

TRANS-PACIFIC PARTNERSHIP

AGREEMENT

CHAPTER SUMMARY: CROSS-BORDER TRADE IN SERVICES

The Cross-Border Trade in Services Chapter establishes rules for the supply of services between TPP Parties, including obligations which require TPP Parties to treat local and foreign service providers equally.

At the same time, TPP Parties have identified service sectors where existing government policies may have the effect of advantaging local suppliers over foreign suppliers, or where the government would like to retain flexibility to implement government policies, such as in relation to social services like health and public education. Any regulatory procedures are required to be fair and transparent and give businesses a clear understanding of the operating conditions for the provision of services in that country.

The Chapter also provides mechanisms for TPP Parties to work towards greater mutual recognition of professional services qualifications.

Services are vital to the Australian economy, generating 75 per cent of GDP in 2015-16 and employing four out of five Australians.

The TPP countries account for 26% of the world's trade in services, with Australian exports to TPP countries worth \$23 billion in 2015-16 (almost 34% of Australia's total services exports). As the Asia-Pacific region develops further, consumers – particularly the burgeoning middle class in Asia – will increasingly demand services of the highest quality. By 2030, it is estimated that annual services exports to Asia could be worth \$163 billion and support over one million jobs.¹ Through the TPP, Australian suppliers will be well placed to capitalise on these opportunities.

Some TPP Parties have restrictions in place which make it difficult for Australian providers to compete with local and other providers. For example, conditions which require a supplier to establish a local office makes business more expensive and, in the case of small and medium enterprises, perhaps impossible to expand service delivery to consumers in TPP Parties. The TPP will provide Australian suppliers with greater certainty about operating conditions in TPP markets.

The TPP is also a living agreement that will capture market reforms taken by governments in future. In this way it will create a level playing field over time, creating new opportunities for Australian providers to supply services to consumers in the TPP region.

The Chapter applies to government measures which influence trade in services between TPP Parties, including policies which may affect how providers produce, distribute, market or sell a service. The Chapter covers the various ways that services may be provided to consumers from a TPP Party. For example, in the education context, the Chapter covers circumstances in which:

¹ Asialink Business, 2015, 'Australia's Jobs Future: The rise of Asia and the services opportunity'

- an Australian university delivers a course online to students in another TPP Party;
- students of another TPP Party study at an Australian university; and
- an Australian university establishes a campus in another TPP country.

The Chapter does not apply to government actions in relation to financial services, services purchased by the government, or to services supplied by the government on a non-commercial, non-competitive basis, such as air navigation and air traffic control, or to government grants or subsidies.

Key Obligations

Under the national treatment obligation, a TPP Party must not treat foreign service suppliers less favorably than like domestic service suppliers. Under the most-favoured-nation treatment obligation, a TPP Party must not treat service suppliers from another TPP Party less favourably than like service suppliers from any other country. The Chapter imposes an obligation on TPP Parties to not impose restrictions on their own or foreign suppliers in service sectors, including limitations on the number of providers who can supply services in a country or the legal form of enterprise (such as a partnership or joint venture) that can provide services (the 'market access' obligation).

Each TPP country is also prohibited from requiring a provider from another TPP country to establish a local office or other facility in its territory, or to live in their country as a condition of supplying services (the 'local presence' obligation).

Consistent with other FTAs, these key obligations will not apply to local governments (such as local councils) but will apply to federal, regional governments (including Australia's States and Territories) and to new regulations and policies adopted by local governments - except in relation to activities and sectors for which TPP Parties have listed exceptions (see below).

Exceptions

In Party-specific annexes to the Agreement, TPP Parties have identified existing laws, regulations and policies that may provide local suppliers with an advantage over foreign suppliers, inconsistent with the key obligations under the Chapter. In these sectors, TPP countries have committed to lock in existing market conditions, providing Australian businesses with greater transparency regarding the operating conditions in these service sectors and certainty that the goal posts will not be shifted. Future market reforms in these sectors will be captured as a TPP commitment, guaranteeing that any liberalisation will flow through to Australian providers. This mechanism of capturing future market liberalisation is known as 'the ratchet'.

TPP Parties have specified particular activities and sectors where the government would like to retain flexibility to implement government policies, including to maintain existing policies or to introduce new policies which may discriminate between local and foreign suppliers. Activities and sectors that TPP Parties have highlighted as being 'carved-out' from the key obligations under the Chapter include social services like public health, education and social welfare.

These exceptions apply on a plurilateral basis to TPP Parties.

Regulation

TPP Parties are required to ensure that measures which affect the supply of services to their country are administered in a reasonable, objective and impartial way.

To ensure that businesses are familiar with regulations which may affect how they supply services in a TPP Party, each TPP Party is required to make relevant laws and regulations publicly available to allow interested parties to comment on these regulations and ensure that a mechanism is available for a TPP Party to respond to queries from businesses.

Professional Recognition and Cooperation

TPP Parties will establish a Professional Services Working Group to facilitate discussion between TPP Parties and relevant professional bodies on recognition of professional qualifications, licensing and/or registration.

Countries may require the authorization, licensing or certification for certain services suppliers, such as lawyers, architects and engineers. Such requirements may differ between countries and include conditions in relation to education, experience and professional licences and certificates granted to the service supplier in another country. Such recognition may be achieved through harmonisation, unilaterally, or by agreement between the countries.

In relation to legal services, TPP Parties recognise the importance of transnational legal services and have committed to work with their relevant bodies to facilitate this. TPP Parties will also build on work being done through APEC to promote mutual recognition for engineering and architectural services, including the possibility of implementing a licensing or registration regime on a temporary basis or for a specific project.

The Chapter also establishes a mechanism for TPP Parties to consult with each other if conditions applicable to foreign suppliers of express delivery services in a TPP Party become more restrictive after entry into force of the Agreement. The obligations regarding express delivery services will not apply to those services exclusively provided by Australia Post under relevant laws and regulations.

The Chapter also establishes rules for monopoly providers of certain postal services in a TPP Party to ensure a level playing field between local and foreign postal service suppliers.