* size of the procurement markets to which U.S. firms would gain new access under the TPP is a mere *one-fifteenth* of the size of the U.S. procurement market to which U.S. firms would lose preferential access.

**USTR Spin:** *“TPP will support American jobs and innovation by opening up new markets for American products in growing economies across the globe. TPP countries are fast-growing markets where governments are expanding their buying and building as they grow more prosperous. When TPP is enacted, eight of our TPP partners will already be party to government procurement agreements with the United States. TPP will open three additional markets to American products.”*

USTR acknowledges that only three of the TPP negotiating countries represent new procurement market opportunities for U.S. firms, as the rest are already covered by existing U.S. trade deals with procurement provisions or the World Trade Organization's Agreement on Government Procurement.<sup>14</sup> The *combined* national procurement markets of those three countries – Vietnam, Malaysia and Brunei – amounts to an estimated \$36 billion,<sup>15</sup> less than 7 percent of the \$530 billion U.S. federal procurement market.<sup>16</sup> Waiving U.S. firms' preferential access to hundreds of billions of dollars of U.S. federal procurement is a terrible trade-off for such tiny market access gains. And regarding USTR's claim that these countries “are fast-growing markets,” each of the three countries has been growing more slowly than developing countries in the East Asia and Pacific region overall, according to the World Bank.<sup>17</sup> To “support American jobs and innovation,” Buy American should not be gutted for such meager prospects.

**Reality:** The undermining of Buy American to meet TPP rules would empower foreign corporations that pay workers a fraction of U.S. wages, including Chinese-government-owned firms (also known as state owned enterprises or SOEs) in Vietnam and Malaysia, to undercut U.S. firms in winning U.S. government contracts paid for by U.S. taxpayers.

**USTR Spin:** *“Of course the U.S. market is larger than those of other countries...But because we are already the most open economy in the world with the most competitive businesses and workers, we also stand to gain significantly from new opportunities.”*

Once again, USTR tries to change the subject. Rather than explaining why it makes sense to trade away preferential access to \$530 billion in U.S. federal contracts for access to \$36 billion in new procurement opportunities for U.S. firms in TPP countries, USTR offers rhetoric about openness and competitiveness. But the reality is that the U.S. procurement market is protected by Buy American requirements. Under the TPP, U.S. firms would have to compete on prices, pitting U.S. workers against workers in Vietnam, where minimum wages are less than 60 cents an hour<sup>18</sup> – a fraction of those paid even in China and less than one twelfth of the U.S. federal minimum wage.<sup>19</sup> Vietnam also bans independent unions, employs widespread child labor and has been cited for using forced labor.<sup>20</sup> In addition, the rising number of Chinese SOEs, which receive subsidies from the Chinese government, that operate in Vietnam and Malaysia would be given the same access as U.S. firms to

U.S. federal procurement contracts under the TPP.<sup>21</sup> Indeed, in January 2014 China's state-run media reported that the TPP would likely entice more Chinese firms to operate in Vietnam to take advantage of the special access to the U.S. market that the TPP would provide.<sup>22</sup> As competitive as U.S. workers are, it is hardly fair competition to open U.S. taxpayer-funded government purchases to firms that receive subsidies from foreign governments, use child labor or pay miserable wages. It is also not a job creation plan. If USTR wishes to bolster U.S. businesses and workers, it should support Buy American and dump the TPP rules that would do the opposite.

## ENDNOTES

<sup>1</sup> Letter from 121 members of Congress to President Barack Obama, July 30, 2014. Available at: <http://www.citizen.org/documents/edwards-jones-letter-buy-american-tpp-july-2014.pdf>.

<sup>2</sup> The Mellman Group and North Star Opinion Research, "Findings From A National Survey And Focus Groups Of Likely 2014 Voters," poll conducted for the Alliance for American Manufacturing, January 2014, at 37. Available at: [http://americanmanufacturing.org/files/2014.Summary.AAM\\_National.Poll.pdf](http://americanmanufacturing.org/files/2014.Summary.AAM_National.Poll.pdf).

<sup>3</sup> For more information on the Buy American preferences in place since 1933 in addition to more recent Buy American preference programs, see John R. Luckey, "Domestic Content Legislation: The Buy American Act and Complementary Little Buy American Provisions," Congressional Research Service, April 25, 2012. Available at: <http://fas.org/sgp/crs/misc/R42501.pdf>.

<sup>4</sup> For a description of how Buy American preferences have been waived to implement prior agreements requiring national treatment in government procurement, see Public Citizen, "How Overreaching 'Trade' Pact Rules Can Undermine Buy American Procurement Policies," PC memo, 2014. Available at: <http://www.citizen.org/documents/buy-american.pdf>.

<sup>5</sup> Letter from 121 members of Congress to President Barack Obama, July 30, 2014. Available at: <http://www.citizen.org/documents/edwards-jones-letter-buy-american-tpp-july-2014.pdf>.

<sup>6</sup> Office of the U.S. Trade Representative, "The Facts about Government Procurement and TPP: TPP Promotes Buying American Across the Globe," July 30, 2014. Available at: <http://www.ustr.gov/about-us/press-office/blog/2014/july/facts-about-government-procurement-and-tpp-tpp-promotes-buying>.

<sup>7</sup> See John R. Luckey, "Domestic Content Legislation: The Buy American Act and Complementary Little Buy American Provisions," Congressional Research Service, April 25, 2012. Available at: <http://fas.org/sgp/crs/misc/R42501.pdf>.

<sup>8</sup> Letter from 121 members of Congress to President Barack Obama, July 30, 2014. Available at: <http://www.citizen.org/documents/edwards-jones-letter-buy-american-tpp-july-2014.pdf>.

<sup>9</sup> For a description of how Buy American preferences have been waived to implement prior agreements requiring national treatment in government procurement, see Public Citizen, "How Overreaching 'Trade' Pact Rules Can Undermine Buy American Procurement Policies," PC memo, 2014. Available at: <http://www.citizen.org/documents/buy-american.pdf>.

<sup>10</sup> "USTR Says Sub-Federal Government Procurement Off The Table In TPP," *Inside U.S. Trade*, July 31, 2014. Available at: <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-08/01/2014/ustr-says-sub-federal-government-procurement-off-the-table-in-tpp/menu-id-710.html>.

<sup>11</sup> For examples of such requests for TPP transparency, see U.S. Senate Committee on Finance, "Wyden Calls For Unprecedented Transparency on Trade Deals," May 1, 2014. Available at: <http://www.finance.senate.gov/newsroom/chairman/release/?id=27b17a6a-ac18-4acd-b36a-a2a2340eac7f>. Office of Congressman Jared Polis, "Polis Leads Bipartisan Call for Inclusion of Internet Economy in US Trade Agreements," August 6, 2013. Available at: <http://polis.house.gov/news/documentsingle.aspx?DocumentID=345400>. Office of Senator Elizabeth Warren, "Sen. Warren Calls on U.S. Trade Representative Nominee Michael Froman to Pledge Transparency in Trade Negotiations," June 13, 2013. Available at: [http://www.warren.senate.gov/?p=press\\_release&id=158](http://www.warren.senate.gov/?p=press_release&id=158). Office of Congressman Mark Pocan, "Pocan Calls for Increased Transparency on Trans-Pacific Partnership Free Trade Agreement to Protect American Jobs," June 11, 2013. Available at: <http://pocan.house.gov/media-center/press-releases/pocan-calls-for-increased-transparency-on-trans-pacific-partnership-free>. Citizens Trade Campaign, "Over 400 Groups Urge Replacement of Outdated 'Fast Track' and a New Direction for the Trans-Pacific Partnership and Other 21st Century Trade Agreements," letter to members of Congress, March 4, 2013. Available at: [http://www.citizenstrade.org/ctc/wp-content/uploads/2013/03/CivilSocietyLetteronFastTrackandTPP\\_030413.pdf](http://www.citizenstrade.org/ctc/wp-content/uploads/2013/03/CivilSocietyLetteronFastTrackandTPP_030413.pdf).

<sup>12</sup> "USTR Says Sub-Federal Government Procurement Off The Table In TPP," *Inside U.S. Trade*, July 31, 2014. Available at: <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-08/01/2014/ustr-says-sub-federal-government-procurement-off-the-table-in-tpp/menu-id-710.html>.

<sup>13</sup> "In TPP, Canada Seeks Access To Certain Sub-Federal Procurement Deals," *Inside U.S. Trade*, March 7, 2013. Available at: <http://insidetrade.com/Inside-US-Trade/Inside-U.S.-Trade-03/08/2013/in-tpp-canada-seeks-access-to-certain-sub-federal-procurement-deals/menu-id-710.html>.

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<sup>14</sup> USTR includes New Zealand as a TPP negotiating country that “will already be party to government procurement agreements with the United States,” as New Zealand is currently negotiating accession to the World Trade Organization’s Agreement on Government Procurement. Japan is already a member of the same agreement. Australia, Canada, Chile, Mexico, Peru, and Singapore already have FTAs with the United States that cover government procurement.

<sup>15</sup> Brunei’s national procurement market is reported to be worth \$0.5 billion. World Trade Organization, “Trade Policy Review: Brunei Darussalam, Report by the Secretariat,” WT/TPR/S/196, January 21, 2008, at 50-51. Available at: [http://www.wto.org/english/tratop\\_e/tpr\\_e/s196-03\\_e.doc](http://www.wto.org/english/tratop_e/tpr_e/s196-03_e.doc). Malaysia’s national procurement market is reported to be worth \$25.4 billion. World Trade Organization, “Trade Policy Review: Malaysia, Report by the Secretariat, Revision,” WT/TPR/S/292/Rev.2, April 8, 2014, at 54. Available at: [https://docs.wto.org/dol2fe/Pages/FE\\_Search/DDFDocuments/123898/q/WT/TPR/S292R2.pdf](https://docs.wto.org/dol2fe/Pages/FE_Search/DDFDocuments/123898/q/WT/TPR/S292R2.pdf). Vietnam’s national procurement market is estimated to be worth \$10.2 billion. Total procurement (including sub-national) reported at Transparency International-USA and Center for International Private Enterprise, “APEC Procurement Transparency Standards in Vietnam: The Need to Move from Law to Practice,” 2011, at 13. Available at: <http://www.cipe.org/sites/default/files/publication-docs/TI-Report-Vietnam.pdf>. Estimate of national procurement derived using the OECD-31 average for the share of central government spending in total government spending: Organisation for Economic Co-operation and Development, *Government at a Glance 2013*, 2013, at 78. Available at: [http://www.oecd-ilibrary.org/governance/government-at-a-glance-2013/distribution-of-general-government-expenditures-across-levels-of-government-2001-and-2011\\_gov\\_glance-2013-graph53-en](http://www.oecd-ilibrary.org/governance/government-at-a-glance-2013/distribution-of-general-government-expenditures-across-levels-of-government-2001-and-2011_gov_glance-2013-graph53-en). Expenditures converted to U.S. dollars using historical exchange rates maintained by: Federal Reserve Bank of St. Louis, “Annual Rates,” FRED Economic Data. Available at: <http://research.stlouisfed.org/fred2/categories/32219>. Historical exchange rates also found at: OANDA, “Currency Converter,” 2014. Available at: <http://www.oanda.com/currency/converter/>. Amounts have been adjusted for inflation and expressed in 2013 dollars using the CPI-U-RS series from: Department of Labor. U.S. Bureau of Labor Statistics, “Consumer Price Index Research Series Using Current Methods (CPI-U-RS),” U.S. Department of Labor, 2014. Available at: <http://www.bls.gov/cpi/cpirsai1978-2013.pdf>.

<sup>16</sup> Office of Federal Procurement Policy, “Office of Federal Procurement Policy,” Office of Management and Budget, 2014, accessed August 8, 2014. Available at: [http://www.whitehouse.gov/omb/procurement\\_mission](http://www.whitehouse.gov/omb/procurement_mission).

<sup>17</sup> The World Bank, “Data: GDP growth (annual %),” 2014, accessed August 8, 2014. Available at:

<http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries/4E-VN-BN-MY?display=graph>.

<sup>18</sup> “Minimum Wages in Vietnam with effect from 01-01-2014 to 31-12-2014,” Decree 182/2013/ND-CP, WageIndicator.org, April 22, 2014, accessed August 8, 2014. Available at:

<http://www.wageindicator.org/main/salary/minimum-wage/vietnam>.

<sup>19</sup> U.S. Department of Labor, “Wages: Minimum Wage,” 2014, accessed August 8, 2014. Available at:

<http://www.dol.gov/dol/topic/wages/minimumwage.htm>.

<sup>20</sup> U.S. State Department, “Vietnam 2013 Human Rights Report,” 2013, at 40-45. Available at:

<http://www.state.gov/documents/organization/220456.pdf>.

<sup>21</sup> For more on the rising presence of Chinese firms in Malaysia and Vietnam, see Siva Sithraputhran and Stuart Grudgings, “China to invest more than \$1.6 billion in Malaysia steel, port,” *Reuters*, February 5, 2013. Available at:

<http://www.reuters.com/article/2013/02/05/malaysia-china-investment-idUSL4NOB55RE20130205>. Nguyen Thi Hang

Ngan and Zhang Jianhua, “Interview: More Chinese investment boosts China-Vietnam trade ties,” *Xinhua*, January 16, 2014. Available at: [http://news.xinhuanet.com/english/indepth/2014-01/16/c\\_133050466.htm](http://news.xinhuanet.com/english/indepth/2014-01/16/c_133050466.htm).

<sup>22</sup> “Vietnam expects more investment from Chinese companies in Vietnam to build support industries that would maximize benefits for the country when it joins the TPP.” Nguyen Thi Hang Ngan and Zhang Jianhua, “Interview: More Chinese investment boosts China-Vietnam trade ties,” *Xinhua*, January 16, 2014. Available at:

[http://news.xinhuanet.com/english/indepth/2014-01/16/c\\_133050466.htm](http://news.xinhuanet.com/english/indepth/2014-01/16/c_133050466.htm).