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Release of

**Secret Trade in Services Agreement (TISA)**

**New Provisions Applicable to All Services (April 25,  
2014)**

**Annex on Professional Services [as at 5 September  
2014]**

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**Trade in Services Agreement TISA Proposal**  
**New Provisions Applicable to All Services**

**April 25, 2014**

Reason: 1.4(b)

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**Article X.1: Local Presence**

Subject to any conditions, limitations and qualifications set out in its Schedule, no Party may require a service supplier of another Party, as a condition for the cross-border supply of a service in its territory, to establish or maintain a commercial presence, or to be resident in the Party's territory.

**Article X.2: Local Content**

1. Subject to any conditions, limitations and qualifications set out in its Schedule, no Party may, in connection with the supply of a service by a service supplier, impose or enforce any requirement; enforce any commitment or undertaking; or, in connection with the supply of a service through commercial presence, condition the receipt or continued receipt of an advantage on compliance with any requirement:

(a) to purchase, use or accord a preference to:

(i) goods produced in its territory, or to purchase goods from persons in its territory;

(ii) electronically transmitted content<sup>1</sup> based on the territory where it was created, produced, published, contracted for or commissioned, or the nationality of the author, performer, producer, developer, or owner;<sup>2</sup> or

(iii) computing facilities<sup>3</sup> located in its territory or computer processing or storage services supplied from within its territory; or

(b) that a service supplier engaged in the marketing or distribution of goods or electronically transmitted content purchase, use, or make available a specified percentage:

(i) of goods of domestic origin; or

(ii) of electronically transmitted content that meet the criteria set out in subparagraph (a)(ii).

2. Paragraph 1 does not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programs, or to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

3. Nothing in paragraph 1 shall be construed to prevent a Party from conditioning the receipt or continued receipt of an advantage, in connection with the supply of a service, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

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<sup>1</sup> Electronically transmitted content means any content that is digitally encoded and produced for commercial sale or distribution, including a computer program. For greater certainty, electronically transmitted content does not include digitized representations of financial instruments, including money. This definition is without prejudice to whether electronically transmitted content is a good.

<sup>2</sup> For greater certainty, "territory" and "nationality" includes the territory and nationality of non-Parties.

<sup>3</sup> "Computing Facilities" means computer servers and storage devices for the processing or storage of information. This does not include facilities used for the supply of public telecommunications services.

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**Article x.3: Local Technology**

1. Subject to any conditions, limitations and qualifications set out in its Schedule, no Party may, in connection with the supply of a service, impose or enforce any requirement or enforce any commitment or undertaking:

(a) to transfer a particular technology or other proprietary knowledge to a person in its territory; or

(b) (i) to purchase, use, or accord a preference to, in its territory, technology of the Party or of persons of the Party<sup>4</sup>; or

(ii) that prevents the purchase or use of particular technology in its territory so as to afford protection on the basis of nationality to its own services or services suppliers or to technology of the Party or persons of the Party.

**2. Paragraph 1 does not apply:**

(a) when a Party authorizes use of an intellectual property right in accordance with Article 31 of the Agreement on Trade Related Aspect of intellectual Property Rights (TRIPS Agreement), or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party's competition laws.

**Article X.4: Movement of Information**

No Party may prevent a service supplier of another Party from transferring, accessing, processing or storing information, including personal information, within or outside the Party's territory, where such activity is carried out in connection with the conduct of the service supplier's business.

**Article X.5: Open Networks, Network Access and Use**

Each Party recognizes that consumers in its territory, subject to applicable laws, and regulations, should be able to:

(a) access and use services and applications of their choice available on the Internet, subject to reasonable network management;

(b) connect their choice of devices to the Internet, provided that such devices do not harm the network;  
and

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<sup>4</sup> For purposes of this Article, the term "technology of the Party or of persons of (he Party" includes technology that is owned by the Party or persons of the Party, and technology for which the Party holds, or persons of the Party hold, an exclusive license.

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(c) have access to information on network management practices of their Internet access service suppliers.

**Article X.6: Electronic Authentication and Electronic Signatures**

1. Except where otherwise provided for in its law, a Party shall not deny the legal validity of a signature solely on the basis that the signature is in electronic form.

2. No Party may adopt or maintain measures for electronic authentication that would:

(a) prohibit parties to an electronic transaction from mutually determining the appropriate authentication methods for that transaction; or

(b) prevent parties from having the opportunity to establish before judicial or administrative authorities that their electronic transaction complies with any legal requirements with respect to authentication.

3. Notwithstanding paragraph 2, a Party may require that, for a particular category of transactions, the method of authentication meet certain performance standards or be certified by an authority accredited in accordance with the Party's law.

**Article X.7: Exceptions**

1. For greater certainty, Articles X.2 and X.3 do not apply to any obligation, commitment, undertaking, or requirement other than those set out in those articles.

2. Articles X.2 and X.3 do not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

3. Provided that such measures are not applied in an arbitrary or unjustifiable manner, and provided that such measures do not constitute a disguised restriction on trade in services, Articles X.2 and X.3 shall not be construed to prevent a Party from adopting or maintaining a measure related to the conservation of living or non-living exhaustible natural resources.

4. Nothing in [Articles X.1 - X.6] shall be construed to prevent any Party from taking any action which it considers necessary for the protection of its own essential security interests.

*[The applicability of Articles X. 1-X.4 to certain financial services is under consideration]*

*[This proposal presumes that government procurement is not within the scope of TISA]*

**Annex<sup>1</sup> on Professional Services**  
**[as at 5 September 2014]**

**Part I - Commitments on Professional Services**

I. Scope [and Definition]

(a) This Annex applies to measures by parties affecting trade in professional services. For the purposes of this Annex, "professional services" means the following services [AU propose: as defined] in each Party's Schedule:

(i) [MX oppose: legal services][AU/JP propose:, including for [GH oppose: domestic law (host country law),] foreign law and international law] [CPC861];

(ii) accounting, auditing and bookkeeping services [CPC 862];

(iii) taxation services [CPC 863];

(iv) architectural services [CPC8671];

(v) engineering services [CPC8672];

(vi) integrated engineering services [CPC8671];

(vii) urban planning and landscape architecture services [CPC8674];

(viii) [CH/CO/NO propose: engineering related scientific and consulting services [CPC8674];

(ix) technical testing and analysis services [CPC 8676];

(x) [AU/CO/NO propose; US/MX/JP oppose: veterinary services [CPC9J2/]; and

(xi) [AU/CO/NZ/NO propose; KR/MX/TW/CH/JP oppose: private education services [CPC 921-4\*\*, CPC 929\*\*]

(b) This Annex [AU/CO/JP propose: shall not apply][AU/CO oppose: is subject] to [any measure that a Party adopts or maintains with respect to] sectors, sub-sectors, or activities [AU propose; CH oppose: as set out in Section A of Part I of each Party's Schedule] [AU oppose: that a Party has][AU oppose: scheduled in accordance with Article II-2 paragraph 4].

[AU/CO propose; EU oppose: 2. Standstill

In scheduling commitments pursuant to Article I-3 (Market Access), any terms, limitations and conditions on market access affecting trade in professional services shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or [prompt] renewal of any such measures.]

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<sup>1</sup> AU: For purposes of this text, we refer to "Annex". As the architecture of the TISA text takes shape, it is possible that it could be a "Chapter" or "Section".

[AU/CH propose: 7. Economic Needs Tests

No Party may adopt or maintain discriminatory economic needs tests, including labour market tests, as a requirement for the supply of a professional service<sup>4</sup> [CH propose; AU oppose: for categories described in a party's schedule of specific commitments].]

[AU propose: 8. Business names Subject to its laws and regulations, each Party shall permit professional service suppliers of any other Party to use the business names under which they ordinarily trade in the territory of the other Party and otherwise ensure that the use of business names is not unduly restricted.]

## **Part II - Trade in Professional Services**

### **9. Encouraging Recognition**

(a) Each Party shall consult [NO propose: as appropriate] with relevant bodies in its territory ("its relevant bodies") to seek to identify professional services sectors or sub-sectors where two or more Parties are mutually interested in establishing dialogue on issues related to recognition of professional qualifications, licensing and/or registration.

(b) Each Party shall encourage its relevant bodies to establish dialogues with the relevant bodies of other Parties, with a view to recognizing professional qualifications, and facilitating licensing and/or registration procedures.

(c) Each Party shall encourage its relevant bodies to take into account existing agreements relating to professional services in the development of agreements on recognition of professional qualifications, licensing and registration.

(d) Each Party may consider, where feasible, taking steps to implement a temporary or limited licensing regime, such as project specific licensing or registration, based on the foreign supplier's home license or recognized professional body membership (without the need for further [CO/EU/CL oppose: written] examination). Such a temporary or limited licensing regime should not operate to prevent a foreign supplier from gaining a local license subsequent to satisfying the necessary local licensing requirements.

### **10. Working Party on Professional Services**

(a) The Parties shall endeavour to facilitate trade in professional services, including through the establishment of a Working Party on Professional Services, comprising representatives of each Party.

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<sup>4</sup> [AU propose: Nothing in this paragraph shall be construed to prevent a Party applying economic needs tests in a manner which accords national treatment to professional services and service suppliers of any other Party within the meaning of Article I:4.]