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TPP Government Procurement Negotiations: Buy American Policy Banned, a Net Loss for the U.S.

Negotiators from the Office of the U.S. Trade Representative (USTR) are currently engaged with Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam in a closed-door process that has been branded as a "trade" negotiation on a possible Trans-Pacific Partnership (TPP) agreement. But the issues under discussion extend far beyond tariffs and other traditional trade matters. Under the proposed framework, U.S. states and the federal government would be obliged to bring our existing and future domestic policies into compliance with expansive norms set forth in 29 proposed TPP chapters, including one imposing limits on government procurement policy. Failure to conform our domestic policies to these terms would subject the U.S. government to lawsuits before dispute resolution tribunals empowered to authorize trade sanctions against the United States until our policies are changed. Also, any "investor" that happens to be incorporated in one of these countries would be empowered to launch its own extra-judicial attack on our domestic laws in World Bank and UN arbitral tribunals with respect to changes to procurement contracts with the U.S. federal government.

The TPP's procurement chapter would require that all firms *operating* in any signatory country be provided equal access as domestic firms to U.S. government procurement contracts over a certain dollar threshold. To implement this "national treatment" requirement, the United States would agree to waive Buy American procurement policies for all firms operating in the TPP countries.

Some corporate TPP proponents argue that this is good for the United States because these rules would apply to all signatory countries, so U.S. firms would be able to bid on procurement contracts in other countries on a national treatment basis. It is a ridiculous notion that new access for some U.S. companies to bid on contracts in the TPP countries is a good trade-off for waiving Buy American preferences on U.S. procurement: **Taking even the most favorable cut on other countries' markets, the total U.S. procurement market is significantly larger than the *combined* procurement market of *all* other TPP negotiating parties**: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

But the United States already has "free trade" agreements (FTAs) with procurement provisions with six of these countries: Australia, Canada, Chile, Mexico, Peru and Singapore. Plus, Japan and the United States are already party to (and New Zealand will soon be party to) the Government Procurement Agreement of the World Trade Organization (WTO) – which covers most procurement that a TPP would likely cover. Accordingly, the United States would gain few if any new procurement opportunities in Japan or New Zealand. Removing these countries and existing FTA partners, the U.S. procurement market is **35 times** the size of the total "new" TPP procurement market.[1]

These numbers include procurement at all levels of government, including the national government and sub-national governments. Since past U.S. trade deals have typically not opened up all state and local procurement, it makes sense to try to isolate only the national government procurement market, to get a sense of the lower-bound estimate of the comparative market sizes.

Data that separates national-level procurement from procurement by sub-national entities such as states, provinces, and municipalities could only be obtained for eight countries. The divergence between total and only national procurement differs considerably among Australia, Brunei, Canada, Malaysia, Mexico, Peru, Singapore and the United States, the countries for which data are available.[2] For instance, the national government share of total procurement is approximately 25 percent in Australia and the United States, while it exceeds 80 percent in Malaysia. (In Brunei and Singapore, there are no sub-national levels of government.)[3] The U.S. federal procurement market is about four times the size of the combined national government procurement market of TPP countries for which data are available. If data from the Organisation for Economic Co-operation and Development (OECD) on total government expenditures by level of government – as distinct from procurement only – is used to approximate national government procurement for countries with unavailable data, the U.S. federal procurement market still exceeds the *combined* national government procurement market of *all* other TPP countries.[4]

Recall again that Australia, Canada, Chile, Mexico, Peru and Singapore already have FTAs with the United States, while Japan and the United States are already party to (and New Zealand will soon be party to) the WTO's Government Procurement Agreement. If we consider only Brunei, Malaysia and Vietnam, then the U.S. federal procurement market is **more than 14 times the size** of the potential "new" TPP national government procurement market. When we take into account the fact that the United States already has access to the government procurement of many TPP countries through bilateral trade deals and the WTO, **the size of the new procurement markets that the TPP may open for the United States is in the order of $37 billion (national) to $54 billion (total), which is a terrible trade for giving up the U.S procurement market of $530 billion (federal) to $1.9 trillion (total).**

Approximate value of government procurement markets in TPP negotiating countries	
Country	**National and subnational combined (billions 2014 USD)**
Australia[5]	207.2
Brunei[6]	0.5
Canada[7]	264.8
Chile[8]	5.5
Japan[9]	956.3
Malaysia[10]	31.0
Mexico[11]	68.1
New Zealand[12]	25.7
Peru[13]	13.0
Singapore[14]	22.3
Vietnam[15]	22.5
U.S.[16]	**1,876.3**
Sum of TPP negotiating parties, except U.S.	1,617.0
Sum of TPP parties where U.S. does not already have procurement access	**54.0**

The adjacent table displays the data on the value of the government procurement markets in the TPP negotiating countries. This data includes procurement of both the national government and sub-national entities like provinces and municipalities. All data has been inflation-adjusted to 2014 dollars using the Congressional Budget Office's Consumer Price Index Research Series.[17] Since no single data source presents directly comparable numbers between all countries, these numbers come from the OECD, WTO, government agencies and Transparency International.[18]

The TPP procurement rules would not only constrain how our national and state governments may use our tax dollars in local construction projects and purchase of goods. They also limit what specifications governments can require for goods and services and the qualifications for bidding companies. Thus, requiring that electricity come from renewable sources or that uniforms meet sweat-free standards could be forbidden. Rules excluding firms that refuse to meet prevailing wage requirements or that are based in countries with terrible human or labor rights records could be challenged.

Effectively, these rules would offshore our tax dollars rather than investing them back in our economy, while eliminating important policy tools for job creation, development of green economy capacity and the building of demand for preferred business practices.

ENDNOTES

[1] Since perfectly comparable government procurement data do not exist, the values of government procurement are approximations. See below for data sources and methodology.

[2] The estimated value of national government procurement in 2014 U.S. dollars is: $44.2 billion for Australia; $0.5 billion for Brunei; $19.7 billion for Canada; $25.8 billion for Malaysia; $25.2 billion for Mexico; $5.8 billion for Peru; $22.3 for Singapore; and $530.0 billion for the United States. For these and all other procurement estimates in this document, all currencies have been converted into U.S. dollars using historical exchange rate data from the Federal Reserve Bank of St. Louis (http://research.stlouisfed.org/fred2/categories/32219) or OANDA (http://www.oanda.com/currency/historical-rates/). All dollar amounts are adjusted for inflation and expressed in 2014 dollars according to the CPI-U-RS index of the U.S. Bureau of Labor Statistics (which provides indices up through 2013) and the online inflation calculator of the U.S. Bureau of Labor of Statistics (which provides an approximate 2014 index). 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. U.S. Bureau of Labor Statistics, "CPI Inflation Calculator," U.S. Department of Labor, accessed January 6, 2015. Available at: http://www.bls.gov/data/inflation_calculator.htm. The data sources for national-level procurement are:

- Australia: Australia Department of Finance, "Statistics on Australian Government Procurement Contracts," 2014, accessed January 7, 2015. Available at: http://www.finance.gov.au/procurement/statistics-on-commonwealth-purchasing-contracts/.
- Brunei: World Trade Organization, "Trade Policy Review, Report by the Secretariat: Brunei Darussalam," WT/TPR/S/196/Rev.1, February 2008, at 51.
- Canada: World Trade Organization, "Trade Policy Review, Report by the Secretariat: Canada," WTO Document WT/TPR/S/246, June 2011, at 72.
- Malaysia: World Trade Organization, "Trade Policy Review, Report by the Secretariat: Malaysia, Revision" WTO document WT/TPR/S/292/Rev.2, April 8, 2014, at 54.
- Mexico: World Trade Organization, "Trade Policy Review, Report by the Secretariat: Mexico, Revision" WTO document WT/TPR/S/279/Rev.1, July 10, 2013, at 100,101.
- Peru: Sistema Electronico de Contrataciones del Estado, "Planes Anuales informados por Tipo de Entidad: 2012," 2014, accessed January 7, 2015. Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDUQFjAA&url=http%3A%2F%2Fwww.mef.gob.pe%2Fcont_estado%2Festadisticas%2FPAC_porTipoEntidad2011.xls&ei=W7RdUeHdNua40gHk9YGoDQ&usg=AFQjCNFgyXlOy1CXZI4SCyFZ2_i-J2pnUA&bvm=bv.44770516,d.dmQ.
- Singapore: World Trade Organization, "Trade Policy Review, Report by the Secretariat: Singapore, Revision" WTO document WT/TPR/S/267/Rev.1, October 18, 2012, at 30.
- United States: "Office of Federal Procurement Policy," Office of Management and Budget, 2014, accessed January 7, 2015. Available at: http://www.whitehouse.gov/omb/procurement_mission/.

[3] *See* Commonwealth Local Government Forum, "The Local Government System in Brunei Darussalam," 2011. Available at: http://www.clgf.org.uk/userfiles/1/files/Brunei%20local%20government%20profile%202011-12.pdf. *See* also Commonwealth Local Government Forum, "The Local Government System in Singapore," 2011. Available at: http://www.clgf.org.uk/userfiles/1/files/Singapore%20local%20government%20profile%202011-12.pdf.

[4] To approximate the value of the national procurement market for New Zealand and Japan, the share of central government spending in total government spending was multiplied by the total government procurement market. For Chile and Vietnam,

the same procedure was applied, but the 31-country OECD average was used. The source of the data is: Organisation for Economic Co-operation and Development, “Figure 3.35. Distribution of general government expenditures across levels of government (2001 and 2011),” *Government at a Glance 2013*, (OECD, 2013). Available at: http://www.oecd-ilibrary.org/governance/government-at-a-glance-2013/expenditures-structure-by-level-of-government_gov_glance-2013-22-en.

[5] Organisation for Economic Co-operation and Development, “Figure 7.3. General government procurement as a percentage of GDP (2011),” *Government at a Glance 2013*, (OECD, 2013). Available at: http://dx.doi.org/10.1787/888932942773. Numbers on procurement share of GDP converted to dollars with GDP data from: International Monetary Fund, “World Economic Outlook Database,” October 2014. Available at: http://www.imf.org/external/pubs/ft/weo/2014/02/weodata/weoselgr.aspx.

[6] World Trade Organization, “Trade Policy Review, Report by the Secretariat: Brunei Darussalam,” WT/TPR/S/196/Rev.1, February 2008, at 51.

[7] See endnote 5.

[8] World Trade Organization, “Trade Policy Review, Report by the Secretariat: Chile, Revision” WTO document WT/TPR/S/220/Rev.1, November 5, 2009, at 71..

[9] See endnote 5.

[10] World Trade Organization, “Trade Policy Review, Report by the Secretariat: Malaysia, Revision” WTO document WT/TPR/S/292/Rev.2, April 8, 2014, at 54.

[11] See endnote 5.

[12] See endnote 5.

[13] World Trade Organization, “Trade Policy Review, Report by the Secretariat: Peru, Revision” WTO document WT/TPR/S/289/Rev.1, February 7, 2014, at 66.

[14] World Trade Organization, “Trade Policy Review, Report by the Secretariat: Singapore, Revision” WTO document WT/TPR/S/267/Rev.1, October 18, 2012, at 30.

[15] Dang Chien Thang, "APEC Procurement Transparency Standards in Vietnam," Transparency International-USA, Center for International Private Enterprise, and Towards Transparency, 2011, at 13. Available at: http://www.cipe.org/sites/default/files/publication-docs/TI-Report-Vietnam.pdf.

[16] See endnote 5.

[17] 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. U.S. Bureau of Labor Statistics, “CPI Inflation Calculator,” U.S. Department of Labor, accessed January 6, 2015. Available at: http://www.bls.gov/data/inflation_calculator.htm.

[18] The data in the table for Australia, Canada, Japan, Mexico, New Zealand, and the United States is derived from a single OECD source, and so data for these countries are directly comparable. Data from other sources may measure slightly different categories of procurement and therefore are not perfectly comparable. In the table, the years of measurement are: 2012 for Chile, Malaysia and Peru; 2011 for Australia, Canada, Japan, Mexico, New Zealand, Singapore and the United States; 2009 for Vietnam; and 2006 for Brunei.