

# ACTU Submission

ACTU Submission to the Department of Foreign Affairs and Trade  
on the Plurilateral Services Agreement negotiations



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## Introduction

1. The Australian Council of Trade Unions – the peak council for organised labour in Australia – welcomes the opportunity to make this submission to the Department of Foreign Affairs and Trade on the Plurilateral Services Agreement negotiations. Our position reflects our membership which consists of unions covering all sectors of the economy, across all states and territories, representing 2 million workers. Our comments also draw on our experience supporting workers to attain safe, secure and rewarding employment in Australia and internationally.
2. The ACTU strongly believes that comprehensive assessment and well-founded estimations of the agreement's impact on environment, and economic and social development is a prerequisite for informed negotiations. Such an assessment should examine the social, economic and environmental impacts and consider the impact in light of financial market weaknesses and instability, growing inequalities and other major challenges.
3. Consideration needs to be given as to whether the GATS framework is the most appropriate framework for the Plurilateral Services Agreement negotiations. GATS rules restrict certain forms of regulation even when applied in a non-discriminatory way and it provides out-dated definitions on a series of issues. Therefore negotiating under the GATS framework could create dangerous cross-fertilisation and loopholes that would further complicate the trade regime and increase uncertainty.
4. We also believe that negotiations must be transparent and accessible. The process should be open to civil society and interest groups so as to increase the probability of a fair, inclusive and relevant agreement to all.
5. Our comments in this submission consist of general principles and we reserve the opportunity to make additional submissions as the negotiations progress.

## **Principles for Negotiation**

### Positive List Approach

6. We understand that the negotiations are to take a positive list approach to making offers for market access and that a negative list approach is to be taken on national treatment. The ACTU strongly recommends the adoption of a positive list approach on all matters as a negative list reduces policy making space on social, labour, consumer protection and other regulation in the public interest.
7. The inclusion of a ratchet clause – that would automatically lock new open markets into the agreement – is also problematic. Such an inclusion would limit policy space that would otherwise be available, consistent with current WTO rules.

### Uphold Regulatory Policy-Making Space

8. It is imperative that governments retain their ability to regulate to achieve public policy goals, like environmental protection, social security, public health, financial stability, and protecting workers and consumers. The agreement should not impose downward harmonisation of standards.
9. Also, some Parties may call for the establishment of regulatory assessment processes at a national and international level. However, the Plurilateral Services Agreement negotiations should respect the cultural values reflected in different regulations, as well as the sovereign and democratic right of governments to use regulation when it is deemed necessary under their own criteria.

### Financial Services Commitments that Support Financial Stability

10. Financial services commitments should neither undermine financial stability nor provide legal coverage for excessive risk taking, speculation and other common damaging behaviour of banks and capital pools. Preserving regulatory space for governments would allow for rapid and effective reactions to market failures and it would contribute to the stability of the global economic system. Therefore there should be no restriction on measures designed to address failures in the fiscal, monetary or financial sector. This is increasingly acknowledged as good practice, with IMF research clearly showing, for example, that it is necessary to sustain an

adequate level of capital controls to intervene in harmful fluctuations of capital movement and protect the balance of payments.<sup>1</sup>

#### Achieving and Maintaining Universal Access to High Quality Public Services

11. Replacing state with private provision of public services has often lowered quality of services, worsened working conditions and wages for service workers, and excluded the poorest – and often those geographically isolated and too remote, from access to services to make service delivery profitable. When provided by the state, services provision is subject to democratic control and is sensitive to social goals. Most importantly, state provision has a role to play in achieving universal access to public services, in poverty alleviation and in addressing economic inequality. Therefore, the agreement needs to protect and promote public services.
12. Public services also play a major role in sustaining economic growth. Reducing inequality is increasingly understood to contribute to economic growth; the public sector continues to be the best remedy for tackling income inequality.
13. Providing transparent and accountable legal and regulatory systems is essential to economic development. The agreement should not promulgate regulatory restraints and disciplines that would lower the quality of services, reduce access or affect working conditions adversely. Competitive neutrality and other principles aimed at levelling the playing field should always take into account, in their design and implementation, the broad interests of society.
14. In this regard, anchoring the agreement in GATS rules is problematic. GATS Article I:3 provides an extremely narrow definition of public services as services “supplied in the exercise of governmental authority” and this “means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers”. In virtually all participating countries, essential public services such as water provision, health services, education and public transportation are provided on a commercial basis even when provided by the state – and even if not entirely centred on profit maximisation.
15. The adoption of a narrow definition of public services in the Plurilateral Services Agreement would limit the breadth of services that can be excluded from the agreement’s regulatory disciplines, market access commitments and competitive neutrality requirements.

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<sup>1</sup> IMF, *The Liberalization and Management of Capital Flows - An Institutional View*, available at: <http://www.imf.org/external/pp/longres.aspx?id=4720>

#### Exclusion of Investor-State Dispute Settlement Provisions

16. There should be no investor-state dispute settlement mechanism for the resolution of any type of disputes arising from the provisions or the interpretation of the agreement. Furthermore, the definition of investment, property, real estate, and all forms of expropriation as well as fair and equitable treatment should be realistic and appropriate.

#### Enforceable Labour Standards

17. The agreement should provide for the rights of workers to become subject to the dispute provisions of the agreement. The ILO Fundamental Principles and Rights at Work Conventions, health and safety conventions, acceptable conditions at work and existing labour laws and regulation should be enforceable in parity with commercial disputes and equal level of benefits suspension.
18. The agreement should establish, and parties should resource, a capacity building mechanism to support improvements in adherence to labour standards.

#### Maintain Public Policy Objectives for Procurement Policy

19. Government procurement should not be included in the agreement. Government procurement has strong potential to create growth and jobs and protect and improve respect of labour standards (as provided in ILO Convention 94).
20. Furthermore, government procurement is covered by the WTO Government Procurement Agreement, so parties should not be obligated to undertake further commitments on government procurement under the Plurilateral Services Agreement.

#### Privacy and data security need to be ensured

21. E-commerce and internet-based commercial services involve data processing, storing and transferring. The agreement should put in place a strong legal and enforcement framework to protect users' privacy and security.

#### Exclusion of Mode IV

22. Mode IV provisions should not be included in the agreement. Migration policy is the most appropriate tool to regulate the movement of people.

## **Conclusion**

23. The Plurilateral Services Agreement negotiations should be transparent and based on well researched impact assessments and estimations. The participating countries need to maintain adequate policy space, also with flexibilities, to pursue development, defend against economic and social dangers as well as protect the environment.
24. In this respect, the importance of promoting labour standards, guaranteeing quality public services accessible to all, and protecting the national interests and people's sovereignty from financial instability should be central to the agreement.



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