



Trade in Services Agreement (TiSA) Transparency Annex (April 2014)

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Restraint: Without prejudice - Limited distribution - For TiSA participants only

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Description

This is the secret April 2014 draft of the Trade in Services Agreement (TiSA) Transparency Annex, 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 make governments more transparent to global commercial actors, creating obligations to notify and consult with transnational corporations on decisions and measures which may affect their interests.

This text dates from shortly before the 6th round of TiSA negotiations held from 28 April to 2 May 2014 in Geneva, Switzerland.

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Note: Unattributed text is from US Proposal, as revised, December 2013.

Article I-[]: Transparency

(Note: In some cases, these disciplines will need to be modified to reflect sector-specific disciplines negotiated in other provisions and annexes.)

1. Each Party shall ensure its laws, regulations, [procedures] and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.

CH/MX REVISE BASED ON SWISS ALTERNATIVE, ATTACHED

2. **[CL/KR/NO/AU/CR: To the extent possible each Party shall], [CH/IL/MX/TR: Each Party may]:**
 - a. publish in advance any **[CO: draft]** measure referred to in paragraph 1 that it proposes to adopt; and
 - b. provide [interested persons] **(Turkey NOTE: this raises concerns)** and other Parties a reasonable opportunity to comment on such proposed **[KR: draft]** measure.

CH/MX/TR REVISE BASED ON SWISS ALTERNATIVE, ATTACHED

3. With respect to proposed [regulations] **[CR: measures]** of general application of its central level of government respecting any matter covered by this Agreement that are published in accordance with paragraph 2(a), each Party:
 - a. shall publish the proposed [regulation] **[CR: measure]** in a **[HK: single]** official [journal] **[CT/HK/MX: publication]** of national circulation **[CT/HK: and make publically available at no cost]** and shall encourage its distribution through [additional outlets] **[AU/CA/CT/HK/MX: or electronic means];**
 - b. should to the extent possible publish the proposed regulation [not less than 60 days] before the date public comments are due **[AU/HK/NZ: or such other period in advance of that date that provides sufficient time for interested persons to evaluate the proposed regulation and formulate and submit comments];**
 - c. [shall include in the publication] **[NO: shall provide]** **[AU: shall, to the extent possible, include in the publication]** [an explanation of the purpose of and rationale for the proposed regulation; and]
 - d. shall [address] **[AU/CA/HK/IL/JP/NZ: consider]** **[EU: take into account]** comments received during the comment period and **[AU/CA/NZ: is encouraged to]** explain substantive revisions it made to the proposed regulations in its official journal **[HK/IL/MX/AU: to the extent practicable (HK NOTE: only if 'address' used above)].**

[NO: publish them]

[IL/TR NOTE: Para 3 must be soft law]

Note: REVIEW OF FEBRUARY 21, 2014 CONCLUDED AT THIS POINT

4. [If a Party does not provide advance notice and opportunity for comment pursuant to paragraph 3, it shall, to the extent possible, address in writing the reasons therefor.] **[AU: or otherwise notify interested persons the reasons for not doing so]. (Japan - explain concrete procedures) (Turkey – paragraph is unnecessary) (Norway – explain relationship between paragraph 4 and paragraph 3)**
5. With respect to [regulations] **[CR: measures]** of general application adopted by its central level of government respecting any matter covered by this Agreement, each Party:
 - a. shall promptly publish the regulations in a single **[AU: website or]** official journal of national circulation and shall encourage their distribution through [additional outlets] **(Japan – explain, as above) (Turkey – delete);** and
 - b. [shall include in the publication and explanation of the purpose of and rationale for the regulations.] **(Turkey) (Norway – purpose is in proposed regulation; need to discuss alternatives to publication)**
6. Each Party shall, to the extent possible, [allow reasonable time between publication of a final regulation and its effective date.] **(Japan) (Norway – need clarification)**

CR ALTERNATIVE FOR PARAS 5 AND 6, ATTACHED

7. [Each Party shall maintain or establish appropriate mechanisms for responding to inquiries from interested persons regarding its regulations relating to the subject matter of this Agreement.] **(Japan – delete) (Turkey – define interested persons)**

(Some participants asked about provisions of GATS Article III not covered by the proposal of the United States. In this connection we draw participants' attention to the text of GATS Article IIIbis:

“Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.”)

Proposals by Switzerland

As an alternative option to para 1, Switzerland proposes a text based on the following provision from the Agreement on Trade Facilitation (Art. 1. 1. 1, sub para e).

Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them.

Laws, regulations and administrative rulings of general application relating to rules of origin;

As an alternative option to para 2, Switzerland proposes a text based on the following provision from the Agreement on Trade Facilitation (Art. 2. 1. 1).

Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

CR alternative proposal for paragraphs 5 and 6

With respect to measures of general application adopted by its central level of government, respecting any matter covered by this Agreement and upon request, each Party shall provide an explanation of, the objective of and rationale for such measure and allow for adequate time between publication and entry into force of such measure, unless specific legal or practical circumstances dictate otherwise.