



Trade in Services Agreement (TiSA) Domestic Regulation Annex (April 2015)

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Description

This is the secret April 2014 bracketed draft text of the Trade in Services Agreement (TiSA) Annex on Domestic Regulation, 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 restricts the ability of TiSA states to enact regulations which affect the international trade in services, or which are deemed incompatible with the market philosophy underlying TiSA. WikiLeaks has previously published an earlier version of this Annex. The April 2015 text dates from shortly after the 12th round of TiSA negotiations held from 13-17 April 2015 in Geneva, Switzerland.

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TiSA – Annex on Domestic Regulation

Scope & Definitions

[AU/CA/CL/CO/CR/EU/HK/JP/KR/MX/NO/NZ/PA/PE/PK/TW/US propose; TR considering:

1. This Annex applies to measures relating to licensing requirements and procedures, qualification requirements and procedures, **[PA oppose; CA/EU/US considering:** and technical standards,] affecting trade in services with respect to which a Party has undertaken a commitment under Article I-3 or I-4, subject to any terms, limitations, conditions or qualifications set out in its schedule¹ pursuant to Articles II-1 and II-2.

2. Notwithstanding paragraph 1, paragraphs **[NZ propose: 6,] [CH/HK/NZ propose; AU/CL/CO/EU/MX/NO/PE considering: 10]** of this Annex apply to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.]]

[CH/CL/EU/HK/JP/KR/LI/NO/NZ/TR propose; CR/PE/US oppose:

3. For the purposes of this Annex:

- (a) “Licensing requirements” are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service;
- (b) “Licensing procedures” are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements;
- (c) “Qualification requirements” are substantive requirements relating to the competence of a natural person in relation to the supply of a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply that service;
- (d) “Qualification procedures” are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.

[EU/JP/KR/LI considering; CO oppose:

- (e) “Technical standards” are measures that lay down the characteristics of a service or the manner in which it is supplied. Technical standards also include the procedures relating to the compliance with and enforcement of such standards.]]

CO does not object to having a definition for the term “technical standards”, and it intends to propose another definition for the term.

¹ **[US propose; CO/CH/CL/EU/KR considering:** For greater certainty, to the extent that an entry in a Party's schedule does not identify an inconsistency with Article I-3 or I-4, that entry does not modify the scope of this Annex.]

General Provisions

The group has agreed to move the original paragraphs 4 & 5 from the DR Annex to the core text, hence the renumbering of the ensuing paragraphs.

[CO/CH/CL/HK/KR/MX/NZ/PE propose; US/CA oppose:

4. Each Party shall ensure that any **[AU/CO/HK/MX/PE propose: measures relating to]** licensing requirements and procedures, qualification requirements and procedures, and technical standards it applies comply with the criteria outlined in subparagraphs 4(a), (b) and (c) of GATS Article VI. In determining whether a Party is in conformity with the obligation under this paragraph, account shall be taken of international standards of relevant international organizations² applied by that Party.]

JP/MX prefer spelling out the exact text of subparagraphs 4(a), (b) and (c) of GATS Article VI rather than making reference to them.

EU prefers spelling out the exact criteria rather than making reference to subparagraphs 4(a), (b) and (c) of GATS Article VI.

Development and Administration of Measures

[General Principles]

[AU/CA/CH/CL/CO/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PA/PE/TR/TW/US propose; UY considering:

5. Where a Party maintains measures **[IL oppose: relating to licensing requirements and procedures, qualification requirements and procedures [CA/US oppose; EU considering:, and technical standards] [US oppose: which require authorization for the supply of a service] [CA/CR/IL propose: within the scope of this Annex],** the Party shall:]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (a) ensure that such measures are based on objective and transparent criteria³ and **[CA oppose; IL considering: related to the objectives of the measure at issue and to the service being regulated];]**

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/KR/LI/MX/NO/NZ/PA/PE/TR/TW propose; JP considering:

² The term “relevant international organisations” refers to international bodies whose membership is open to all Parties of TiSA.

³ **[US propose:** Parties understand that objective and transparent criteria may include, inter alia, criteria such as competence, ability to supply a service, or potential health or environmental impacts of an authorisation decision, and that competent authorities may assess the weight to be given to such criteria.]

- (b) ensure that the procedures used by, and the related decisions of, [CH **oppose:** any] competent [CH **oppose:** authority] [CH **propose:** authorities] are impartial with respect to all applicants. [HK **oppose:** The] [HK **propose:**, and that the] competent authority should reach its decisions in an independent manner;]

US alt. proposal for subparagraph 5(b)

[US **propose;** TR **oppose;** CA/PK **considering:**

- (b) ensure that competent authorities shall be separate from and not accountable to service suppliers that they regulate;]

[CH/CL/CO/CR/EU/HK/KR/LI/MX/NO/NZ/TR/TW **propose;** PA/US **oppose;** PE/PK **considering:**

- (c) ensure that the procedures do not in themselves unduly impede fulfilment of requirements;

[AU/CA/CH/CL/CO/EU/HK/IL/IS/JP/MX/NO/NZ/PA/PE/TR/TW/US **propose:**

- (d) provide for [CA/PA **oppose;** PE **considering:** adequate] procedures to verify the competence of [CR/TW/US **oppose;** CA/PE **considering:** service suppliers] [AU/CA/CR/EU/JP/TW/US **propose;** CH/PA/TR **oppose:** professionals] of any other Party;]

Alt. proposal from the Chair of the Apr 2015 round for subparagraph 5(d)

- (d) provide adequate procedure to verify the competence or ability to supply a service of service suppliers [US **oppose:** of any other Party].

[CH/CL/HK/JP/MX/NZ **propose;** CA/CO/CR/EU/IL/NO/PE/US/TR **oppose:**

- (e) [JP/KR/NZ **propose;** MX **oppose;** CL/CH/HK **considering:** to the extent practicable] provide opportunities for comment on relevant regulations before they enter into force, to the extent as foreseen by their relevant practices and procedures.]

The group will review subparagraph 5(e) in light of the development of the Transparency Annex.

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW **propose;** PA/US **considering:**

- (f) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application [US **considering:**, a Party requires in order to obtain authorisation for the supply of a service⁴];]

⁴ [US **propose:** For greater certainty, a Party may require multiple applications where a service is within the substantive competence or territorial jurisdiction of multiple competent authorities.]

[Authorization]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

6. Where authorisation is required for the supply of a service, the competent authorities of a Party shall:

[Requirements for Applications and Examinations]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (a) to the extent practicable, permit an applicant to submit an application at any time;]

[AU/CA/CH/CL/CO/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (b) allow a reasonable period for the submission of an application where specific time periods for applications exist;]

[AU/CA/CH/CL/CO/EU/HK/IL/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (c) **[TR propose; AU/CA/CL/CO/EU/HK/IL/JP/NZ/PE/TW/US oppose; CH/LI/MX/NO considering:** to the extent practicable] where examinations are required, schedule such examinations at reasonably frequent intervals;] **[IL/KR/US propose; AU/CA/CO/EU/JP/LI/MX/NO/PE/TW considering:** and provide a reasonable period of time to enable interested persons to request to take the examination;]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/JP/KR/MX/NO/NZ/TR/US propose:

- (d) **AU/CL/CO/EU/HK/IL/KR/MX/NO/NZ/US oppose; CH considering:** to the extent practicable] **[US oppose:** endeavour to] **[CR/US propose; EU oppose:** where the authority deems appropriate] accept applications in electronic format **[IL/US oppose:** under the equivalent conditions of authenticity as paper submissions;] **[CR/IL/US propose:** in compliance with legal requirements with respect to authentication;]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/JP/KR/MX/NO/NZ/PE/TR/TW/US propose:

- (e) **[EU/IL/JP/NO propose; CO/HK/MX/PE oppose; CH considering:** to the extent practicable] **[AU/CA/CR/HK/KR/PE/TR/TW/US propose; CH/CO oppose; CL/NZ considering:** where the authority deems appropriate,] accept **[CA/EU/IL/JP/US oppose:** authenticated] copies **[CA/CO/EU/IL/JP/TW/US propose; AU/PE considering:** of documents as authenticated in accordance with its domestic law] in place of original documents **[CA/IL/US oppose:** to the extent its domestic law permits;]

[Setting of Fees]

[AU/CA/CH/CL/CO/EU/HK/IL/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (f) ensure that the **[CA/CL/EU/PE/US oppose:** related] **[AU/CA/CO/CR/EU/JP/LI/TW/US propose; MX/PE considering:** authorization] fees⁵ **[AU/HK oppose:** charged by the

⁵ [Authorization] [F][f]ees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

competent authority] are reasonable **[CO/CR/IL/JP/PA/PE/US oppose:** and are determined with regard to the administrative costs involved, if applicable;] **[PE propose:**, cost-oriented,] **[AU/CA/CO/CR/IL/JP/PE/TW/US propose;** **EU considering:**, transparent and do not in themselves restrict the supply of the relevant service.]

[Processing of Applications]

[AU/CH/CL/CO/EU/HK/JP/KR/MX/NO/NZ/TR/TW/US propose:

- (g) **[AU/EU/IL/JP/KR/US/NO propose;** **HK/MX/NZ oppose;** **CH/CL considering:** to the extent practicable] **[TR propose:** endeavour to establish a normal] **[US oppose:** indicate the **[IL propose:** approximate]] **[US propose;** **EU considering:** establish an indicative] timeframe for processing of an application as reference for the applicant;]

[AU/CA/CH/CL/CO/EU/HK/IL/JP/KR/MX/NO/NZ/PE/TR/TW propose; **US considering:**

- (h) **[US propose;** **AU/IL/NO/TR considering;** **CA/CH/EU/HK oppose:** to the extent practicable] initiate the processing of an application without undue delay;]

[AU/CH/CL/CO/EU/HK/IL/IS/JP/KR/NO/NZ/TR propose:

- (i) ensure that the processing of an application including reaching a final decision, is completed within a reasonable timeframe from the submission of a complete application;] **[CA/CR/MX/PE/US propose:** within a reasonable period of time after the submission of an application considered complete under its own law and regulation, inform the applicant of the decision about the application;]

[Informing Applicants of Status of Applications]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PA/PE/PK/TR/TW/US propose:

- (j) at the request of the applicant, provide without undue delay information concerning the status of the application;]

[AU/CA/CH/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (k) within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant **[CR/JP/KR/IL/PE/TW propose:** to the extent practicable] in writing, including in electronic format, of the decision concerning the application;]

[CH/CL/CO/HK/NO/NZ/MX/TR propose:

- (l) **[AU/JP/KR/PE/TR/US/IL propose;** **HK/EU/MX/NZ oppose;** **CH/CL considering:** to the extent practicable] **[PE/US oppose:** in the case of an incomplete application, **[CO/EU/IL oppose:** at the request of the applicant,] identify the additional information that is required to complete the application, and provide the opportunity for the applicant

to **[PE oppose: remedy deficiencies]** **[CH propose: rectify formal deficiencies]** within a reasonable timeframe] **[AU/CA/PE/US propose: provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required];]**

[CH/CL/CO/EU/HK/MX/NO/NZ/TR propose:

- (m) **[JP/KR/US propose; CH/CL/HK/MX/NO/NZ considering:** to the extent practicable] inform the applicant in writing **[MX/TR propose: and/or in electronic format]** and without undue delay in case of rejection of an application;]

[AU/CH/CL/CO/EU/HK/LI/MX/NO/NZ/TR/IL propose:

- (n) **[JP/KR/US/NO propose; CH/CL/HK/IL/MX/NZ considering:** to the extent practicable] upon request, provide reasons for rejection of the application **[TR oppose: and the established procedures, including timeframe for appeal and resubmission of an application]** **[US propose: if an application is rejected, inform the applicant of the reason for rejection, either directly or on request as appropriate]; and]**

[Entry into Effect of Authorization]

[AU/CH/CL/CO/CR/EU/HK/JP/KR/LI/MX/NO/NZ/TW propose; CA considering:

- (o) ensure that **[EU/US oppose: a licence or]** authorization, once granted, enters into effect without undue delay in accordance with the terms and conditions specified therein.] **[TR propose; CO oppose: ensure that once qualification requirements and licensing requirements have been fulfilled and the licence or the authorization granted, a service supplier is allowed to supply the service without undue delay in accordance with the terms and conditions specified therein.]**

[AU/CH/CL/CO/EU/HK/KR/MX/NO/NZ/PE/TW propose:

7. Parties **[PA/US oppose: are encouraged to ensure]** **[PA/US propose: should encourage]** **[CA/EU/NO/PA/US oppose: maximum]** transparency of relevant processes relating to the development and application of domestic and international standards **[PA/US oppose; PE considering: by non-governmental bodies].]**

[AU/CA/CH/CL/CO/EU/HK/IS/JP/KR/LI/MX/NO/NZ/PE/TR/TW propose:

Transparency

8. **[CH/CR propose; US oppose:** In the application of Article-TRANSPARENCY,] Each Party shall ensure that all measures of general application relating to licensing requirements and procedures, qualification requirements and procedures **[CA/US oppose:, and technical standards]** **[CH propose:, as well as detailed information regarding these measures]** are published promptly through printed or electronic means.] **[US oppose; CR considering:** The published information shall include, inter alia, the following, where applicable] **[CH propose; US considering:** In the application of Article - TRANSPARENCY, published measures of general application relating to licensing requirements and

procedures, qualification requirements and procedures (or published materials explaining such measures) shall include the following information, where it exists]:

- (a) **[CR/US considering:** requirements **[US propose:** and procedures (including fees)] for authorization, including for application and **[CR/US oppose:** periodic] renewal of such authorization, and generally applicable terms and conditions of such authorization;]
- (b) **[CR/US considering:** contact information of relevant competent authorities;]
- (c) **[CR considering:** licensing requirements and procedures, including requirements, criteria and procedures for application and renewal, and applicable fees;]
- (d) **[CR considering:** qualification requirements and procedures, including requirements, criteria and procedures for application and renewal, procedures for verification and assessment of qualifications, and applicable fees;]

US propose combining subparagraphs 8(c) and 8(d) and suggest examining the consistency between paragraph 1 and the chapeau of paragraph 6.

- (e) **[CA/US oppose; CR considering:** technical standards;]
- (f) **[CR/US considering:** procedures relating to appeals or reviews of decisions concerning applications;]
- (g) **[CR/US considering:** procedures for monitoring or enforcing compliance with the terms and conditions of licences;]
- (h) **[CR/US considering:** how public involvement such as through hearings and opportunity for comment, if made available, is provided for; and]
- (i) **[CR/US considering:** any established timeframe for processing of an application.]]

AU/EU stand ready to consider the horizontal application of paragraph 8 to all sectors irrespective of whether specific commitments have been made.

US alt. proposal for paragraph 8

[US Propose: Where a Party requires authorization for supply of a service, further to [TRANSPARENCY PARA 1], the Party shall provide the information necessary for interested persons to comply with the requirements and procedures for obtaining such authorization. Such requirements and procedures may include:

- (a) fees;
- (b) procedures for verification of the competence of professionals;
- (c) contact information of relevant competent authorities;
- (d) procedures for appeal or review of decisions concerning applications;
- (e) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
- (f) opportunities for public involvement, such as through hearings or comments; or
- (g) timeframes for processing of an application.

[AU/CH/CL/CO/EU/HK/IS/JP/KR/MX/NO/NZ/PA/PE/TW propose; US oppose:

9. Each Party shall, to the extent practicable, publish the measures referred to in paragraph 8 in advance of adoption.]

EU stands ready to consider the horizontal application of paragraph 9 to all sectors irrespective of whether specific commitments have been made.

Enquiries

10. Each Party shall maintain or establish appropriate mechanisms for responding to enquiries from any service suppliers regarding any measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards. [Such enquiries may be addressed through the enquiry and contact points established under Article I-[transparency] of this Agreement or any other mechanisms as appropriate.

Recognizing that TiSA may have a general provision in the core text on contact points, the group will review paragraph 10 in light of the development of the core text.

The group has agreed to move the paragraph on Review of Administrative Decisions to the core text, hence the renumbering of the ensuing paragraph.

[AU/CA/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MX/NO/NZ/PA/PE/PK/TR/TW/US propose:

Review of the Annex

11. If the results of the negotiations related to Article VI (4) of GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.] **[CH propose:** Promptly after the entry into force of the results of the negotiations pursuant to Article VI:4 of the GATS, the Parties shall jointly assess whether those results, or part of them, would improve this Annex, and shall determine whether to incorporate them into this Agreement.

Paragraph 11 is without prejudice to the multilateralization of the disciplines in the DR Annex (to be reviewed, recognizing that the provisions on multilateralization pathways for TiSA are yet to be discussed).

US proposal circulated on 24 April 2014

TiSA - Annex on Domestic Regulation

Proposal by the United States

1. This Annex covers measures relating to licensing requirements and procedures, and qualification requirements and procedures with which a service supplier is required to comply in order to obtain, amend or renew authorization to supply a service. Articles [X, XX, XXX] of this annex shall not apply to:

- (a) Measures in sectors where a Party has not scheduled a commitment on market access in accordance with Article II-1;
- (b) Terms, limitations and conditions on market access, as defined in Article I-3 of this Agreement, that are set out in a Party's schedule in accordance with Article II-1;
- (c) Measures that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in Section A of Part I of each Party's Schedule in accordance with Article II-2(4) of this Agreement;
- (d) Conditions or qualifications on national treatment, as defined in Article I-4, that are set out in a Party's schedule in accordance with Article II-2(1) of this Agreement.

2. Each Party shall ensure that all measures of general application within the scope of this annex affecting trade in services are administered in a reasonable, objective and impartial manner.

3. Where a Party maintains measures within the scope of this annex, the Party shall ensure that its competent authorities:

- (a) to the extent practicable, permit submission of an application at any time;
- (b) where specific time periods for applications exist, allow a reasonable period for the submission of an application;
- (c) where they deem appropriate, accept applications in electronic format in compliance with any legal requirements with respect to authentication;
- (d) at the request of the applicant, provide, without undue delay, information concerning the status of the application;
- (e) to the extent practicable, provide the applicant with the opportunity to correct minor errors and omissions in the application and endeavour to provide guidance on the additional information required;
- (f) to the extent practicable, establish an indicative timeframe for processing of an application;
- (g) where they deem appropriate, accept copies of documents that are authenticated in accordance with its domestic law in place of original documents;
- (h) where examinations are required, schedule such examinations at reasonable intervals and provide a reasonable period of time to enable interested persons to request to take the examination;

- (i) within a reasonable period of time after the submission of an application considered complete under its law and regulation, inform the applicant of the decision about the application; and
 - (j) if an application is rejected, to the extent practicable, inform the applicant of the reason for rejection, either directly or on request as appropriate.
4. Each Party shall ensure that procedures exist to verify the competence of professionals of any other Party.
5. Each Party shall ensure that any authorisation fee charged by the competent authority is reasonable, transparent and does not in itself restrict the supply of the relevant service.
6. If the results of the negotiations related to Article VI(4) of GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.