



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

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Description

This is the secret February 2015 draft 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.

This text dates from the 11th round of TiSA negotiations held 9-13 February 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 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 commitment¹.]

¹ 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.

[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 [JP propose: an effective application for] entry and temporary stay including relevant forms and documents, 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, [CO/CR/JP/KR/HK/CH propose: where applicable], include the following information [AU oppose: relevant to the entry, [CO/CR propose: and] temporary stay [CR/HK/JP/KR/LI/MX/TW oppose: and work] of natural persons, inter alia;

2. **[NZ considering:** The information referred to in paragraph 1 shall include, **[AU considering:** where applicable], the following information:

- a) categories of **[TW oppose: visas]**, **[CR/TW oppose PE/MX considering: work]** permits or any similar type of document granting authorization,
- b) documentation required and conditions to be met,
- c) method of filing **[PA oppose: and details on where to file [NZ/AU/CA/TW oppose: ²]**,
- d) application fees **[CR/PA considering: and 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: any available]** extensions,
- g) **[NZ oppose: [CA oppose: rules] [CA propose: conditions and procedures]** regarding accompanying dependents],
- h) available review and/or **[PE/PA considering: appeal]** procedures,
- i) **[CA/CO/CR/PA/IL/PE oppose: details of relevant contact points established in accordance with Article 7]**,
- j) reference to relevant immigration laws of general application.]

[AU/CL/CO/CR/MX/PA/PE/TW/IL/KR/NZ/JP/HK propose; PK considering: 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 or otherwise engage in business activities.]

CH/TR: Do we need this para at all?

[TR/EU/PE/NO/IS propose: Article 4 [EU propose; Scheduling of] [EU oppose: Schedules of Commitments for the] Entry and Temporary Stay of Natural Persons

1. **[PE oppose; EU/NO/CO/IS propose:** In scheduling commitments pursuant to Articles I-3 (Market Access) and I-4 (National Treatment) of the Agreement.] Each Party shall set out in its schedule, commitments for the entry and temporary stay in its territory of natural persons of another Party.

[EU/CL/CO/MX propose: 2.] These schedules shall specify the conditions and limitations governing those commitments, including **[EU/CL/CO propose: the categories of natural persons]** **[EU oppose: the authorized]** **[CH/EU/CO oppose: length]** **[CH/CO propose; EU oppose: duration]** **[EU propose: period]** of stay and

² 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.

[EU/CO/CL/MX propose: where applicable] [NO considering: any possibility for multiple entries and extension of stay], for each category of natural persons included in each Party's schedule of commitments.]

[CH/CA oppose; PE/TR considering] [EU propose: 3. The conditions and limitations referred to in paragraph 2 shall be scheduled in the column that relates to Article I-3 (Market Access) in Section B (C) of Part I.] US to be read/decided upon/ with par 3

[AU/TR/CL propose; CA/EU/HK/IL/KR/NO/NZ/TW/CR oppose: 2. In sectors where commitments are undertaken a Party shall not maintain or adopt Economic Needs Tests, including labor market tests, as a requirement for a visa or work permit.]

[PE oppose; EU/NO propose: Article 5. Specific commitments

[CL propose; AU considering:] 1. Each Party shall take market access and national treatment commitments for intra-corporate transferees, business visitors and categories delinked from commercial presence: contractual service suppliers and independent professionals.³

2. [CL propose: For every sector committed 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 shall allow entry and temporary stay of [intra-corporate transferees³]. [TW/JP oppose: Such entry and temporary stay shall be for a minimal period of [X] years.] Parties shall not maintain or adopt Economic Needs Tests for [intra-corporate transferees³].

3. Subject to any terms, limitations, conditions and qualifications that the Party sets out in its Schedule, Parties shall allow entry and temporary stay of [contractual service suppliers and independent professionals³] for a minimum of [X%] of the following sectors/sub-sectors:

Professional services:

1. Accounting, auditing and bookkeeping services (CPC 862)
2. Architectural services (CPC 8671)
3. Engineering services (CPC 8672)
4. Integrated engineering services (CPC 8673)
5. Urban planning and landscape architectural services (CPC 8674)
6. Medical & dental services (CPC 9312)
7. Veterinary services (CPC 932)
8. Services provided by midwives, nurses, physiotherapists and paramedical personnel (CPC 93191)

³ Final wording subject to further discussion, including on the cross-reference to categories in the AU submission on the temporary entry categories.

Computer and related services:

9. Consultancy services related to the installation of computer hardware (CPC 841)
10. Software implementation services (CPC 842)
11. Data processing services (CPC 843)
12. Data base services (CPC 844)
13. Other (CPC 845+849)

Research and Development services:

14. R&D services on natural sciences (CPC 851)
15. R&D services on social sciences and humanities (CPC 852)
16. Interdisciplinary R&D services (CPC 853)

Other business services

17. Advertising services (CPC 871)
18. Market research and public opinion polling services (CPC 864)
19. Management consulting services (CPC 865)
20. Services related to management consulting (CPC 866)
21. Technical testing & analysis services (CPC 8676)
22. [CH propose: Services incidental to manufacturing]
23. Related scientific and technical consulting services (CPC 8675)
24. Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment) (CPC 633 + 8861-8866)
25. Specialty design services (CPC 87907)

Construction and related engineering services:

26. General construction work for buildings (CPC 512)
27. General construction work for civil engineering (CPC 513)
28. Installation and assembly work (CPC514+516)
29. Building completion and finishing work (CPC 517)
30. Other (CPC 511+515+518)

Environmental services:

31. Sewage services (CPC 9401)
32. Refuse disposal services (CPC 9402)
33. Sanitation and similar services (CPC 9403)
34. Other

[CH propose: Financial Services]

[CH propose: Financial advisors]

Tourism and travel related services:

35. Hotels and Restaurants (CPC Ex. 641)
36. Travel Agencies and Tour Operators services (CPC 7471)
37. Tourist Guides services (CPC 7472)

[CH propose: Transport services

[CH propose: Other services auxiliary to all modes of transport CPC]

Recreational, cultural and sporting services:

38. Sporting and other recreational services (CPC 964)

Such entry and temporary stay shall be for a minimal period of [X] months [EU propose: in any 12 months period] or for the duration of the contract [EU propose:., whichever is less].]

[AU/EU propose; JP/TW oppose: 1. Each Party shall undertake commitments to allow temporary entry of [Business Visitors] for a period of [AU propose: stay up to a maximum of 90 days] EU propose: Parties shall not maintain or adopt Economic Needs Tests for [Business Visitors³].]

EU suggests that this provision should become paragraph 3 of this Article

[AU/JP propose: 2. Where a Party allows for the entry and temporary stay of an [Intra Corporate Transferees, Contractual Service Suppliers or Independent Professionals] who has a spouse, and the period of stay is greater than 12 months, that Party shall, upon application, also allow the accompanying spouses the right of entry and temporary stay for an equal period [JP propose: in principle] to that of the [Intra Corporate Transferee, Contractual Service Supplier or Independent Professional] [JP propose: provided that such spouses fulfil requirements under its laws and regulations].]

[EU oppose: [TR propose: Article 6. Entry and Temporary Stay Related [CO/TW oppose: Requirements] [CO/TW propose: Procedures] [CR oppose; CA propose: 6 Work Authorization Related Requirements] [AU propose: 6. Immigration Formalities]

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

[TR/CH propose: 1. Parties shall;

- (i) 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] [CR oppose; CA propose: work authorization] related requirements, procedures [IL/PE oppose: and decisions]

[AU/CA/HK/IS/NO/NZ/MX/KR/IL/CR/PE/PA **oppose:** (ii) abstain from implementing overly burdensome⁴ procedures [JP **oppose:** and requiring documents which would breach privacy of individuals and confidentiality of business information⁵.]]]

[CA/CR **propose;** IL **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/CR **propose:** entry and temporary stay] for the service providers shall be commensurate with [reflecting] the approximate cost of services rendered.]

[TR/CH/PE **propose;** IL **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 **propose;** IL **oppose:** 2. Each Party shall ensure that fees charged by competent authorities for the processing of applications for [CA **propose:** temporary entry and stay] [AU/CH/CL/CO/IL/IS/JP/KR/MX/NZ/NO/TW **propose:** entry and temporary stay] are reasonable, in that they do not unduly impair or delay trade in services under this Agreement.]

[JP **propose;** IL **oppose:** Each Party shall ensure that fees charged by its competent authorities on application for entry and temporary stay do not in themselves represent an unjustifiable impediment to the entry and temporary stay under this Annex.]

[TR/CL/CH **propose;** IL **oppose:** 3. [AU/CL/PE/PA **propose:** Complete] Applications [JP **propose:** for the grant of entry and temporary stay] shall be processed [AU/CL **oppose:** promptly and expeditiously] [AU/CL/CR/PA **propose:** as expeditiously as possible] [CR **propose:** in accordance with existing laws and regulations]. [TR **propose;** CR **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.]]

⁴ 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.

⁵ 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.

[CH/CO/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 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 propose: 4. At the request of an applicant, the competent authorities of the Party shall endeavor to respond promptly to any reasonable request about the status of an application.]

[TR propose; CA oppose: 5. In case of an incomplete application, the applicant shall be informed **[IL oppose: promptly] [IL 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, endeavor to notify the applicant.]

[TR propose: 6. When the application is denied, the applicant shall be informed of the denial and be given an opportunity to appeal the decision.]

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

[AU/CL propose: 6. When the application is refused, the applicant shall be informed of the refusal and be provided information on how they may seek review of the decision.]

[MX/PE propose: 6. When the application is refused, the applicant shall be informed of the refusal and be provided information of any **[CO oppose: available]** appeal mechanism **[CO propose:, where applicable].]**

[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 propose: 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 endeavor to issue multiple entry visas, where appropriate.]

TR propose: Where possible, applications should be accepted and processed in electronic format.

8. 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.

[AU/CA propose: A Party may, on a non-discriminatory basis, and in accordance with existing laws 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.]

TR requests information about the precise nature of such disputes and their significance in the markets of concerned TiSA Parties.

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 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 propose:** 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 paragraphs 1 and 2. [AU/NO/CH propose: 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.]