

TISA - Annex on Domestic Regulation

Scope & Definitions

1. This Annex applies to measures¹ relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards, affecting trade in services with respect to which a Party has undertaken a commitment under Article I-3 or I-4, subject to any terms, limitations, conditions or qualifications set out in its schedule pursuant to Articles II-1 and II-2.

2. Notwithstanding paragraph 1, paragraphs [~~NZ propose:~~ 3,] [~~AU/CA/CH/CL/CO/CR/EU/HK/IS/JP/KR/LI/MU/MX/NO/NZ/PE/PK/TR/TW propose;~~ ~~CACR/EU/IL/LI/MX/NO/PA considering:~~7] of this Annex apply to measures relating to licencing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in services.

General Provisions

[~~CO/CH/CL/HK/KR/MU/MX/NZ/PE propose;~~ CA/US oppose:

3. Each Party shall ensure that any [~~AU/CO/HK/MX/PE propose:~~ measures relating to] licensing requirements and procedures, qualification requirements and procedures, and technical standards it applies comply with the criteria outlined in subparagraphs 4(a), (b) and (c) of GATS Article VI. In determining whether a Party is in conformity with the obligation under this paragraph, account shall be taken of international standards of relevant international organizations² applied by that Party.]

Development and Administration of Measures

4. Where a Party maintains measures relating to licencing requirements and procedures, qualification requirements and procedures [~~CA/EU/US oppose:~~ and technical standards], the Party shall:

- (a) ensure that such measures are based on objective and transparent criteria³ and [~~HK/NZ propose;~~ AU/CA/CO/EU/IL/IS/LI/MU/NO/PA/PE/TR/TW/US oppose: are not more trade restrictive than are required to achieve the policy objectives of the measures];

¹ [~~US propose;~~ CO/PE considering; CA/PA oppose: This Annex does not apply to taxation measures.] (to be discussed as a horizontal issue.)

² The term "relevant international organisations" refers to international bodies whose membership is open to all Parties of TISA.

³ [~~CR considering:~~ For greater certainty. Such criteria may include, inter alia, competence, ability to supply a service,][~~CH/NZ oppose;~~ ~~GR/HK/LI/MU/PK considering:~~ or potential health or environmental impacts of an authorisation decision, and competent authorities may assess the weight to be given to such criteria.")]

(a)(b) [CA propose: ensure that such measures do not discriminate against individuals on the basis of gender⁴];

(b)(c) ensure that the competent authority reaches and administers its decisions in an independent manner;

(e)(d) (please see the two alternatives below)

Proposal I for 4(de)
[CH/HK/NZ/PK/TR propose:
(de) ensure that the procedures do not in themselves unduly impede fulfilment of requirements;]
Proposal II for 4(de)
[AU/CA/CL/CO/CR/EU/IL/IS/JP/KR/LI/MU/MX/NO/PA/PE/TW/US propose:
(de) ensure that the procedures do not in themselves unduly prevent fulfilment of requirements;]
Proposal for alternative language
NZ propose:
(d) ensure that the procedures are reasonable and do not in themselves unduly impair or] delay the [provision of the services] [fulfilment of requirements];

(e) (ed) [In furtherance of] [Further to] [Domestic Regulation Art. 2 in the core text] ensure that the procedures are impartial, and ensure that the procedures are adequate for applicants to demonstrate whether they meet the requirements, where such requirements exist;

NZ reflects that 4(ed) is subject to the stabilization of Domestic Regulation Art. 2 in the core text.

~~[CH/HK/ propose; AU/CA/CO/CR/JP/IL/LI/PE/PK/TR/US oppose:~~

⁴ For greater certainty, this provision does not apply to reasonable and *bona fide* circumstances of discrimination, and to affirmative action policies aimed at disadvantaged persons.

~~(e) provide opportunities for comment on relevant regulations before they enter into force, to the extent as foreseen by their relevant practices and procedures.]~~

~~The group will review subparagraph 4(e) in light of the development of the Transparency Annex.~~

~~AU/CA/CL/CO/EU/IS/JP/KR/MU/MX/NO/NZ/PE/PK/TR/TW/US prefer dealing with the transparency discipline in 4(e) within the horizontal Transparency Annex.~~

(f) to the extent practicable, avoid requiring an applicant to approach more than one competent authority for each application for authorisation⁵;

5. Where authorisation is required for the supply of a service, the competent authorities of a Party shall:

(a) to the extent practicable, permit an applicant to submit an application at any time;

(b) allow a reasonable time period for the submission of an application where specific time periods for applications exist;

(c) where examinations are required, schedule such examinations at reasonably frequent intervals; and provide a reasonable period of time to enable applicants to request to take the examination;

(d) taking into account their competing priorities and resource constraints, endeavour to accept applications in electronic format;

(e) accept copies of documents, which are authenticated in accordance with the Party's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process;

(f) ensure that the authorization fees⁶ charged by the competent authority, meet each of the following criteria:

(i) be reasonable,

(ii) be transparent, and

(iii) do not in themselves restrict the supply of the relevant service.

(g) to the extent practicable, provide an indicative timeframe for processing of an application;

⁵ For greater certainty, a Party may require multiple applications for authorisation where a service is within the jurisdiction of multiple competent authorities.

⁶ Authorization fees include licensing fees and fees relating to qualification procedures; they do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

- (h) to the extent practicable ascertain without undue delay the completeness of an application for processing under domestic laws and regulations;
- (i) in the case of an application considered complete under domestic laws and regulations, within a reasonable period of time after the submission of an application, ensure that the processing of an application is completed, and that the applicant is informed of the decision concerning the application, and to the extent possible in writing.⁷
- (j) at the request of the applicant, provide without undue delay information concerning the status of the application.
- (k) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable:
- (i) inform the applicant that the application is incomplete;
 - (ii) at the request of the applicant provide guidance on why the application is considered incomplete;
 - (iii) provide the applicant with the opportunity⁸ to provide the additional information that is required to complete the application, and
- where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time.
- (l) in the case of a rejected application, to the extent possible, either upon their own initiative or upon the request of the applicant, inform the applicant of the reasons for the rejection and, where applicable, the procedures for resubmission of an application; and
- (m) ensure that authorization, once granted, enters into effect without undue delay subject to the applicable terms and conditions.

[AU/CA/CL/CO/CR/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/PK/TR/TW/US propose; CH considering:

⁷ Competent authorities can meet this requirement by informing an applicant in advance in writing, including through a published measure, that lack of response after a specified period of time from the date of submission of the application indicates either acceptance or rejection of the application. For greater certainty, "in writing" may include in electronic form.

⁸ For greater certainty, such opportunity does not require a competent authority to provide extensions to deadlines.

6. Each Party shall encourage its competent authorities, when adopting technical standards, to adopt technical standards developed through open and transparent processes, and shall encourage [CH propose:⁹] and body designated to develop technical standards to use open and transparent processes.]

Transparency

7. Where a Party requires authorization for supply of a service, further to [TRANSPARENCY PARA 1], the Party shall provide the information necessary for service suppliers or persons seeking to supply a service to comply with the requirements and procedures for obtaining, maintaining, amending and renewing such authorization. Such information shall include, inter alia, where it exists:

- (a) fees;
- (b) contact information of relevant competent authorities;
- (c) procedures for appeal or review of decisions concerning applications;
- (d) procedures for monitoring or enforcing compliance with the terms and conditions of licenses;
- (e) opportunities for public involvement, such as through hearings or comments;
- (f) indicative timeframes for processing of an application;
- (g) the requirements and procedures;
- (h) technical standards.

Review of the Annex

8. If the results of the negotiations related to Article VI (4) of GATS enter into force, the Parties shall jointly review such results. Where the joint review assesses that the incorporation of such results into this Agreement would improve the disciplines contained herein, the Parties shall jointly determine whether to incorporate such results into this Agreement.

CH drafting proposal for consideration during legal scrubbing: After the entry into force of the results of the negotiations pursuant to Article VI:4 of the GATS, the Parties shall jointly assess whether those results, or part of them, would improve this Annex, and shall determine whether to incorporate them into this Agreement.

Paragraph 8 is without prejudice to the multilateralization of the disciplines in the DR Annex (to be reviewed, recognizing that the provisions on multilateralization pathways for TISA are yet to be discussed).

⁹ [CH considering: A Party that applies the obligations set out in Article 4.1 of the TBT Agreement to services *mutatis mutandis* shall be deemed to fulfil this requirement.]

