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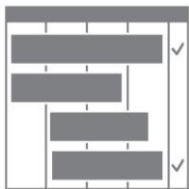
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Reengineering the Trans-Pacific Partnership

The A/E case against Chapter 15 of the TPP

April 27, 2016

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1.0 Executive Summary

While the Trans-Pacific Partnership (TPP) is debated in Congress, among political candidates, and in corporate boardrooms nationwide, each industry must look specifically at how the key provisions of this agreement may affect it. For government contractors providing architecture and engineering (A/E) or other professional services, the TPP could have disastrous consequences. Chapter 15, which covers government procurement, could lead to reduced salaries and lost jobs for many professional American workers.

At its core, Chapter 15 of the TPP is a mechanism that will allow partner nations to bid on U.S. federal government contracts. This provision will have a significant impact on companies that employ highly-skilled, well-paid professionals at salaries greater than those of other partner nations.

This white paper details the reasons that members the A/E industry must work in concert to force the elimination or modification of Chapter 15 by members of Congress. The primary arguments against Chapter 15 of the TPP are as follows:

1. The provision will allow partner nations who pay lower salaries to more easily win contracts over U.S. companies.
2. The provision is likely to negatively affect the salaries of highly skilled U.S. workers.
3. The provision requires expansion into sub-central government markets, which may reduce state and local taxing authorities' ability to define discretionary fiscal policy.

With the 2016 presidential election right around the corner, we are likely to see a vote on the TPP occur by the end of the year. This time sensitive issue must be addressed before the final legislation is drafted.

2.0 Background

In 2005, a little-known free trade agreement was negotiated by New Zealand, Chile, Singapore and Brunei. In 2008, President Bush announced that the U.S. would participate in negotiations in order to:

"... position US businesses better to compete in the Asia-Pacific region, which is seeing the proliferation of preferential trade agreements among US competitors and the development of several competing regional economic integration initiatives that exclude the United States."¹

Once the U.S. was actively involved in negotiating the treaty, they took the initiative to invite Australia, Peru and Vietnam to join the pact. By the time the TPP was officially drafted in 2015, the member nations also included Malaysia, Mexico, Canada and Japan.

"The TPP deal that is emerging is a fatally flawed pact that does not adequately protect Maryland jobs, the environment, and workers' rights. Any trade deal must pass the test of boosting American jobs and wages. This deal fails that test." - Representative Chris Van Hollen (D-MD 8th District)

According to the United States Trade Representative, the TPP agreement includes the following features:

¹ Cited in Deborah Elms (2011), 'From the P4 Agreement to the Trans-Pacific Partnership: Explaining expansion interests in the Asia-Pacific region', in Simon J. Evenett et al. (eds.), Trade-led Growth: A Sound Strategy for Asia, UN Economic and Social Commission for Asia and the Pacific, and Asia-Pacific Research and Training Network on Trade, p. 145.

- *"Comprehensive market access. The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment, so as to create new opportunities and benefits for our businesses, workers, and consumers.*
- *Regional approach to commitments. The TPP facilitates the development of production and supply chains, and seamless trade, enhancing efficiency and supporting our goal of creating and supporting jobs, raising living standards, enhancing conservation efforts, and facilitating cross-border integration, as well as opening domestic markets.*
- *Addressing new trade challenges. The TPP promotes innovation, productivity, and competitiveness by addressing new issues, including the development of the digital economy, and the role of state-owned enterprises in the global economy.*
- *Inclusive trade. The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade. It includes commitments to help small- and medium-sized businesses understand the Agreement, take advantage of its opportunities, and bring their unique challenges to the attention of the TPP governments. It also includes specific commitments on development and trade capacity building, to ensure that all Parties are able to meet the commitments in the Agreement and take full advantage of its benefits.*
- *Platform for regional integration. The TPP is intended as a platform for regional economic integration and designed to include additional economies across the Asia-Pacific region."*²

Reading between the lines, the TPP is widely seen as a countermeasure to Chinese influence in the Asia-Pacific region, but there is significant criticism regarding the secrecy of negotiations, controversial intellectual property provisions, and standards related to environmental impact and labor. This white paper, however, focuses specifically on Chapter 15, which has largely 'flown under the radar' due to other hotly debated trade issues related to the TPP.

3.0 Key Concerns

In Chapter 15, titled "Government Procurement," TPP outlines a plan for treating member countries as if they were U.S. bidders in the federal government procurement process. According to attorney and policy consultant Sharon Anglin Treat, this "...undermines one of the most important job-creation tools, using government purchasing to invest in jobs."

3.1 U.S. Salaries and Job Stability

Section 15-15, which addresses the awarding of contracts, states that:

"Unless a procuring entity determines that it is not in the public interest to award a contract, it shall award the contract to the supplier that the procuring entity has determined to be fully capable of fulfilling the terms of the contract and that, based solely on the evaluation criteria specified in the notice and tender documentation, submits:

- (a) the most advantageous tender; or*
- (b) if price is the sole criterion, the lowest price."*

The low bar set by this provision means that, in a lowest price technically acceptable (LPTA) procurement environment, countries that provide subject matter experts (SMEs) with higher wages will face an automatic disadvantage. This is of particular concern for companies in the U.S. which endeavor to pay SMEs commensurate with the employment market and cost of living by region.

Table 1 below shows a brief cross-section of median salaries² for four industry-representative professions in TPP countries. Assuming that U.S. government contracts will be awarded in U.S. dollars, the international currencies below have been converted to U.S. dollars³ for effective comparison.

² ["Summary of the Trans-Pacific Partnership Agreement". USTR. 4 October 2015. Retrieved 16 October 2015.](#)

Table 1

Position	Australia	Malaysia	Singapore	United States
Project Architect	54,516 USD (71,785 AUD)	15,086 USD (60,946 MYR)	39,623 USD (53,885 SGD)	64,370 USD
Senior Project Architect	68,469 USD (90,158 AUD)	30,040 USD (121,356 MYR)	57,237 USD (77,480 SGD)	84,238 USD
Structural Engineer	53,589 USD (70,565 AUD)	17,176 USD (69,386 MYR)	33,389 USD (45,408 SGD)	65,175 USD
Electrical Engineer	56,983 USD (75,033 AUD)	11,012 USD (44,489 MYR)	31,562 USD (42,923 SGD)	71,100 USD

As demonstrated by the data above, the U.S. typically pays architects and engineers a higher salary than their foreign counterparts, often by large amounts. It stands to reason that a foreign company paying lower salaries to SMEs will likely be able to outbid U.S. companies for lucrative U.S. federal contracts. This disadvantage could potentially lead to a reduction in U.S. salaries and/or overall job loss in highly technical fields.

3.2 Foreign Competition

Section 15-21 further discusses the facilitation of participation by SMEs. It says:

- “1. The Parties recognise the important contribution that SMEs can make to economic growth and employment and the importance of facilitating the participation of SMEs in government procurement.*
- 2. If a Party maintains a measure that provides preferential treatment for SMEs, the Party shall ensure that the measure, including the criteria for eligibility, is transparent.”*

While, on the surface this may seem like a fail-safe that protects highly regulated fields from foreign intrusions, the text goes on to state that the procuring government must take steps to help partner countries learn and comply with U.S. regulations and codes. This of course, is something U.S. companies already do, so the following instructions will serve to further reduce the small competitive advantages that U.S. companies have.

“The Parties shall endeavour to cooperate in matters such as:

- (a) facilitating participation by suppliers in government procurement, in particular, with respect to SMEs;*
- (b) exchanging experiences and information, such as regulatory frameworks, best practices and statistics;*
- (c) developing and expanding the use of electronic means in government procurement systems;*
- (d) building capability of government officials in best government procurement practices;*
- (e) institutional strengthening for the fulfilment of the provisions of this Chapter; and*
- (f) enhancing the ability to provide multilingual access to procurement opportunities.”*

3.3 State and Local Considerations

While the current iteration of Chapter 15 only covers federal procurement at this time, it does require that the Parties “commence negotiations with a view to achieving expanded coverage, including sub-central coverage” within three years. Furthermore, the specific language included in the TPP indicates a strong bias against preferential programs like “buy local,” an economic stimulus measure which is used by state and local governments across the U.S.

“With respect to any measure regarding covered procurement, each Party, including its procuring entities, shall accord immediately and unconditionally to the goods and services of any other Party and to the suppliers of any other Party, treatment no less favourable than the treatment that the Party, including its procuring entities, accords to: (a) domestic goods, services and suppliers; and (b) goods, services and suppliers of any other Party.”

While the TPP does exclude some state and local programs (state and local highway and mass transit projects, state and local water projects), labor organizations agree that this provision will be problematic for governments and workers alike. According to the AFL-CIO, “Such provisions could undermine popular local and state preference programs.”³ Moreover, there is a strong possibility that taxing authorities could also lose out on valuable tax revenue (e.g., corporate tax, employment tax, income tax, etc.) by doing business with foreign entities.

The inclusion of this provision in the agreement should serve as a warning to state and local governments that their ability to use discretionary fiscal policy as a way to manage the overall economy could be curbed in the near future.⁴

4.0 Solutions

While it is yet unclear whether or not the TPP will obtain Congressional approval, the A/E industry must assume that it will and take appropriate steps to lobby their representatives for changes that are necessary for the future of the industry. This white paper suggests the following actions by industry organizations/associations, participants, and stakeholders:

1. Coalesce to communicate concerns with elected officials in their states and localities and determine where their representatives stand on the issue.
2. Seek opportunities to speak with local and national publications regarding the far-reaching implications of Chapter 15
3. Publish and distribute opinion pieces on this topic through their own blogs, newsletters and marketing vehicles.

5.0 Conclusion

Chapter 15 of the Trans-Pacific Partnership, which addresses government procurement, has dangerous implications for the U.S. architecture and engineering industry, including a loss of competitive advantage for U.S. companies, a reduction in salaries for American subject matter experts, and the potential for a loss of quality in work completed for government agencies.

With the U.S. presidential election looming large, the TPP is a key platform issue that will be hotly debated throughout the year and the A/E industry must have its say. A cohesive and concerted immediate effort will be required in order to achieve response and action

³ [“Report on the Impacts of the Trans-Pacific Partnership.”](#) Labor Advisory Committee on Trade Negotiations and Trade Policy 02 Dec. 2015. Retrieved 25 Apr. 2016.

⁴ Matthew Yglesias, [“TPP’s Government Procurement Rules, Explained.”](#) Vox.com. Updated 06 Nov. 2015. Retrieved 26 Apr. 2016.

About the Author

Charles “Chip” Denman spent a career in the U.S. Navy and recently retired as a Captain. He is a seasoned leader in strategic operations and execution and as an Executive Vice President, Chip is responsible for developing processes that better organize the firm that will take NIKA to the next level. Previously, Chip served as the Director, International Security Operations and Senior Naval Advisor at the State Department, as a Legislative Advisor to the Chief of Naval Personnel, and as Strategist for the Office of the Chief of Naval Operations (OPNAV) and Office of the Secretary of Defense (OSD). During his tenure, Chip earned the Defense Superior Service, Legion of Merit and the State Department’s Superior Honor Award medals as well as other personal, campaign, and unit awards.