



Trade in Services Agreement (TiSA) Transparency Annex (January 2015)

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Author: Trade in Services Agreement country negotiators

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Description

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

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Article I-[]: Transparency

1. Each Party shall ensure that 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 propose:** Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.]
2. **[US/AU/CA/CL/CO/TW/JP/KR/NO/CR/MX/PE/NZ propose; CH/HK/IL/TR oppose:** To the extent possible **[AU/MX propose:** and in a manner consistent with its domestic law and legal system] each Party shall, **[CH/EU/HK/IL/TR/PA/IS propose:** Each Party may]:
 - a. publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
 - b. **[TR oppose:** provide **[NZ propose:** where appropriate,] interested persons and other Parties a reasonable opportunity to comment on such proposed measure.]

FOOTNOTE [NZ propose: A Party may, consistent with its domestic legal system, comply with its obligations relating to proposed regulations in this Article by publishing a policy proposal, discussion document, summary of regulation or other such document that contains sufficient detail to adequately inform interested persons and other Parties about whether and how their trade interests might be affected.]

ALTERNATIVE FOOTNOTE LANGUAGE FOR CONSIDERATION

A party may, consistent with its domestic legal system, comply with its obligations in this Article relating to publication of measures referred to in paragraph 1 that it proposes to adopt, by publishing information (for example in a policy proposal, discussion document, summary of regulation or other such document) that contains sufficient detail to adequately inform interested persons and other Parties about whether and how their trade interests might be significantly affected.

3. With respect to proposed regulations of general application **[EU/HK/CL oppose:** 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 in a **[CO/EU/IL/CR oppose:** single] official publication **[EU oppose:** of national circulation] or an official website **[US propose:** preferably consolidated into a single portal];

This is subject to additional input from delegates on whether to specify that publication or website should be at “no cost”

3. **[EU opposes entire paragraph: TR considering opposing:]** should to the extent possible publish the proposed regulation **[CH/CR/CO/JP/HK/IL/KR/MX/PA oppose:** not less than 60 days] before

the date public comments are due [CH/HK/MX/CR propose: in accordance with its domestic law] [AU/NZ/CL/PE/US propose: 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. [NO propose: shall provide] [AU/CL/CR/US/NZ/PE/CA/TW propose: shall, to the extent possible, include in the publication] an explanation of the purpose of and rationale for the proposed regulation; and

d. shall [US propose: address] [AU/CA/CL/CO/CR/EU/HK/IS/IL/MX/NO/JP/NZ/PE propose: consider] comments received during the comment period and [AU/CA/NZ/CL/CR/PE propose: is encouraged to] explain substantive revisions it made to the proposed regulations [CR/CL/MX propose: on an official website or] in its official journal [CR/HK/AU propose: to the extent practicable] [US propose; NO/CR propose: explain substantive revisions it made to the proposed regulations in its official journal] [NO propose: publish them]. **IL/TR assert that Para 3 must be soft law**

4. [AU/US/NZ propose; TR/CR propose: 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/CA propose; NZ considering; PE: propose: or otherwise notify interested persons the reasons for not doing so.]
5. [US/KR/CA/CO/NZ/AU/NO/IS/LI/MX/CH propose: With respect to [US/CO/NZ/KR/AU/CR/CT/CA propose; EU/IS propose: regulations] [TR/CH/PE propose: measures] of general application adopted [CL/CO/EU/HK/CH propose: by its central level of government] respecting any matter covered by this Agreement, each Party:

- a. shall promptly publish the regulations in a [US propose; CL/TR/CO/CR/IL/PA/EU propose: single] official [AU/MX/CL/TR/CA/NZ/CO/NO/IS/LI/CR/LI/TW/PA propose: website or] [US propose; HK/CO propose: journal] [HK/CO/AU/CR/NO/IS/LI/TW/PA propose: publication] of [HK: considering: national] circulation [EU propose: of national circulation] [TR/CR/IL propose: and shall encourage their distribution through additional outlets]; and

Chair (25 Sept2014) Proposed for consideration: “shall promptly publish the [regulations] in an official outlet/media available in the jurisdiction where the [regulation] applies, such as a website or a publication, including a journal”

CR: suggests subparagraph 5.A to be modified in accordance with the discussion of subparagraph 3.A.

HK propose: to review the reference to “national” in conjunction with the adoption of the Marrakesh Agreement explanatory note for the definition of “country” in the core text.

- b. [US/CL/MX/NZ/AU/LI/CA propose; TR/CR/IL/PA propose: shall [CL/MX/CR/NO/PA/CO propose: endeavor, where appropriate, to] include [US/CR propose: in] [NZ/LI propose: with] the publication [HK/LI/NO/LI propose: or otherwise publish] an explanation [US propose; CR/CO propose: of the purpose of and rationale] for the regulations.]]

6. **[US/IL/KR/AU/NZ/MX/EU/PE/CH/CA/NO propose; TR considering; CR/HK/PA oppose:** Each Party shall, to the extent possible, **[CH oppose:** allow reasonable time between publication of a **[US/AU propose; MX/EU/CH oppose:** final] regulation and its effective date.] **[CH propose:** publish its [regulations] prior to the time of their entry into force.]
7. **[US/CO/MX/AU/JP/NZ/KR/CA/IL/NO/CR/LI/IS/CL/TW/PE/HK propose:** Each Party shall maintain or establish appropriate mechanisms for responding **[PE propose:** to the extent possible] to enquiries from **[CH propose:** service suppliers] **[PE/TR/EU/CH oppose:** interested persons] regarding its **[EU oppose:** regulations] relating to the subject matter of this Agreement.]
8. **[CH propose:** Nothing in this Annex shall require a Party to provide information or to communicate in a language other than its language or languages, at central or at sub-federal level.]

NOTE: THE FOLLOWING TWO PROPOSALS HAVE BEEN REMOVED FOR DISCUSSION IN CONNECTION WITH THE TISA 'CORE TEXT'

IL/CR/AU/US/EU/MX/HK/KR/TR/PA/PE/CO: need to further consider GATS Article III*bis*: “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.”)

[AU/US propose:

Article I-[]: Judicial, Arbitral or Administrative Review

Each Party shall maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services. Where such procedures are not independent of the agency entrusted with the administrative decision concerned, the Party shall ensure that the procedures in fact provide for an objective and impartial review.]

NOTE: Similar language was discussed in connection with paragraph 13 of the Domestic Regulations text, and participants agreed to move it to the core text.