

TiSA TRADE IN SERVICES AGREEMENT

DRAFT PROVISIONS – ~~10 July 2015~~

03 November 2015 21 June 2016

[This text includes all proposals related to the framework of the agreement, but does not include proposals on new and enhanced disciplines and institutional provisions (including dispute resolution).]

<i>PE: Will address the issue of 'like circumstances' in its schedule.</i>
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PREAMBLE

[...]

Part I - General Provisions

Article I-1: Scope

1. This Agreement applies to measures by [~~the~~] Parties affecting trade in services.
2. For the purposes of this Agreement, trade in services is defined as the supply of a service:
 - (a) from the territory of one Party into the territory of any other Party;
 - (b) in the territory of one Party to the service consumer of any other Party;
 - (c) by a service supplier of one Party, through commercial presence in the territory of any other Party;
 - (d) by a service supplier of one Party, through presence of natural persons of a Party in the territory of any other Party.
3. For the purposes of this Agreement:
 - (a) "measures by [~~the~~] Parties" means measures taken by:
 - (i) central, regional or local governments and authorities; and
 - (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Party shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;
 - (b) "services" includes any service in any sector except services supplied in the exercise of governmental authority;

- (c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

Article I-2: Definitions

For the purpose of this Agreement:

- (a) "measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (b) "supply of a service" includes the production, distribution, marketing, sale and delivery of a service;
- (c) "measures by ~~the~~ Parties affecting trade in services" include measures in respect of
- (i) the purchase, payment or use of a service;
 - (ii) the access to and use of, in connection with the supply of a service, services which are required by those Parties to be offered to the public generally;
 - (iii) the presence, including commercial presence, of persons of a Party for the supply of a service in the territory of another Party;
- (d) "commercial presence" means any type of business or professional establishment, including through
- (i) the constitution, acquisition or maintenance of a juridical person, or
 - (ii) the creation or maintenance of a branch or a representative office, within the territory of a Party for the purpose of supplying a service;
- (e) "sector" of a service means,
- (i) with reference to a [specific] commitment, one or more, or all, subsectors of that service, as specified in a Party's Schedule,
 - (ii) otherwise, the whole of that service sector, including all of its subsectors;
- (f) "service of another Party" means a service which is supplied,
- (i) from or in the territory of that other Party, or in the case of maritime transport, by a vessel registered under the laws of that other Party, or by a person of that other Party which supplies the service through the operation of a vessel and/or its use in whole or in part; or
 - (ii) in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of that other Party;
- (g) "service supplier" means any person that supplies a service;¹

¹ Where the service is not supplied directly by a juridical person but through other forms of commercial presence such as a branch or a representative office, the service supplier (i.e. the juridical person) shall, nonetheless, through such presence be accorded the treatment provided for service suppliers under the Agreement. Such treatment shall be extended to the presence through which the service is supplied and need not be extended to any other parts of the supplier located outside the territory where the service is supplied.

Limited distribution – for TiSA participants only

- (h) "monopoly supplier of a service" means any person, public or private, which in the relevant market of the territory of a Party is authorized or established formally or in effect by that Party as the sole supplier of that service;
- (i) "service consumer" means any person that receives or uses a service;
- (j) "person" means either a natural person or a juridical person;
- (k) "natural person of another Party" means a natural person who resides in the territory of that other Party or any other Party, and who under the law of that other Party:
 - (i) is a national of that other Party; or
 - (ii) has the right of permanent residence in that other Party, in the case of a Party which:
 - 1. does not have nationals; or
 - 2. accords substantially the same treatment to its permanent residents as it does to its nationals in respect of measures affecting trade in services, as notified in its acceptance of or accession to the WTO agreement, provided that no Party is obligated to accord to such permanent residents treatment more favourable than would be accorded by that other Party to such permanent residents;
- (l) "juridical person" means any legal entity duly constituted or otherwise organized under applicable law, whether for profit or otherwise, and whether privately-owned or governmentally-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association;
- (m) "juridical person of another Party" means a juridical person which is either:
 - (i) constituted or otherwise organized under the law of that other Party, and is engaged in substantive business operations in the territory of that Party or any other Party; or
 - (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - 1. natural persons of that Party; or
 - 2. juridical persons of that other Party identified under subparagraph (i);
- (n) a juridical person is:
 - (i) "owned" by persons of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Party;
 - (ii) "controlled" by persons of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - (iii) "affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;
- (o) "direct taxes" comprise all taxes on total income, on total capital or on elements of income or of capital, including taxes on gains from the alienation of property, taxes on estates, inheritances and gifts, and taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

Further definitions to be developed as necessary

AU: We also need to include the Marrakesh Agreement Explanatory Notes on the meaning of the term "country", if "country" is used in the TiSA.

TW: With respect to Australia's proposal; we propose an alternative in the Part IV (Institutional Provisions), Section 4 to deal with all the terms not defined by the TiSA, in the case that the TiSA Parties deem it necessary and appropriate to harmonize the WTO and the TiSA interpretations.

- (p) **[AU propose:** "country" or "countries" as used in this Agreement include any separate customs territory Member of the WTO. In the case of a separate customs territory Member of the WTO, where an expression in this Agreement is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.]

[Article [...]: Most-Favoured-Nation Treatment

CH/EU/NO: delete unless there is a parallel economic integration article below

1. With respect to any measure covered by this Agreement, each Party shall accord immediately and unconditionally to services and service suppliers of any other Party treatment no less favourable than that it accords to like services and service suppliers of any other country.
2. A Party may maintain a measure inconsistent with paragraph 1 provided that such a measure is listed in **[AU/CH/EU propose:** its [List of [MFN] **[JP propose:** Article [...] Exemptions][**CH propose;** **AU/EU oppose:** , and meets the conditions of the Annex on Article II Exemptions of the GATS].]

CO: will propose a text similar to GATS Article XXII:3 in order to clarify the impossibility to invoke the MFN Article under the Dispute Settlement Mechanism of TiSA with respect to commitments taken under other international agreements particularly BIT's.

3. The provisions of this Agreement shall not be so construed as to prevent any Party from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.]

[Article [...] Economic Integration - GATS Article V] [Linked to Article on MFN]

US: proposes deletion of this article.

[CO propose: **[JP propose:** This Agreement shall not prevent any of its Parties from being a Party to or entering into an] agreement notified under Article V or Article V *bis* of the GATS.]

[CH/TR/NO propose: Paragraph 1 of Article [MFN] shall not apply to agreements to which a Party is a party or **[TR oppose:** is] **[TR propose:** will be] entering into and which liberalize trade in services between or among their parties, provided that such agreements are notified under Article V or Article V *bis* of the GATS.]

Article I-3: Market Access

1. With respect to market access through the modes of supply identified in Article I-1, each Party shall accord services and service suppliers of any other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.²
2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;
 - (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;
 - (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;³
 - (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
 - (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
 - (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

² If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(a) of Article I-1 and if the cross-border movement of capital is an essential part of the service itself, that Party is thereby committed to allow such movement of capital. If a Party undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in subparagraph 2(c) of Article I-1, it is thereby committed to allow related transfers of capital into its territory.

³ Subparagraph 2(c) does not cover measures of a Party which limit inputs for the supply of services.

Article I-4: National Treatment

1. Subject to any conditions and qualifications set out in its Schedule, each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.⁴
2. A Party may meet the requirement of paragraph 1 by according to services and service suppliers of any other Party, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Party compared to like services or service suppliers of any other Party.

Article I-5: Additional commitments

Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles [I-3] or I-4, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

1.

2. <i>Might need to be reviewed depending on outcome of discussion on new and enhanced disciplines.</i>

[Article [...] Transparency]

~~{Proposals to be developed}~~

<i>US: See US text proposal on Transparency.</i>
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<p><u>[CH: 1. 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.</u></p>

<p>2. <u>Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.]</u></p>
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⁴ [Specific] commitments assumed under this Article shall not be construed to require any Party to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

Article [...]: Disclosure of Confidential Information

Nothing in this Agreement shall require any Party 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.

[Article [...] Domestic Regulation]

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

1. Parties recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet their **[CR/LI/MX/TR propose: public]** policy objectives.

[CH/HK/MX/TR propose; 2. AU/CA/CL/CO/CR/EU/JP/NO/PA/US oppose: Nothing in these disciplines prevents Parties from exercising the right to introduce or maintain regulations in order to ensure provision of universal service **[HK propose: in a manner consistent with their obligations and commitments under this Agreement].]**

The group has agreed to move the provision above from the DR Annex to the core text, and will further discuss if it should appear as part of the preamble or as a provision.

Recognizing the right to regulate for the purpose of ensuring provision of universal service is subsumed under a Party's right to regulate, all parties except TR prefer to remove the last bracketed text of this Article

2. **[US propose; AU/CH/HK/JP/KR/NO/NZ/PE/PK oppose; CA/CL/CO/CR/EU/IS/MX/PA/TR/TW/UY considering:** *[In sectors where specific commitments are undertaken,][Subject to any [terms, limitations,] conditions or qualifications set out in its schedule]]* Each Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.]

The group has agreed to move the provision above from the DR Annex to the core text.

The proponent will reflect further on its proposed bracketed text (in italics) in light of the hybrid scheduling approach of this agreement.

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

3. Each Party shall maintain [AU/CA/CO/EU/JP/LI/MX/PE/TR/US **oppose:** or institute as soon as practicable] 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.]

3.

<i>EU comment: does not support placement of this provision in the core text part 1</i>

Article I-6: Recognition

1. For the purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorization, licensing or certification of services suppliers, and subject to the requirements of Paragraph 3, a Party may recognize the education or experience obtained, requirements met, or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement with the country concerned or may be accorded autonomously.
2. A Party that is a party to an agreement or arrangement of the type referred to in Paragraph 1, whether existing or future, shall afford adequate opportunity for any other Party, upon request, to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Party accords recognition autonomously, it shall afford adequate opportunity for any other Party to demonstrate that education, experience, licenses, or certifications obtained or requirements met in that other Party's territory should be recognized.
3. A Party shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised restriction on trade in services.
4. Each Party shall:
 - (a) within 12 months from the date on which the Agreement takes effect for it, inform the [Working Party on Professional Services] of its existing recognition measures and state whether such measures are based on agreements or arrangements of the type referred to in Paragraph 1;
 - (b) promptly inform the [Working Party on Professional Services] as far in advance as possible of the opening of negotiations on an agreement or arrangement of the type referred to in Paragraph 1 in order to provide adequate opportunity to any other Party to indicate their interest in participating in the negotiations before they enter a substantive phase;
 - (c) promptly inform the [Working Party on Professional Services] when it adopts new recognition measures or significantly modifies existing ones and state whether the measures are based on an agreement or arrangement of the type referred to in Paragraph 1.

5. Wherever appropriate, recognition should be based on multilaterally agreed criteria. In appropriate cases, Parties shall work in cooperation with relevant intergovernmental and non-governmental organisations towards the establishment and adoption of common international standards and criteria for recognition and common international standards for the practice of relevant services trades and professions.

Article 1-7: Payments and Transfers

1. Except under the circumstances envisaged in Article I-8, a Party shall not apply restrictions on international transfers and payments for current transactions relating to its [specific] commitments.
2. Nothing in this Agreement shall affect the rights and obligations of the members of the International Monetary Fund under the Articles of Agreement of the Fund, including the use of exchange actions which are in conformity with the Articles of Agreement, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its [specific] commitments regarding such transactions, except under Article I-9 or at the request of the Fund.

Article I-8: Restrictions to Safeguard the Balance of Payments

1. In the event of serious balance-of-payments and external financial difficulties or threat thereof, a Party may adopt or maintain restrictions on trade in services on which it has undertaken [specific] commitments, including on payments or transfers for transactions related to such commitments. It is recognized that particular pressures on the balance of payments of a Party in the process of economic development or economic transition may necessitate the use of restrictions to ensure, *inter alia*, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.
2. The restrictions referred to in paragraph 1:
 - (a) shall not discriminate among Parties;
 - (b) shall be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) shall avoid unnecessary damage to the commercial, economic and financial interests of any other Party;
 - (d) shall not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) shall be temporary and be phased out progressively as the situation specified in paragraph 1 improves.

3. In determining the incidence of such restrictions, Parties may give priority to the supply of services which are more essential to their economic or development programmes. However, such restrictions shall not be adopted or maintained for the purpose of protecting a particular service sector.
- [4. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to [body defined by the Agreement].
5. (a) Parties applying the provisions of this Article shall consult promptly with the [body defined by the Agreement] on restrictions adopted under this Article
- (b) The [body defined by the Agreement] shall establish procedures⁵ for periodic consultations with the objective of enabling such recommendations to be made to the Party concerned as it may deem appropriate.
- (c) Such consultations shall assess the balance-of-payment situation of the Party concerned and the restrictions adopted or maintained under this Article, taking into account, *inter alia*, such factors as:
- (i) the nature and extent of the balance-of-payments and the external financial difficulties;
- (ii) the external economic and trading environment of the consulting Party;
- (iii) alternative corrective measures which may be available.
- (d) The consultations shall address the compliance of any restrictions with paragraph 2, in particular the progressive phaseout of restrictions in accordance with paragraph 2(e).
- (e) In such consultations, all findings of statistical and other facts presented by the International Monetary Fund relating to foreign exchange, monetary reserves and balance of payments, shall be accepted and conclusions shall be based on the assessment by the Fund of the balance-of-payments and the external financial situation of the consulting Party.
6. If a Party which is not a member of the International Monetary Fund wishes to apply the provisions of this Article, the [body defined by the Agreement] shall establish a review procedure and any other procedures necessary.]

<i>AU: Paragraphs 4 to 6 subject to further discussion on institutional provisions.</i>

⁵ It is understood that the procedures under paragraph 5 shall be the same as the GATT 1994 procedures.

Article [...] Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with that Party's obligations under Article [...] (MFN) and [specific] commitments.
2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's [specific] commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its territory in a manner inconsistent with such commitments.
3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect, (a) authorizes or establishes a small number of service suppliers and (b) substantially prevents competition among those suppliers in its territory.

Article 1-9: General Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Party of measures:

- (a) necessary to protect public morals or to maintain public order;⁶
- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - (iii) safety;
- (d) inconsistent with Article I-4 (National Treatment), provided that the difference in treatment is aimed at ensuring the equitable or effective⁷ imposition or collection of direct taxes in respect of services or service suppliers of other Parties;
- (e) inconsistent with Article [...], provided that the difference in treatment is the result of an agreement on the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

⁶ The public order exception may be invoked only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

⁷ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Party under its taxation system which:

- (i) apply to non-resident service suppliers in recognition of the fact that the tax obligation of non-residents is determined with respect to taxable items sourced or located in the Party's territory; or
 - (ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Party's territory; or
 - (iii) apply to non-residents or residents in order to prevent the avoidance or evasion of taxes, including compliance measures; or
 - (iv) apply to consumers of services supplied in or from the territory of another Party in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Party's territory; or
 - (v) distinguish service suppliers subject to tax on worldwide taxable items from other service suppliers, in recognition of the difference in the nature of the tax base between them; or
 - (vi) determine, allocate or apportion income, profit, gain, loss, deduction or credit of resident persons or branches, or between related persons or branches of the same person, in order to safeguard the Party's tax base.
- Tax terms or concepts in paragraph (d) of Article [...] (General Exceptions) and in this footnote are determined according to tax definitions and concepts, or equivalent or similar definitions and concepts, under the domestic law of the Party taking the measure.

Article I-10: Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - (i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) taken in time of war or other emergency in international relations; or
 - (c) to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. [The [body defined by the Agreement] shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.]

[Article [...]: Annexes

The Annexes to this Agreement are an integral part of this Agreement].

4. *Might need to be reviewed depending on outcome of discussion on new and enhanced disciplines and to ensure Schedules and other relevant attachments are integral part of the Agreement.*

[Article [...] Denial of benefits

A Party may deny the benefits of this Agreement:

- (a) to the supply of a service, if it establishes that the service is supplied from or in the territory of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement;
- (b) in the case of the supply of a maritime transport service, if it establishes that the service is supplied:
 - (i) by a vessel registered under the laws of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Party or of a Party to which the denying Party does not apply the WTO Agreement;
- (c) to a service supplier that is a juridical person, if it establishes that it is not a service supplier of another Party, or that it is a service supplier of a Party to which the denying Party does not apply the WTO Agreement.]

[GATS Article XIII: Government Procurement

Articles II, XVI and XVII [Articles MFN, MA and NT] shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not a view to commercial resale or with a view to use in the supply of services for commercial sale.]

[Placeholder for subsidies]

Part II- Scheduling Commitments

Each Party shall adopt a schedule in accordance with the provisions set out in this Part.

Article II-1: Scheduling of Market Access Commitments

In scheduling commitments pursuant to Article I-3 (Market Access), each Party shall set out in Section B of Part I and in Part II of its Schedule the [specific] commitments it undertakes, and any terms, limitations and conditions with respect to sectors where such commitments are undertaken.

Article II-2: Scheduling of National Treatment Commitments

1. In scheduling commitments pursuant to Article I-4 (National Treatment), each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to any conditions and qualifications that the Party shall set out in its Schedule in accordance with paragraphs 2 and 4.
2. The conditions and qualifications on national treatment set out in Section B of Part I or Part II of each Party's Schedule 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.
3. If a Party amends a measure referred to in paragraph 2 in a way that reduces or eliminates the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment), as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with the treatment provided for in Article I-4 (National Treatment).
4. Paragraphs 2 and 3 and Article I-4 (National Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in Section A of Part I of each Party's Schedule.

CH: Switzerland will continue its consultations regarding these provisions and their implications and operationalization under its domestic law.

EU: Depending on outcomes of the discussion on annex on mode 4 a provision on Scheduling of Entry and Temporary Stay of Natural Persons could be introduced here.

[Article II-3 Scheduling of Measures Inconsistent with both Market Access and National Treatment

[AU/CA/CO/EU/JP/NZ/US **propose**: Any measure required to be set out in a Party's Schedule in accordance with both Article II-1 (Scheduling of Market Access Commitments) and Article II-2 (Scheduling of National Treatment Commitments) shall be included] in both the [NZ **oppose**: column] [NZ **propose**: part] of the Schedule that relates to Article 1-3 (Market Access) and the [NZ **oppose**: column] [NZ **propose**: part] of the Schedule that relates to Article 1-4 (National Treatment).]

[Article 11-4: Scheduling Additional Commitments]

[Under Discussion]

<i>EU: Further horizontal commitments or standards could be introduced here.</i>
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Part III- New and Enhanced Disciplines

[...]

[US considering: Article I] Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in services, nothing in [Part III of] this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by [Part III of] this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. [Chapter [] (Dispute Settlement)] shall otherwise apply to this Article. An [arbitral tribunal] established under [Article [] (Establishment of an Arbitral Tribunal)] may be requested by a Party to determine only whether any measure (referred to in Paragraph 1) is inconsistent with its rights under this Agreement.]