

AFTINET initial summary of TPP Chapter 10 (Cross-Border Trade in Services) and Annexes I and II, Non-Conforming Measures (NCMs) on services and investment.

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Summary

The text of TPP Chapters and Annexes I and II can be found [here](#). To read the text, you need to download both the Cross-Border Trade in Services Chapter 10 and those two annexes which relate to it and the Investment chapter.

In general, the aim of the Trade in Services Chapter is to increase trade in services and treat them on a commercial basis, open them to international investment, and to minimise barriers to such trade. Considerations about the social impacts of services are secondary to this aim.

The TPP services and investment chapters are both structured on a negative list basis, which means that all services are included unless specifically excluded in the annexes.

Regulation of services is treated as if it were a tariff, frozen at existing levels or reduced over time, but not to be increased in future, known as the “ratchet” structure. This is intended to prevent governments from introducing new forms of regulation, especially if services have been deregulated or privatised. For example, the recent failure of deregulation and privatisation of Australian technical and further education services has resulted in government reregulation of those services late in 2016. If the TPP had already been implemented, it could have prevented such reregulation. This reduces the ability of future governments to regulate in the public interest.

The negative list means that governments may not be aware of the implications of the inclusion of all services, and have to specify very detailed exclusions if they want to maintain policy flexibility for particular services or respond to new developments like TAFE re-regulation, climate change or the Global Financial Crisis. New services which may be developed in future will be automatically covered, reducing government’s ability to regulate them.

Current non-conforming laws and policies listed in Annex I can be maintained, but they cannot be changed in ways which would make them more “trade restrictive” in future, and new restrictions cannot be introduced.

Non-confirming measures listed in Annex II can be both maintained and changed in future.

The Annexes of non-conforming measures do not prevent foreign corporations from suing governments over these forms of regulation under the separate ISDS provisions in the Investment Chapter for measures introduced at national, state or local government level.

Overview

Chapter 10 has a similar structure and many similar clauses to the Australia-US Free Trade Agreement (AUSFTA), and is enforceable through the state-to-state disputes process applying to the rest of the agreement. Foreign corporations can also launch ISDS cases in relation to trade in services if they can argue that a law or policy relating to a service has been applied in a way which does not conform with the obligations in the ISDS provisions of the investment chapter.

The chapter defines cross-border trade in services as the supply of services from the territory of one Party to the territory of another Party (cross-border supply), the supply of services from the territory of a Party to a person of another Party (consumption abroad), and services supplied by a national of a Party in the territory of another Party (commercial presence). These are known as modes 1 to 3 in the WTO General Agreement on Trade in Services. The chapter does not include movement of natural persons (mode 4), which is dealt with in Chapter 12.

The reason for the separate chapter on movement of natural persons is that the US has legislation which prevents it from making any commitments affecting migration arrangements in trade agreements. The separation enables the US to make commitments on trade in services in Chapter 10, but not on movement of natural persons in Chapter 12.

The detailed analysis below indicates where the TPP provisions are different from Australia's commitments in AUSFTA.

The relationship between the AUSFTA and the TPP is unclear. It appears that the AUSFTA will continue to exist alongside the TPP, since there is a specific side letter between Australia and the US on Intellectual Property which refers to certain clauses of Chapter 18 on Intellectual Property in the TPP replacing clauses in the equivalent chapter in AUSFTA.

If this is the case, the Most Favoured Nation (MFN) articles in some chapters of the TPP would mean that AUSFTA clauses could continue to apply if they were more favourable to an investor or service supplier than the TPP provisions. However MFN does not apply to the non-conforming measures listed in Annex I and Annex II.

Some provisions which could limit regulation of particular services are:

- 1) **The non-conforming measures do not prevent foreign corporations from suing governments under the ISDS provisions in the Investment Chapter for measures introduced at national, state or local government level.**
- 2) Governments claim that public services are excluded from trade in services provisions. However the **definition of public services** (Article 10.1, p. 10-2) remains ambiguous in the context of competitive tendering and privatisation. It defines "a service supplied in the exercise of governmental authority "as "a service that is supplied neither on a commercial basis nor in competition with one or more service providers."
- 3) Market access provisions (Article 10.5a), p.10-5) mean governments cannot regulate on numbers of service suppliers, numbers of operations and numbers employed in particular services or operations. This **may limit planning for the distribution of services and staffing levels in services like child care and aged care.**
- 4) **Existing local government laws and policies** which do not conform to the rules of the agreement appear to be totally excluded by the reservation for local government services in Annex I (p.1) **But local governments will not be able to adopt new laws or policies in future** which do not conform to the agreement, including any form of preference for local service providers. **Non-conforming measures are only protected from the specific obligations listed in the annexes. Foreign corporations can still use the ISDS provisions in the Investment Chapter to sue for damages for measures introduced at national, state or local government level.**
- 5) There are more detailed obligations for governments on **domestic regulation of services** to ensure that regulations for **licensing, qualifications and technical standards** are "reasonable" and proceed without delay (Articles 10.8-9, pp. 10.6- 10.8).

- 6) **There are stronger legally binding obligations than in the AUSFTA on postal services not to cross subsidise express delivery services which could lock in Australia Post policies** of total separation of the monopoly service from other services and prevent future change (Annex 10-B, Article 5. 7.7, p.15).
- 7) **The Chapter does apply to certain services related to air transport, which were previously not included in AUSFTA (Article 4c). These include airport operations services, ground handling services, aircraft repair and maintenance services, selling and marketing of air transport services, travel and tour operator services and advertising and distribution services.**

Australia has also made a series of additional commitments on the same air transport services under the WTO General Agreement on Trade in Services (GATS), which were not previously included. Annex II, Appendix A, p. 23 states that Australia has made a series of additional commitments on national treatment, market access and cross-border supply. The specific services include airport operations services, ground handling services, aircraft repair and maintenance services, selling and marketing of air transport services and travel and tour operator services, including advertising and distribution services.

Note that the inclusion of these services in both the TPP, with 12 member countries, and Australia's WTO GATS commitments which will eventually extend to 160 member countries, mean that there cannot be policies which require these services to be supplied by local service providers. This may be the result of lobbying by airline companies, which have resisted demands from unions for policies that aircraft maintenance and other services be supplied locally. These corporations will be able to argue that Australia's TPP and GATS commitments prevent policies which require the use of local services.

- 8) **The TPP non-conforming measure on audio-visual services allows Australia to maintain existing measures and develop new measures. This is broader and more flexible than the nonconforming measure on audio-visual services in the AUSFTA. However, because Australia has reserved the right to maintain measures in existing bilateral agreements, the AUSFTA provisions on audio-visual services, which are more restrictive and prescriptive for Australian local content provisions, still apply to the United States. Thus, Australia has reserved the more flexible right to adopt or maintain any measure with respect to Australian content in media to all TPP partners except for the United States.**

Detailed analysis

Exclusions in the chapter (Article 3a-c), pp. 10-3)

Articles 3a) and b) state that the chapter does not apply to financial services (there is a separate Chapter 11 on financial services) or government procurement, (for which there is also a separate chapter 15).

Article 3c) claims to exclude public services, described as services supplied in the exercise of governmental authority. However, the definition of public services (Article 10.1 p. 10-2) is the same ambiguous definition used in WTO GATS and other trade agreements, which is “a service that is supplied neither on a commercial basis nor in competition with one or more service providers.” Given moves to competitive tendering and privatisation, many public services are in fact now provided on a commercial basis or in competition with other service providers. The TPP promotes these developments through the chapters on State-Owned Enterprises and Competition Policy.

Article 3 d), (p. 10-3). The chapter does not apply to government subsidies, grants, government supported loans guarantees and insurance.

Article 5 a)-f), (p. 10-3): the chapter does not apply to some air transport services and related services, **but does include aircraft repair and maintenance services, selling and marketing of air transport services, computer reservation system services, specialty services, airport operations services and ground handling services. This is a significant change from AUSFTA, which excluded most of these services.**

Australia has also made a series of additional commitments on some specific services related to air transport services under the WTO General Agreement on Trade in Services (GATS), which were not previously included. These will initially apply to TPP countries, but will eventually apply to 160 WTO member countries.

Annex II, Appendix A, p. 23 states that Australia has made a series of additional commitments on national treatment, market access and cross-border supply. The specific services include airport operations services, ground handling services, aircraft repair and maintenance services, selling and marketing of air transport services and travel and tour operator services, including advertising and distribution services.

Note that the inclusion of these services in both the TPP, with 12 member countries and Australia's WTO GATS commitments to 160 member countries, mean that there cannot be policies which require these services to be supplied by local service providers. This may be the result of lobbying by airline companies, which have resisted demands from unions for policies that aircraft maintenance and other services be supplied locally. These corporations will be able to argue that Australia's TPP and GATS commitments prevent policies which require the use of local services.

National treatment

Article 10.3 (p.10-4) commits governments to treating service providers from other TPP countries as if they were national service suppliers at both national and state levels, so there can be no preference for local providers.

Most-Favoured Nation treatment

Article 10.4 (p.10-4): Governments must grant TPP service providers treatment no less favourable than it grants to services and service suppliers from both other TPP and non-TPP countries. This means that

if a government makes an agreement which is more liberalising than the TPP, (for example, the plurilateral Trade in Services Agreement now being negotiated outside of the WTO), it will have to grant the same treatment to other TPP Parties.

Market Access

Article 10.5a) (p.10-5): governments cannot place any limits on the numbers of service suppliers, total value of service transactions or assets, total numbers of service operations, the total quantity of services output, the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ. This potentially places limits on the degree to which governments can engage in planning for the distribution of private services, or have requirements for levels of staffing, in areas like childcare or aged care.

Article 10.5 b), (p.10–5) forbids any restriction or requirement of specific types of legal entity or joint ventures through which the service may be supplied.

Article 10.6, (p. 10 –5) forbids any requirement that a service supplier must have a local presence, in the form of an office, enterprise or residency in the country where the service is being supplied.

Non-Conforming Measures (Article 10.7: p. 10–5)

These measures are exempted from the Chapter 10 articles on National Treatment, Most-Favoured National Treatment, Market Access, and Local Presence, described above but not from the application of ISDS in the investment chapter (Chapter 9).

They are listed in two separate Annexes described in more detail below. Non-Conforming Measures at national and state level must be specifically listed in one of the annexes.

Annex I excludes the existing measures listed at national and state level, but does not permit governments to change those measures in a way that would make them more trade restrictive (known as the standstill effect).

It appears that all existing nonconforming measures at local government level are included in Annex I without having to be specifically listed, but the standstill effect would apply, so local governments could not introduce measures which would be more trade restrictive in future.

Annex II lists measures for which governments reserve the right to both maintain existing and adopt new or more restrictive measures that do not conform to the obligations of Chapter 10.

Domestic Regulation (Article 10.8, p.10-8)

These articles place restrictions on government regulation of services and have been hotly debated in WTO GATS negotiations, and in the Trade in Services (TISA) negotiations outside the WTO, as revealed in leaked documents.

This article requires governments to ensure (Article 10.8.2, p.10-6) that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, are based on objective and transparent criteria such as competence and the ability to supply the service, and in the case of licensing procedures are not in themselves a restriction on the supply of the service.

This wording is the same as AUSFTA. There are additional words in the TPP article which recognise “the right to regulate and to introduce new regulations on the supply of services in order to meet

policy objectives” (Article 10.8.2). However the word “recognise” is more ambiguous and less enforceable than the obligations to ensure the requirements listed above.

Article 10.8.4 and 5 (p.10-7) are new sections, not found in AUSFTA, which contains quite detailed specific obligations on governments to ensure that authorisations for the supply of services proceed without any delay, provide reasons for rejection, and charge reasonable fees.

Article 10.8.5 sets out detailed requirements for the conduct of examinations.

These new articles are very similar to those in the leaked draft text of the Trade in Services Agreement and place new and more restrictive obligations on governments.

Article 10.9 (p.10-8): recognition of standards and qualifications.

This clause is the same as AUSFTA and provides for arrangements to recognise education, qualifications, licenses or certifications of other countries, either by harmonisation, by agreement or arrangement, or autonomously.

“If a government accords recognition autonomously, it shall afford adequate opportunity to another Party to demonstrate that education, experience, licenses or certifications obtained or requirements met in that other Party’s territory should be recognised”. Given the number and wide range of countries involved in the TPP, this has much wider implications than the same clause in the AUSFTA.

Annex 10b), express Delivery Services (Articles 5, 6 and 7, p.15)

The articles in this annex are far more strongly worded than the similar AUSFTA Article 10.2.3, which reads:

“Each Party *confirms its intention* to prevent the direction of revenues derived from monopoly postal services to confer an advantage to its own or any other competitive supplier’s express delivery services in a manner inconsistent with that Party’s laws and practices applicable to the monopoly supplier postal services”

The TPP Article 5 (p.10- 15) much stronger obligations read:

“*No Party shall allow* a supplier of services covered by a postal monopoly to cross-subsidise its own or any other competitive supplier’s express delivery services with revenues derived from monopoly postal services.”

TPP Article 6 (p.10-15) refers to other TPP obligations and reads:

Each Party *shall ensure* that any supplier of services covered by a postal monopoly does not abuse its monopoly position to act in the Party’s territory in a manner inconsistent with the Party’s commitments under Article 9.4 (National Treatment, Article 10.3 (National Treatment), article 10.5 (Market Access) with respect to the supply of express delivery services.

These articles lock in current policies of separating Australia Post monopoly services from its express delivery services and would prevent policy change in future. This complete separation also paves the way for privatisation of Australia Post’s express delivery services.

Australian nonconforming measures in Annex I

These are existing nonconforming measures which may be retained but not made more restrictive in future (the standstill effect). As discussed above, they apply to listed measures at national and state levels, and to *all* nonconforming measures at local government level, which do not need to be listed.

Note that these nonconforming measures only provide exemptions for National Treatment, Most-Favoured Nation Treatment, Market Access, and Local Presence, described above, but do not prevent foreign corporations from launching cases based on the ISDS provisions in the investment chapter (Chapter 9).

Annex 1 reservations are similar to those in AUSFTA, but have been updated to take into account changes in legislation and adjustments for inflation. Broadly speaking, they include:

- 1) the role of Foreign Investment Review Board in reviewing investments in particular sectors, including telecommunications, transport, media, developed non-residential commercial real estate, investments by all foreign government investors, irrespective of size, and all foreign investment over the value of A\$1.94 billion (p.2-5)
- 2) specific requirements for people practising certain occupations to be resident in Australia, including patent attorneys, migration agents, company auditors, liquidators and customs brokers(p.6-10).
- 3) Licensing requirements for foreign fishing vessels (p.11).
- 4) restrictions on foreign investment in Telstra (p.12).
- 5) restrictions on foreign investment in the Commonwealth Serum Laboratory (p.13).
- 6) requirements for ocean carriers providing international liner cargo shipping services to or from Australia (p.14).
- 7) requirements for ships involved in coastal trade to be registered on the Australian shipping register (p.15).
- 8) restrictions on total foreign ownership and board members of Australian international airlines (p.16).

Annex II: reservations which reserve the right to maintain or adopt new measures

In Annex II, the Australian government reserves the right at national or state government level to maintain existing measures or to adopt a new or more restrictive laws or policies in the listed areas.

But as for Annex I, these nonconforming measures only provide exemptions for National Treatment, Most-Favoured Nation Treatment, Market Access, and Local Presence, described above but do not prevent foreign corporations from launching cases based on the ISDS provisions in the investment chapter (Chapter 9).

Many of the Annex II provisions are the same as provisions in AUSFTA. This summary focuses on those that are new or different.

Annex II Introductory note (no page number) Education and Training services

This is a new provision not included in AUSFTA. It appears to be a response to issues raised by those concerned about the implications of the Chapter for education and training. It reads:

Nothing in Chapter 10 (Services) or Chapter 9 (Investment) shall interfere with

- a) the ability of individual institutions to maintain autonomy in admissions policies, in setting tuition rates and in the development of curricula or course content
- b) non-discriminatory accreditation quality assurance procedures, including the standards that must be met
- c) government funding subsidies or grants, such as land grants, preferential tax treatment and other public benefits provided to education and training institutions

- d) the need for education institutions to comply with non-discriminatory requirements related to the establishment and operation of a facility in a particular jurisdiction.

Note that education is also included as part of a broader reservation, which says that Australia reserves the right to adopt or maintain any measures with respect to services to the extent that they are social services established or maintained for a public purpose, including public education and public training (p.7).

Temporary entry of businesspersons (p.1):

Australia reserves the right to adopt or maintain any measure with respect to the supply of a service by the presence of natural persons subject to the provisions of chapter 12 (Temporary Access of Business Persons).

Indigenous persons and organisations (p.2)

Reserves the right to adopt or maintain any measure according preferences to any indigenous person or organisation in relation to any commercial or industrial undertaking in the service sector, or to any investment measure.

State government measures (described as regional government) (p.3)

Australia reserves the right to adopt or maintain any measures at the regional level of government that is not inconsistent with Australia's obligations under article XIV of the GATS

The Foreign Investment Review Board and screening of proposals to invest in agricultural land and agribusiness (p.4-5)

This is a new provision not in AUSFTA and reserves the current government's legislation on screening of investments of more than \$15 million in agricultural land and \$53 million in agribusiness.

Privatisation (p.6)

This is a new provision not in AUSFTA, probably resulting from the Howard government's negative experience when it was advised AUSFTA provisions did not allow it to require a percentage of Australian ownership in its failed attempt to privatise the Snowy Mountains Engineering Corporation

This preserves the right of Australian governments at national level to adopt or maintain measures for Australian ownership of privatised assets, and to adopt or maintain any measure at the state government level in respect to the devolution to the private sector of services provided in the exercise of government authority and the privatisation of government identities or assets.

Regulation of services (p.8)

This reserves the right of governments to make regulations affecting services to the extent that they are established or maintained for a public purpose, including both public and private services, as made clear by the footnotes referring to blood plasma services and other private services. However, there is some ambiguity in the definition, and the obligation would rest with governments to show that such services are established and maintained for a public purpose.

This clause is broader than the one in AUSFTA because it includes blood and plasma products, public utilities, public transport and public housing, which were not included in the AUSFTA list. Again the inclusion of these appears to be in response to the huge public opposition to proposals in AUSFTA (not implemented) for competitive tendering of supply of blood products and the attempt to maintain a

percentage of Australian ownership in the proposed privatisation of the Snowy Mountains Engineering Corporation. The reservation reads:

“Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services and the following services to the extent they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, including the collection and distribution of blood and blood related products, childcare, public utilities, public transport and public housing”.

Broadcasting and Audio-visual services (p 8 -10)

This appears to be more comprehensive and less specific than AUSFTA. It reserves the right to adopt or maintain any measure with respect to Australian content in media, including transmission quotas, expenditure requirements, spectrum management and subsidies or grants in order to make Australian audio-visual content reasonably available to Australian consumers, consistent with Australia’s GATS obligations.

This appears to be more comprehensive and flexible than the AUSFTA exemption.

Annexed II applies a general exemption from the most Favoured Nation (MFN) provisions, which would appear to exempt Annex two provisions from more favourable provisions in other agreements, including AUSFTA.

However, there is a nonconforming measure which in turn exempts other existing bilateral agreements from MFN. This means that the AUSFTA provisions on audio-visual services, which are more restrictive and prescriptive for Australian local content provisions, do apply to the TPP, but they will only apply to the United States. Thus, Australia has reserved the more flexible right to adopt or maintain any measure with respect to Australian content in media to all TPP partners except for the United States.

Australia also reserves the right to adopt and maintain preferential co-production arrangements for film and television production (p.10). This is the same as AUSFTA.

Measures with respect to the creative arts, indigenous culture and other cultural heritage (p.11)

This is a new reservation not found in AUSFTA and is a much broader cultural carveout. It reads:

“Australia reserves the right to adopt or maintain any measure with respect to the creative arts, indigenous traditional cultural expressions and other cultural heritage”.

Footnote 15 has a broad definition of measures with respect to creative arts to include performing arts, visual arts and craft literature and hybrid artworks, but does not include literary works transmitted electronically. Footnote 16 specifies that such measures shall be implemented in a manner consistent with Australia’s commitments under article XVI, and article XVII of the WTO General Agreement on Trade in Services. Footnote 17 has a broad definition of cultural heritage, including ethnological, archaeological, historical, literary, artistic, scientific or technological movable or built heritage, including connections held by museums, galleries, libraries, archives and other institutions.

Distribution of tobacco, alcohol and firearms (p. 12)

This is the same wording as AUSFTA, reserving the right to adopt or maintain any measure with respect to wholesale and retail trade services of tobacco products, alcohol, alcoholic beverages or firearms.

Gambling and betting (p.14)

This is a new provision not found in AUSFTA, and appears to be a response to domestic calls for regulation of gambling, and the [WTO case](#) in which Antigua, a small Caribbean island country, lodged a WTO dispute against US federal government regulation of online gambling. Antigua argued that the regulation violated the US GATS commitments because there was no specific exclusion of gambling in the category of “Other Recreation Services” which US had included in its positive schedule of GATS commitments.

Maritime transport cabotage, investment in federal leased airports (pp 15-16)

Australia reserves the right to adopt any measure relating to these two areas.

Services related to air transportation (p. 17)

The change to Australia’s commitments in Article 5 and the change to its GATS commitments in Appendix A on air transport services means that there cannot be future policies which require these services to be supplied by local service providers to most other TPP governments and to WTO members. See more detail below.

This specific reservation appears to reserve the right to deny market access to air transport services in Article 5 to firms from those TPP governments which do not provide equivalent market access to Australian firms for some air transport services.

Australia reserves the right not to provide market access to firms from those TPP countries which maintain exceptions for ground handling services and airport operations services in their Annex II reservations.

Exemption from MFN for Australia-New Zealand CER agreement and favourable treatment for Pacific Island Forum member states, and for other bilateral and multilateral agreements involving aviation, fisheries or maritime matters including salvage (p.18)

This is a more detailed version of a similar reservation in AUSFTA which was more general. This clause specifically mentions ANZCERTA and Pacific Island Forum members.

The general part of the TPP clause reads:

“Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to any service supplier under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this agreement.” **Note this refers only to agreements already in place, but includes AUSFTA. This means that AUSFTA will prevail over TPP provisions unless it is specifically agreed that they will not. This is important for the nonconforming measures on audio-visual services and cultural services, described above, where the more specific and prescriptive AUSFTA provisions will apply**

The reservation for ANZCERTA refers also to future measures, reserving the right to adopt or maintain any measure taken as part of a process of economic integration under the agreement.

The reservation for Pacific Island Forum service suppliers also refers to future measures, maintaining “the right to adopt or maintain any measure under any international agreement in force or *signed after the date of entry* into the force of this agreement.” This appears to be accommodating possible

future commitments in the Pacific Agreement on Closer Economic Relations between the Pacific Islands, Australia and New Zealand, known as PACER-Plus.

Appendix A to Annex II Improvements on commitments in the WTO General Agreement on Trade in Services (GATS) (p.19 -25)

Australia has replaced existing commitments under article XVI of the GATS with no limitations for modes 1 to 3, for a series of specified services. The specified services are under the broad headings of legal advisory services, research and development services, other business services, communication services, construction and related engineering services, distribution services, environmental services, tourism and travel related services and transport services.

Most of these are not significant, and appear to be bringing Australia's commitments into line with more detailed definitions of particular services now used in the GATS. However, there are two issues worth noting.

1) Environmental Services: water for human use

On environmental services, Footnote 21 on page 22 maintains a previous reservation on water for human use, specifying that Australia's commitments on environmental services exclude the provision of water for human use, including water collection, purification and distribution through mains. This means that there could be policies limiting national treatment, market access and other commitments for these services. Note that sewerage services are not exempted.

2) Air Transport Services

Australia has made a series of additional commitments on some specific services related to air transport services under the WTO General Agreement on Trade in Services (GATS), which were not previously included. These will initially apply to TPP countries, but are intended to apply eventually to 160 WTO member countries.

Annex II, Appendix A, p. 23 states that Australia has made a series of additional commitments on national treatment, market access and cross-border supply. The specific services include airport operations services, ground handling services, aircraft repair and maintenance services, selling and marketing of air transport services and travel and tour operator services, including advertising and distribution services.

Note that the inclusion of these services in both the TPP, with 12 member countries and Australia's WTO GATS commitments which are intended to apply eventually to 160 WTO member countries, mean that there cannot be policies which require these services to be supplied by local service providers. This may be the result of lobbying by airline companies, which have resisted demands from unions for policies that aircraft maintenance and other services be supplied locally. These corporations will be able to argue that Australia's TPP and GATS commitments prevent policies which require the use of local services.