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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 about twice the size of the *combined* procurement market of the other TPP negotiating parties:** Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.¹

But the United States already has trade deals 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 the WTO’s Government Procurement Agreement – which covers most procurement that a TPP would likely cover. Accordingly, there will be few if any new procurement opportunities in Japan for the United States. If you remove these countries, the U.S. procurement market is **24 times** the size of the total “new” TPP procurement market.

These numbers look at 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 procurement at national level from procurement by sub-national entities such as states, provinces, and municipalities could only be obtained for seven countries.² The divergence between total and only national procurement differs considerably among Australia, Brunei, Canada, Malaysia, Peru, Singapore and the United States, the countries for which data is available.³ For instance, the national government share of total procurement is small in Australia, Peru and the United States, while it is approximately half in Canada and quite large in Malaysia. In Brunei and Singapore, there are no sub-national levels of government.⁴ But based on available data, the U.S. federal procurement market is about seven times the size of the combined national government procurement market of TPP countries for which data is 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, then the U.S. federal procurement market would be about 50 percent larger than the combined national government procurement market of all other TPP countries.⁵

Recall again that Australia, Canada, Chile, Mexico, Peru and Singapore already have trade deals with the United States, while Japan and the United States are already party to the WTO’s Government Procurement Agreement. If we consider only Brunei, Malaysia, New Zealand and Vietnam, then the U.S. federal procurement market is over 10 times the size of the potential “new” TPP national government procurement market. Thus, when we take into account the fact that the United States already has access to the government procurement of many TPP countries and Japan 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 \$53 billion (national) to \$72 billion (total), which is a terrible trade for giving up the U.S procurement market of \$556 billion (federal) to \$1.7 trillion (total).**

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 2012 dollars using the Congressional Budget Office’s Consumer Price Index Research Series.¹⁸ Since no single data source presents directly comparable numbers between countries, these numbers come from the OECD, WTO, government agencies, and Transparency International.¹⁹

Approximate value of government procurement markets in the TPP negotiating countries	
Country	National and subnational combined (billions 2012 USD)
Australia ⁶	136.9
Brunei ⁷	0.5
Canada ⁸	33.6
Chile ⁹	11.7
Japan ¹⁰	678.8
Malaysia ¹¹	28.1
Mexico ¹²	51.8
New Zealand ¹³	21.7
Peru ¹⁴	6.4
Singapore ¹⁵	11.8
Vietnam ¹⁶	21.9
U.S.¹⁷	1,738.7
Sum of TPP negotiating parties, except U.S.	1,003.2
Sum of TPP parties where U.S. does not already have procurement access	72.2

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 expropriate our tax dollars and transfer them into new private units for corporate profit, 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 does not exist, the values of government procurement are approximations and should be taken as back-of-the-envelope calculations.

² In “Government Procurement: A Synthesis Report,” (2002) Denis Audet notes that “Quantifying the size of government procurement markets becomes even more complicated when attempts are made at distinguishing procurement between government levels (central versus sub-central)...”

³ The value of national government procurement in 2012 U.S. dollars is: \$27.9 billion for Australia; \$0.5 billion for Brunei; \$16.4 billion for Canada; \$23.1 billion for Malaysia; \$2.0 billion for Peru; \$11.8 for Singapore; and \$556.2 billion for the United States. The data sources for the procurement data at the level of the national government are:

- World Trade Organization, “Trade Policy Review, Report by the Secretariat: Australia,” WTO Document WT/TPR/S/244, April 2011, at 55. Available at: http://www.wto.org/english/tratop_e/tpr_e/s244-03_e.doc. Australia currency converted to U.S. dollars using the Federal Reserve Bank of St. Louis historical exchange rate data: <http://research.stlouisfed.org/fred2/categories/32219>.
- World Trade Organization, “Trade Policy Review, Report by the Secretariat: Canada,” WTO Document WT/TPR/S/246, June 2011, at 72. Available at: http://www.wto.org/english/tratop_e/tpr_e/tp346_e.htm.
- World Trade Organization, “Trade Policy Review, Report by the Secretariat: Malaysia,” WTO document WT/TPR/S/225, January 2010, at 42. Available at: http://www.wto.org/english/tratop_e/tpr_e/s225-03_e.doc. Malaysia currency converted to U.S. dollars using the Federal Reserve Bank of St. Louis historical exchange rate data: <http://research.stlouisfed.org/fred2/categories/32219>.
- Sistema Electronico de Contrataciones del Estado, “Planes Anuales informados por Tipo de Entidad: 2011,” 2012, 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&usq=AFQjCNFgyXIOy1CXZI4SCyFZ2_i-J2pnUA&bvm=bv.44770516,d.dmQ.
- USASpending.gov, “Prime Award Spending Data,” 2012, Available at: <http://www.usaspending.gov/explore?carryfilters=on>. See also Office of Management and Budget, “Office of Federal Procurement Policy,” Available at: http://www.whitehouse.gov/omb/procurement_mission/.

⁴ 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>.

⁵ 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, Mexico 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, “Government at a Glance 2011,” August 2011. Available at: <http://statlinks.oecdcode.org/422011011P1G035.XLS>.

⁶ Organisation for Economic Co-operation and Development, “Government at a Glance 2011,” August 2011. Available at: <http://statlinks.oecdcode.org/422011011P1G093.XLS>. Numbers on procurement share of GDP converted to dollars with data from: International Monetary Fund, “World Economic Outlook Database,” September 2011. Available at: <http://www.imf.org/external/pubs/ft/weo/2011/02/weodata/index.aspx>.

⁷ World Trade Organization, “Trade Policy Review, Report by the Secretariat: Brunei Darussalam,” WT/TPR/S/196/Rev.1, February 2008, at 51. Available at: <http://docsonline.wto.org/DDFDocuments/t/WT/TPR/S196R1-03.doc>. Brunei currency converted to U.S. dollars using historical data from the OANDA currency converter, available at: <http://www.oanda.com/currency/converter/>.

⁸ World Trade Organization, "Trade Policy Review, Report by the Secretariat: Canada," WTO Document WT/TPR/S/246, June 2011, at 72. Available at: http://www.wto.org/english/tratop_e/tpr_e/tp346_e.htm. Canadian currency converted to U.S. dollars using the Federal Reserve Bank of St. Louis historical exchange rate data: <http://research.stlouisfed.org/fred2/categories/32219>.

⁹ See endnote 6.

¹⁰ See endnote 6.

¹¹ World Trade Organization, "Trade Policy Review, Report by the Secretariat: Malaysia," WTO document WT/TPR/S/225, January 2010, at 42. Available at: http://www.wto.org/english/tratop_e/tpr_e/s225-03_e.doc. Malaysia currency converted to U.S. dollars using the Federal Reserve Bank of St. Louis historical exchange rate data: <http://research.stlouisfed.org/fred2/categories/32219>.

¹² World Trade Organization, "Trade Policy Review, Report by the Secretariat: Mexico," WTO Document WT/TPR/S/195, February 2008, at 86. Available at: http://www.wto.org/english/tratop_e/tpr_e/s195-03_e.doc.

¹³ See endnote 6.

¹⁴ World Trade Organization, "Trade Policy Review, Report by the Secretariat: Peru," WTO document WT/TPR/S/189, October 2007, at 60. Available at: http://www.wto.org/english/tratop_e/tpr_e/s189-03_e.doc.

¹⁵ World Trade Organization, "Trade Policy Review, Report by the Secretariat: Singapore," WTO document WT/TPR/S/202, July 2008, at 48. Available at: http://www.wto.org/english/tratop_e/tpr_e/s202-03_e.doc Singapore currency converted to U.S. dollars using the Federal Reserve Bank of St. Louis historical exchange rate data: <http://research.stlouisfed.org/fred2/categories/32219>.

¹⁶ Dang Chien Thang, "APEC Procurement Transparency Standards in Vietnam," Transparency International-USA and Center for International Private Enterprise, 2011, at 13. Available at: <http://www.cipe.org/publications/papers/pdf/TI-Report-Vietnam.pdf>.

¹⁷ See endnote 6.

¹⁸ Congressional Budget Office, "Budget and Economic Outlook: Fiscal Years 2011 to 2021," January 2011. Available at: <http://www.cbo.gov/doc.cfm?index=12039>.

¹⁹ The data in Table 1 for Australia, Chile, Japan, New Zealand, and the United States is derived from a single OECD source, and so data for each of these countries is directly comparable to each other. However, the OECD warns that its procurement data "may provide an overestimation." (See Organisation for Economic Co-operation and Development, "Government at a Glance 2011," August 2011, at 148. Available at: http://www.oecd-ilibrary.org/sites/gov_glance-2011-en/09/01/index.html?contentType=/ns/StatisticalPublication,/ns/Chapter&itemId=/content/chapter/gov_glance-2011-46-en&containerItemId=/content/serial/22214399&accessItemIds=&mimeType=text/html). Thus, the data from the OECD and other sources may be measuring slightly different categories for different countries and therefore they are not perfectly comparable. In Table 1, the years of measurement are: 2009 for Vietnam; 2008 for Australia, Canada, Chile, Japan, Malaysia, New Zealand, and the United States; 2007 for Mexico and Singapore; and 2006 for Brunei and Peru.