



Trade in Services Agreement (TiSA) Domestic Regulation Annex (February 2014)

WikiLeaks release: June 3, 2015

Keywords: TiSA, Trade in Services Agreement, WTO, GATS, G20, BCBS, IAIS, IOSCO, FATF, OECD, United States, European Union, Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, Uruguay, draft, bracketed text, negotiating positions, regulation

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Title: Trade in Services Agreement (TiSA) Annex on Domestic Regulation

Date: February 20, 2014

Group: Trade in Services Agreement

Author: Trade in Services Agreement country negotiators

Link: <https://wikileaks.org/tisa/domestic/>

Pages: 12

Description

This is the secret February 2014 bracketed draft of the Trade in Services Agreement (TiSA) Domestic Regulation 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 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.

This text dates from 5th round of TiSA negotiations held from 17-24 February 2014 in Geneva, Switzerland.

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TISA - Annex on Domestic Regulation

[CH/JP/NZ propose:

Scope & Definitions

1. This Annex applies to measures relating to licensing requirements and procedures, and qualification requirements and procedures, and **[CA/US oppose; CO/EU considering: technical standards] [CA/US propose; AU/CH/CL/CR/HK/JP/KR/LI/NO/NZ oppose:** with which a service supplier is required to comply in order **[MX oppose:** to obtain, amend or renew authorization] to supply a service] affecting trade in services. **[CH/CL/HK/MX propose:** Unless otherwise provided for in this Annex, this Annex shall apply to sectors and subsectors where a Party has undertaken specific commitments.] **[CH/TR propose:** This Annex does not apply to measures to the extent that they are subject to scheduling under Articles I-3 (MA) or I-4 (NT).]

[AU/CA/CL/CO/EU/HK/KR/MX/NO/TW/US propose:

1. This Annex applies to measures relating to licensing requirements and procedures, qualification requirements and procedures, **[CA/US oppose; CO/EU considering:** and technical standards,] affecting **[US oppose:** trade in services] **[US propose:** the supply of a service] 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] [inscribed]** in its schedule pursuant to Articles II-1 and II-2.
2. Notwithstanding paragraph 1, paragraphs [X], [XX] ... of this Annex apply to measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.]

[CH propose:

1. This Annex applies to measures by Parties relating to licensing requirements and procedures, qualification requirements and procedures, [and technical standards,] affecting trade in services. This Annex does not apply to measures to the extent that they are subject to scheduling under Articles I-3 or I-4.
2. Except for paragraphs [X], [XX] ... of this Annex, this Annex applies to sectors and subsectors in which a Party has undertaken specific commitments under Article I-3 [or I-4].]

[NZ propose; CH/HK/TR/US oppose:

2. Notwithstanding paragraph 1, [para [X], [XX] ...of] this Annex shall apply to:
- (a) measures in sectors where a Party has made a specific commitment on Market Access, subject to any terms, limitations and conditions set out in that Party's Schedule in accordance with Article II-1; and
 - (b) measures with respect to sectors, sub-sectors or activities where a Party has granted National Treatment, subject to any conditions and qualifications set out in that Party's Schedule in accordance with Article II-2.2.]

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

Subject to the removal of 'to obtain, amend or renew authorization' from Art.1, MX will oppose Art. 3.

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”, but intends to propose another definition for the term.

[AU/CH/CL/CO/EU/HK/IS/MX/NO/NZ propose; US oppose:

General Provisions

4. Parties recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet

[AU/CA/EU/IS/LI/MX/NO/TR/TW propose: public] [CH/HK/JP propose: national] policy objectives. [TR propose: Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service.]]

HK's support for "national" in Art 4 is subject to the adoption of the Marrakesh Agreement explanatory note for the definition of country.

The group will discuss whether Art. 4 should be moved to the preamble of the Agreement.

5. Each Party shall ensure that all measures of general application **[CA propose: within the scope of this Annex]** affecting trade in services are administered in a reasonable, objective and impartial manner.

The group considered moving Art. 5 to the core text of the Agreement, but several participants requested time to reflect on this proposal. The group will also reflect on whether Art. 5 should apply horizontally beyond sectors where specific commitments are undertaken.

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

6. Each Party shall ensure that any 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 organizations¹ applied by that Party.]

EU/JP prefer spelling out the exact criteria rather than making reference to GATS Art. VI.

¹The term “relevant international organisations” refers to international bodies whose membership is open to all Members of the **[US oppose: WTO] [US propose: TISA]**.

Development and Administration of Measures

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

7. Where a Party maintains measures **[EU/IL/NO/US oppose:** relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards which require authorization for the supply of a service] **[CA/CR/EU/IL/NO/US propose:** within the scope of this Annex], the Party shall **[CA/US propose;** **HK/NO oppose:** ensure that its competent authorities:]]

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

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

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

- (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. The competent authority should reach its decisions in an independent manner;]

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

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

US propose: to apply paragraph c horizontally.

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

- (d) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application;]

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

- (e) 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 law and regulation, inform the applicant of the decision about the application;]

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

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

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

- (g) ensure that the **[CA/CL/EU/PE/US oppose: related]** **[AU/CA/CO/CR/EU/JP/LI/TW/US propose; MX/PE considering: authorization]** fees² charged by the competent authority are reasonable **[CO/CR/IL/JP/PA/PE/US oppose: and 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;]**

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

- (h) 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/CA/CH/CL/CO/EU/HK/IL/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

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

- (a) 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;]

²[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.

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

- (b) 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:

- (c) 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:

- (d) 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/MX/NO/NZ/PE/TR/TW propose; US considering:

- (e) **[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/CA/CH/CL/CO/EU/HK/IL/JP/KR/LI/MX/NO/NZ/PE/TR/TW/US propose:

- (f) **[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:

- (g) **[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/CR/IL/JP would consider which flexibility language they would prefer in the beginning of 8(g).
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[AU/CA/CH/CL/CO/CR/EU/HK/IL/JP/KR/MX/NO/NZ/PE/TR/TW/US propose:

- (h) **[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];]

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

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

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

- (j) **[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:

- (k) **[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:

(*k bis*) **[JP/KR/US propose; CH/CL/HK/IL/MX/NO/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]

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

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

The group may review 8(l) in the light of the development of other relevant disciplines of TISA.

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

9. 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

10. **[US oppose: [CH propose:** 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:** 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) **[US considering: requirements [US propose: and procedures (including fees)] for authorization, including for application and [US oppose: periodic] renewal of such authorization, and generally applicable terms and conditions of such authorization;]**
- (b) **[US considering: contact information of relevant competent authorities;]**
- (c) licensing requirements and procedures, including requirements, criteria and procedures for application and renewal, and applicable fees;
- (d) 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 to combine 10(c) and 10(d) and suggest examining the consistency between Article 1 and the chapeau of Article 8.

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

AU/EU stand ready to consider the horizontal application of Art. 10 to all sectors irrespective of whether specific commitments have been made.

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

11. Each Party shall, to the extent practicable, publish the measures referred to in paragraph 10 in advance of adoption.]

EU stands ready to consider the horizontal application of Art. 11 to all sectors irrespective of whether specific commitments have been made.

Enquiries

12. 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.

This article will be reviewed subject to the development of the core text of the Agreement, recognizing that TISA may have a general provision on contact points.

The group has agreed to move Article 13 on Review of Administrative Decisions to the core text, hence the renumbering of the ensuing paragraph.

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

Review of the Annex

13. 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.]

Art.13 is without prejudice to the multilateralization of the disciplines in this Annex (to be reviewed, recognizing that the provisions on multilateralization pathways for TISA are yet to be discussed).

CH draw the Group's the attention to some possible redactional improvements to this article, to be made at an appropriate time.

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.