

# Trade in Services Agreement (TiSA) Annex on Movement of Natural Persons (April 2015)

WikiLeaks release: July 1, 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, travel, natural persons, movement, immigration, borders

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Title: Trade in Services Agreement (TiSA) Annex on Movement of Natural

Persons

**Date:** April 8, 2015

**Organisation:** Trade in Services Agreement

**Author:** Trade in Services Agreement country negotiators **Link:** https://wikileaks.org/tisa/natural-persons/04-2015

Pages: 8

#### **Description**

This is the secret April 2015 bracketed draft text of the Trade in Services Agreement (TiSA) Annex on Movement of Natural Persons, 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 harmonize limitations on the ability of national governments to restrict the ingress, movement or egress within their territory of employees, contractors or agents of services companies. An earlier version of this Annex was previously published by WikiLeaks. This April 2015 text dates from the 12th round of TiSA negotiations held 13-17 April 2015 in Geneva, Switzerland.



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#### **ANNEX ON MOVEMENT OF NATURAL PERSONS**

AU/CO/CR/EU/HK/IS/JP/LI/KR/MX/NZ/PA/TW oppose the use of the term "work".

# Article 1. [CA/EU/IS/NO propose: Scope] [CH/TR propose: Scope and General Provisions]

- 1. This Annex applies to measures affecting natural persons who are service suppliers of a Party, and natural persons of a Party who are employed by a service supplier of a Party, in respect of the supply of a service], [CA/CR/EU/NO/PA propose; AU/JP/TR oppose: as set out in each Party's schedule of specific commitments].
- 2. The Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Party, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.

[AU/CA/CH/CL/CO/CR/HK/LI/JP/KR/TR/MX/NZ/PA propose: 3.] [EU/PE/NO/oppose; IS considering: In accordance with [Parts III and IV] of the Agreement, Parties may negotiate specific commitments applying to the movement of all categories of natural persons supplying services under the Agreement.] Natural persons covered by a specific commitment shall be allowed to supply the service in accordance with the terms of that commitment].

**CA/NO/US:** to be read/decided upon/with Article 4.1

4. The Agreement shall not prevent a Party from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Party under [PE propose: this Agreement] [PE oppose: the terms of a specific commitment<sup>1</sup>.]

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<sup>&</sup>lt;sup>1</sup> The sole fact of requiring a visa for natural persons of certain Parties and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

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[TR propose: Article 2. General Obligations

**AU/EU/CA/CH/CL/CO/CR/KR/LI/MX/NO/NZ/TW/US/IL:** Do we need this para at all?

The Parties have agreed to [EU/HK/IS/JP oppose: the principles and procedures] [EU/HK/IS/JP/NO propose: this Annex] to ensure that all measures [AU/CA/EU/PE oppose: relating to] [AU/CA/EU/IS/NO propose: affecting] related to or concerning the entry and temporary stay [AU/CR/EU/HK/IL/IS/KR/LI/JP/MX/TW oppose: and work] [EU/HK oppose: of service providers] [EU/HK/IS/NO propose: for the purpose of supplying services] [EU/CA/IS oppose: are administered in a reasonable, objective and impartial manner] and [AU oppose: that such measures] are not applied in a manner [EU oppose: which would constitute a means of arbitrary or unjustifiable discrimination [AU/CA propose: between Parties where like conditions prevail] or a disguised restriction on trade in services] [EU/IS/NO propose: as to nullify or impair the benefits accruing to any Party under the terms of a specific commitment.]

#### **Alternative Article 2. General Obligations**

The Parties agreed to ensure that measures relating to entry, temporary stay and work of service providers are administered in a reasonable, objective and transparent manner and clearly related to the objectives of the measure at issue. The application and enforcement of measures governing the granting of entry to service providers shall be accomplished expeditiously so as to avoid unduly impairing or delaying the conduct of trade in services.

### [[EU oppose: AU/CA/CH/CL/CO/CR/HK/JP/KR/MX/NZ/PA/PE/PK/TR/TW/US propose: Article 3. Transparency]

- 1. Each Party shall make publicly available [**TR propose:** all] information on the requirements [**JP/TR propose:** and procedures] for entry and temporary stay including relevant forms and documents, [**PA oppose:** and explanatory materials] that will enable interested persons of the other Parties to become acquainted with applicable requirements [**JP/TR propose:** and procedures.]
- 2. The information referred to in paragraph 1 shall include, [NZ propose; CH oppose: where applicable], the following information:
  - a) categories of **[NZ propose:** temporary entry, including relevant visa information] visa **[CR oppose; PE/MX considering:** work] permits or any similar **[PE propose:** entry and temporary stay] **[PE oppose:** type of document granting] authorization;
  - b) documentation required and conditions to be met;

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- c) method of filing [PA oppose: and details on where to file [NZ/AU/CA/TW oppose: <sup>2</sup>];
- d) application fees [CR/PA considering: and [NZ propose: indicative] typical processing time];
- e) the maximum period of validity of [] for the categories described in subparagraph (a);
- f) conditions for [AU/IS/NO/NZ/PE/PA propose; CH oppose: any available] extensions [PE propose: or renewal];
- g) [NZ oppose: [CA oppose: rules] [CA propose: conditions and procedures regarding accompanying dependents];
- h) available review and/or [PE oppose; PA considering: appeal] procedures;
- i) [CA/CO/CR/PA/IL/PE/NZ oppose: details of relevant contact points established in accordance with Article 7];
- j) reference to relevant immigration laws of general application.]

The group will look whether to have where applicable in the chapeau or any available where required.

[AU/CL/CO/CR/MX/PA/PE/TW/IL/KR/NZ/JP/HK propose; PK considering; CH oppose: The sole fact that a Party grants [CA propose: temporary entry and stay] [AU/CH/CL/CO/CR/HK/IL/IS/JP/KR/MX/NZ/NO/PA/PE/TR/TW propose: entry and temporary stay] to a natural person of another Party shall not be construed to exempt that person from meeting any applicable licensing or other requirements, including any mandatory codes of conduct, to practice a profession [TR propose: according to the specific laws and regulations in force in the territory of that Party,] [TR oppose: or otherwise engage in business activities].] [TR propose: These requirements shall not be used as a means of avoiding the Party's commitments or obligations under the Agreement.]

## [CO/AU/NO/TW/IS/JP/EU propose: KR/PE/MX/CH/TR/PK considering: Article 4. Scheduling of Entry and Temporary Stay of Natural Persons

In scheduling commitments pursuant to Articles 1-3 (Market Access) and 1-4 (National Treatment) of the Agreement, each Party shall set out in its schedule the commitments it undertakes for the entry and temporary stay in its territory of [EU propose: the categories of the] natural persons of another Party. These schedules shall specify the terms, limitations and conditions governing those commitments [for each category [EU oppose: of service supplier]], including the period of stay and [JP oppose; EU considering: any possibility for multiple

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<sup>&</sup>lt;sup>2</sup> Information on where to file [may refer] [refers] to consular offices, external service providers mandated by consular authorities, offices located at the external border, or online filing options where available.

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entry or] extension of stay, any numerical quotas and any requirements of an economic needs test.]

**[EU propose:** The conditions and limitations related to the categories and period of stay referred to in paragraph 1 shall be scheduled in Part I.]

**CH propose; EU oppose:** Negotiating Note: This article is not seen as a substitute for Article 3 of GATS Annex.

#### [CO/NO/CL/EU propose; JP considering; CH oppose: Article 5. Specific Commitments

- 1. Each Party [JP propose: shall undertake] undertakes market access and national treatment commitments for [EU/CO propose: at least] [intra-corporate transferees, business visitors<sup>3</sup>] and categories delinked from commercial presence: [contractual service suppliers and independent professionals<sup>1</sup>.]
- 2. For every sector committed at least for the supply of a service as described in Article I-1:2 (c) [Mode 3], subject to any terms, limitations, conditions and qualifications that the Party sets out in its Schedule, each Party allows entry and temporary stay of [intra-corporate transferees<sup>1</sup>]. [CO/NO considering: A minimal period of such entry and temporary stay shall be [CO considering: at least for up to 1 year.]] [JP propose: Parties shall not maintain or adopt Economic Needs Tests for [intra-corporate transferees<sup>1</sup>].]
- 3. Subject to any terms, limitations, conditions and qualifications that the Party sets out in its Schedule, each Party allows temporary entry of [Business Visitors<sup>1</sup>] for a period of stay **[IS oppose; CO considering:** at least up to a maximum of 90 days]. **[JP propose:** Parties shall not maintain or adopt Economic Needs Tests for [Business Visitors<sup>1</sup>].]
- 4. Subject to any terms, limitations, conditions and qualifications that the Party sets out in its Schedule, Parties allow entry and temporary stay of [contractual service suppliers and independent professionals<sup>1</sup>] [CO considering: for a minimal period up to [NO considering: 6 months in any 12 month period or] for the duration of the contract, whichever is less.] [CO/CL/JP propose; EU oppose: Parties shall not maintain or adopt economic need tests for contractual service suppliers and independent professionals.]

<sup>3</sup> Final wording subject to further discussion, including on the cross-reference to categories in the Australian submission on the temporary entry categories.

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[EU oppose: [TR/PE/PK propose: Article 6. Entry and Temporary Stay Related [TW oppose: Requirements] [PE considering: and Procedures] [AU propose: 6. Immigration Formalities]

Some Parties request coherence for the relevant paragraphs of this Article with Domestic Regulation disciplines.

Canada proposes to use requirements related to temporary entry of natural persons instead of visas, work permits and procedures throughout the article.

#### [TR/CH/PK propose: 1. Parties shall;

(i) [JP propose: in accordance with domestic laws and regulations] ensure transparency, efficiency, [IL/PE/MX oppose: due and fair process] in [CA oppose: [TW oppose: visa and] [JP propose: where applicable] [CR oppose: work permit] [CA oppose: related] requirements, procedures [CA/CR propose; MX/PE/CO considering: related to the temporary entry of natural persons supplying services] [IL/PE oppose: and decisions.]

[AU/CA/HK/IS/NO/NZ/MX/KR/IL/CR/PE/PA oppose: (ii) abstain from implementing overly burdensome<sup>4</sup> procedures [JP oppose: and requiring documents which would breach privacy of individuals and confidentiality of business information<sup>5</sup>.]]]

As an alternative for (ii) **TR propose:** Documents requested for granting visa, work permit and any similar type of document must be relevant and not excessive in relation to the purpose for which they are collected.

[TR/CH/PE/NZ propose; IL/PA oppose: 2. Fees for processing applications for [CA propose: temporary entry and stay] [AU/CH/CL/CO/IL/IS/JP/KR/MX/NZ/NO/TW/PE propose: entry and temporary stay] [CH/TR propose: and work] for the service providers shall be reasonable and [CH propose: shall not exceed] [CH oppose: determined with regard to] the administrative costs involved.]

[AU/CL/CA/JP/CO/MX/CR/PA/PK propose; IL oppose: 2. Each Party shall ensure that fees charged by competent authorities for the processing of applications for [CA propose:

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<sup>&</sup>lt;sup>4</sup> The examples of overly burdensome procedures include but are not limited to excessive number of documents required, **[CR/JP oppose:** absence of on-line application systems], compulsory face-to-face interviews for every individual application, absence of the possibility to apply from home/host/third country, language tests, costs charged for information about the status of application. Applications shall not be rejected due to minor formal breaches.

<sup>&</sup>lt;sup>5</sup> For example, for contractual service providers and independent professionals, the related service contract, as well as related documents or agreement, for which the service provider is seeking temporary access shall not be regarded as confidential information.

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temporary entry and stay] [AU/CH/CL/CO/IL/IS/JP/KR/MX/NZ/NO/TW propose: entry and temporary stay] [CR/PA oppose: are reasonable,] [CH oppose: in that they]] [CH propose: and] [PK considering: do not unduly impair or delay trade in services under this Agreement].]

[TR/CL/CH propose; IL oppose: 3. [AU/CL/PE/PA/CO propose: Complete] Applications [JP propose: for visa and where applicable work permit] [CO/CA propose: for the grant of entry and temporary stay] shall be processed [AU/CL oppose: promptly and expeditiously] [AU/CL/CR/PA/TW/CO/CA/KR propose: as expeditiously as possible] [CR/TW propose: in accordance with existing laws and regulations]. [TR/PK propose: The competent authorities of each Party shall notify the applicant for entry, temporary stay or work permit of the outcome of its application promptly after a decision has been taken. The notification shall include, if applicable, the period of stay and any other terms and conditions.]

[TR/CO/PE propose; CR/AU/PA/CA/IL oppose: The period for processing applications may not exceed 30 days [JP propose:, except in cases where there are reasonable grounds].] [CH oppose: In any case, [AU/CL/PE/PA propose: Each Party shall ensure that] processing times [AU/CL/PA oppose: shall] [AU/CL/PE/PA propose: do] not constitute unnecessary barriers to trade in services.]]

[CH/TR propose; AU/CA/CL/IL/IS/MX/NO/TW/PA/CR oppose: The authorities of each Party competent for granting visas shall finalize within ten calendar days the procedure related to visa applications submitted by natural persons of other Parties covered by its schedule of specific commitments.]

**[TR/JP propose:** 4. Upon the applicant's request, the competent authorities of the Party concerned shall, without undue delay and to the extent possible, provide information concerning the status of the applicant's application.]

[AU/CA/IS/NO/TW/PA/CR/CO/NZ/MX/HK/CL/PE propose: 4. At the request of an applicant, the competent authorities of the Party shall endeavour to respond [CR propose: without undue delay] [CR oppose: promptly] to any reasonable request about the status of an application.]

[TR/TW/PK/CO/HK/MX/CL propose; CR/PE considering; CA oppose: 5. In case of an incomplete application, the applicant shall be informed [IL/TW/CR/PK/CO/HK/MX/CL oppose: promptly] [IL/TW/CR/PK/CO/HK/CL propose: without undue delay] of the information required to complete the application and shall be provided with the opportunity to correct any deficiencies within a reasonable period of time.]

[IS/JP/NO propose: If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall, without undue delay, endeavour to notify the applicant.]

[CA/JP/KR/MX/CO/CR propose: 6. When the application is denied, the applicant shall be informed of the denial.]

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[AU/CL/TR/CH/HK/PK/PE propose: 6. When the application is refused, the applicant shall be informed of the refusal and be provided information on [TR/CH/HK/PK/PE propose:

Proponents of paragraph 1 will consider whether the insertion of available review procedures or language to the same affect would allow them to accept the 2nd Paragraph.

available review procedures] [TR/CH/HK/PK/PE oppose: how they may seek review of the decision.]]

[TR propose; CA/CL/EU/HK/NO/IL/IS/PE/TW oppose: 7. When issuing visas [TR propose: and work permits or any similar type of document granting authorization] to service providers, Parties shall, to the extent possible, ensure that the period of validity is consistent with the planned duration of the contract or project for which services are provided; in cases where this is not possible initial period of stay shall be extended [TR propose: provided the conditions on which it is based remains in effect [KR propose:, subject to relevant domestic regulation of the Party]. Multiple entry visas should be issued [JP oppose: where justified by the nature of the services or the length of the contract or project.] [JP propose: as long as the requirements set by each Party are met.]]

[AU propose: 7. Parties recognize the importance of multiple entry visas in facilitating entry and Parties will endeavour to issue multiple entry visas, where appropriate.]

[TR propose; CL considering: 8. Where possible, applications should be accepted and processed in electronic format.]

[AU/CA propose; TR oppose: 9. A Party may, on a non-discriminatory basis, and in accordance with existing law and regulations, refuse to issue [CA propose: a work permit, authorization or other immigration document] [AU propose: an immigration formality] to a business person where the [CA propose: temporary] entry of that person might adversely affect:

- (a) The settlement of any labor dispute that is in progress at the place or intended place of employment; or
- (b) The employment of any person who is involved in such dispute.]

[AU propose: When a Party refuses pursuant to the above paragraph to issue an immigration formality, it shall inform the applicant accordingly.]

**TW:** whether such disputes include pre-litigation negotiations or administrative proceedings?

#### [TR/JP propose: Article 7. Contact Points

1. **[CO/CR/CA/TW/KR propose:** Each Party shall establish and maintain a contact point and notify the other Parties the contact details in order to facilitate communication, information

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flow and respond to inquiries from the other parties regarding measures that pertain to the entry, temporary stay of natural persons in its territory.]

**IS/NO/NZ/EU:** is this par needed given the general obligation?

2. **[CH/TR propose; CA/CL/EU/KR/MX/NZ/PA/IL/PE/CO/CR oppose; PK considering:** Each Party shall **[CH oppose:** to the extent possible], also establish contact points, which could be the same as the contact point mentioned in paragraph 1, to allow natural person service suppliers to report and seek clarifications, if any, on instances where they have encountered special difficulties in the process of seeking entry and temporary stay in another Party.]

Alternative to paragraph 1 and 2. [AU/CH propose; TR considering: Each Party shall establish or maintain a contact point to respond to enquiries from interested persons regarding [[all] measures] that pertain to the entry and temporary stay covered by this Annex.

3. **[TR/CA propose:** Each Party shall notify the other Parties of the contact details, including amendments, of its contact points.]