



Trade in Services Agreement (TiSA) Japan's Categorical Analysis of Committed Related Provisions in TiSA

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Description

This is a confidential February 2015 presentation document circulated by Japanese negotiators to the other Trade in Services Agreement (TiSA) Parties, setting out the types of market access commitments that each Party is likely to have. The presentation is part of correspondence in connection with the ongoing negotiation of the TiSA, to which Japan is a party. TiSA is an international treaty 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.

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Categorical Analysis of Committed Related Provisions (CRPs) in TiSA

LIMITED

Category A

- These CRPs specify Party's Scheduling method.
- Normally, these CRPs do not require legislative changes.
- Cf. A. Standstill of GATS Understanding on commitments in financial services

Category B

- These CRPs restrict a Party from adopting and maintaining particular measures in terms of MA and NT.
- Some Parties can **NOT** comply with these CRPs.
- Sometimes, these CRPs require legislative changes.

Examples of the two categories in CRPs

Category A **Annex on [International] Maritime Transport Services [and other Maritime Services]**

2. Cross-border supply

Subject to any terms, limitations, conditions, and qualifications set out in its Schedule, each Party shall permit cross-border supply of feeder services and maritime offshore services.

Category B **Annex on Professional Services**

3. Cross-border supply of Professional Services

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)]).]

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.

LIMITED

Distribution of the two categories in CRPs

| | Category A | Category B |
|--|---------------|---------------|
| Annex on Movement of Natural Persons | 9 | 2 |
| Annex on Financial Services | 2 | 0 |
| Annex on International Maritime Transport Services | 4 | 4 |
| Annex on Telecommunications Services | 1 | 2 |
| Annex on Professional Services | 2 | 6 |
| Annex on Road Freight Transport and Related Logistics Services | 0 | 3 |
| Annex on Environmental Services | 3 | 2 |
| Annex on Energy Related Services | 2 | 2 |
| Total | 23 | 21 |

Note1:

There are no CRPs in Annexes on Air Transport Services, Government Procurement, Domestic Regulation, Electronic Commerce, Facilitation of Patient Mobility and Delivery Services.

Note2:

Counts of CRPs may differ over the definitions of CRPs. (disclaimer)

Concerns related to CRPs

1. Are the sectors in which Annexes are not proposed less important?

- If Annexes provide CRPs, the sectors in which Annexes are established achieve a high level of ambition.
- However, the sectors without Annexes are also important and should be liberalized. Among them are distribution and audio-visual services sectors.

2. Do “Category B CRPs” affect the horizontal commitments?

- If so, a CRP in a specific sector even affects other services sectors. For example, in the country that maintains a horizontal foreign equity participation limitation (e.g. 50%) to all services sectors, Section 5 of Annex on Professional Services requires the country to lift the limitation in not only professional services, but also all services sectors including financial services and telecommunications services. (too powerful).
- If not, a CRP in a specific sector allows horizontal inconsistent measures. For example, Section 5 of Annex on Professional Services prohibits a country from adopting and maintaining a foreign capital participation limitation focusing on the professional services sector, but somehow allow the country to introduce a broad horizontal limitation. (a loophole)

3. Don't “Category B CRPs” allow legitimate public policy?

- In some case, CRPs restrict a country from adopting and maintaining a legitimate public policy. For example, a Local Presence requirement often is put in place in order to ensure consumer protection.
- Legitimate public policies differ across countries, and cannot be fully covered by ⁴exception articles. (MA negotiations matter.)