



Trade in Services Agreement (TiSA) Annex on Professional Services (February 2015)

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Description

This is a secret February 2015 draft of the Trade in Services Agreement (TiSA) Annex on Professional Services, including negotiating positions.

TiSA is currently under negotiation between the United States, the European Union and 23 other countries. The Agreement creates an international legal regime which aims to deregulate and privatize the supply of services - which account for the majority of the economy across TiSA countries.

The draft Annex aims to prohibit each state from regulating cross-border trade in professional services such as accountancy, engineering, consulting and private education. Under the terms of the Annex, states would be prohibited from requiring such services to have a local presence, or from limiting the participation of foreign capital in such services.

This text dates from the 11th round of TiSA negotiations held 9-13 February 2015 in Geneva, Switzerland.

Annex¹ on Professional Services*[as at 13 February 2015]***Part I – Commitments on Professional Services****1. Scope [and Definition]**

- (a) This Annex applies to measures by Parties affecting trade in professional services. For the purposes of this Annex, “professional services” means the following services **[AU propose: as defined]** in each Party’s Schedule:
- (i) **[MX oppose: legal services] [AU/JP propose:, including for [CH oppose: domestic law (host country law),] foreign law and international law] [CPC861];**
 - (ii) accounting, auditing and bookkeeping services *[CPC 862];*
 - (iii) taxation services *[CPC 863];*
 - (iv) architectural services *[CPC8671];*
 - (v) engineering services *[CPC8672];*
 - (vi) integrated engineering services *[CPC8673];*
 - (vii) urban planning and landscape architecture services *[CPC8674];*
 - (viii) **[CH/CO/NO propose: engineering related scientific and consulting services [CPC 8675];**
 - (ix) technical testing and analysis services *[CPC 8676];]*
 - (x) **[AU/CO/NO propose; US/MX/JP oppose: veterinary services [CPC932]];** and
 - (xi) **[AU/CO/NZ/NO propose; KR/MX/TW/CH/JP oppose: private education services [CPC 921-4**, CPC 929**];]**
 - (xii) **[CH propose; EU oppose: construction related engineering services [CPC 51**].]**

AU: Given concerns raised with an “all or nothing” approach, Article 1(b) was deleted and Parties will consider what, if any, flexibility is required for each Article in Part I.

New text for this box to be developed to reflect discussions on flexibilities.

¹**AU:** For purposes of this text, we refer to “Annex”. As the architecture of the TISA text takes shape, it is possible that it could be a “Chapter” or “Section”.

[AU propose; CH/EU/KR oppose: 2. *Securing existing market access*

In sectors where commitments are undertaken in accordance with Article I-3 (Market Access), any terms, limitations and conditions on market access affecting trade in professional services shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.]

[AU propose; MX considering: 3. *Cross-border supply of Professional Services*

[IL/JP/KR oppose: Notwithstanding Paragraph 2, each Party shall undertake commitments without limitations to permit the cross-border supply of professional services as described in Art I-1:2 (a) and (b).]

[CH/LI/KR propose; AU oppose: Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on the cross-border supply of professional services as described in Art I-1:2 (a).]

[AU/CO propose: 4. *Local presence*

- (a) No Party may require a service supplier of any other Party to establish or maintain a representative office or any form of commercial presence, or to be resident **[KR oppose:** or domiciled] in its territory as a condition for **[KR propose:** the cross-border supply of] **[AU/CO propose:** trade in] professional services **[AU/CO propose:** as described in Article I-1:2 (a), (b) and (d) (*Mode 1, 2 and 4*).]
- (b) Subparagraph (a) shall be subject to conditions and qualifications scheduled in accordance with Article II-2 paragraphs 2 and 3.]

AU: Article 4 will need to be reviewed subject to the development of localisation provisions applicable to all services.

[AU/CO/IS/NO/US propose; IL considering: 5. *Foreign Capital Limitations*

No Party may, with respect to entities supplying professional services through a commercial presence limit the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment **[US propose:²].**

[IS/NO/US propose: 6. *Foreign Partnership or Management Participation Limitations*

No Party may, with respect to entities supplying professional services through a commercial presence restrict the nationality of partners or of senior managerial or other essential personnel³.]

²**[US propose:** Nothing in this paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the capital of firms supplying professional services to natural persons licensed to supply such services.]

³**[US propose:** Nothing in this paragraph shall be construed to prevent a Party taking non-discriminatory measures that limit participation in the partnership or management of firms supplying professional services to natural persons licensed to supply such services.]

[AU/CO/IL/IS/NO/US propose; HK considering: 7. Joint venture requirements

No Party may require a joint venture **[CH/KR oppose: or joint operation [AU propose:⁴]]** as a condition for the supply of a professional service **[US propose:⁵].]**

[AU/CH/CO propose; NO/US considering: 8. Economic Needs Tests

No Party may adopt or maintain discriminatory economic needs tests, including labour market tests, as a requirement for the supply of a professional service⁶ **[CH propose; AU/CO oppose: for categories described in a Party's schedule of specific commitments].]**

[AU/CO/EU/MX/NO propose; PE considering: 9. Business names

Subject to its laws and regulations, each Party shall permit professional service suppliers of any other Party to use the business names under which they ordinarily trade in the territory of the other Party **[PE oppose: [and] [JP propose: or] otherwise ensure that the use of business names is not unduly restricted].]**

[AU propose; JP oppose: 10. Lawyers Fly-in, Fly-out⁷

- (a) Where commitments are undertaken for the supply of legal services as described in Article I-1:2(a) (*Mode 1*) for foreign law, a Party shall allow entry and temporary stay on a fly-in, fly-out basis without requiring the service supplier to establish or maintain a representative office or any form of commercial presence, or to be resident or domiciled in its territory, or to gain admission or otherwise qualify as a local practitioner, or to register in the Party.
- (b) Where commitments are undertaken for the supply of legal services as described in Article I-1:2(a) (*Mode 1*) for international law, a Party shall allow entry and temporary stay on a fly-in, fly-out basis without requiring the service supplier to establish or maintain a representative office or any form of commercial presence, or to be resident or domiciled in its territory, or to gain admission or otherwise qualify as a local practitioner, or to register in the Party.
- (c) The period of stay shall not exceed 90 days in any 12 month period.]

⁴ **[AU propose; CO considering:** Joint operation refers to a foreign service supplier providing a service with or through a local entity.]

⁵**[US propose:** Nothing in this paragraph shall be construed to prevent authorities of a Party from requiring supervision by a professional licensed only by those authorities of another Party, where it permits such persons to supply services.]

⁶**[AU propose:** Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to professional services and service suppliers of any other Party within the meaning of Article I: 4.]

⁷**[AU propose:** Fly-in, fly-out or temporary practice refers to an approach, either through explicit regulation or otherwise, that allows foreign lawyers to enter and provide legal services on foreign law and/or international law on a temporary basis without any registration in the Party.]

Part II – Trade in Professional Services

11. *Encouraging Recognition*

- (a) Each Party shall consult with relevant bodies in its territory (“its relevant bodies”) to seek to identify professional services sectors or sub-sectors where two or more Parties are mutually interested in establishing dialogue on issues related to recognition of professional qualifications, licensing and/or registration.
- (b) Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognising professional qualifications, and facilitating licensing and/or registration procedures.
- (c) Each Party shall encourage its relevant bodies to take into account existing agreements relating to professional services in the development of agreements on recognition of professional qualifications, licensing and registration.
- (d) Each Party may [CA/CL/CO/HK/LI/PE **propose:** encourage its relevant bodies, where feasible, to consider] taking steps to implement a temporary or limited licensing regime, such as project specific licensing or registration, based on the foreign supplier’s home license or recognised professional body membership (without the need for further examination). Such a temporary or limited licensing regime should not operate to prevent a foreign supplier from gaining a local license subsequent to satisfying the necessary local licensing requirements.

12. *Working Party on Professional Services*

- (a) The Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Working Party on Professional Services, comprising representatives of each Party.
- (b) Each Party of the Working Party shall liaise as appropriate to support its relevant professional bodies and regulators in pursuing recognition pursuant to Article I-6 (Recognition) and paragraph 9 (Encouraging Recognition). Such support could include, but is not limited to, providing relevant points of contact, facilitating meetings, and providing information regarding the regulation of professional services within each Party’s respective territory.
- (c) The Working Party shall meet annually, or as agreed by the Parties, to discuss progress towards the objectives in Article I-6 Recognition and paragraph 9. For a meeting to be held, at least two Parties must participate. It is not necessary for representatives of all Parties to participate in order to hold a meeting of the Working Party.
- (d) Decisions of the Working Party shall have effect only in relation to those Parties that participated in the meeting at which the decision was taken, unless:
 - i. otherwise agreed by all Parties; or
 - ii. a Party that did not participate in the meeting requests to be covered by the decision and all Parties originally covered by the decision agree.

CR is still consulting on paragraph 11 and paragraph 12.

Paragraph 12 will need to be considered in relation to horizontal discussions on institutional arrangements.

TR proposes to work on a language for designation of inquiry points in each TiSA Party that will provide information on request of service suppliers of other Parties on areas including, licensing and qualification requirements, the competent authority regarding standards, procedures to obtain or renew any licence or qualification requirements in professional services.