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TISA/JUL.2015/negotiating text/MNP
as of ~~November 8~~ ~~September 24~~, 2016

Without Prejudice

ANNEX ON MOVEMENT OF NATURAL PERSONS

Article 1. 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/CH/CR/EU/NO/IL/IS_/TW/LI propose; AU/CL/CO/HK/JP/TR/PK/MU/MX/NZ/PE/US oppose:, as set out in each Party's schedule of specific commitments].

~~EU proposes:~~ [Footnote]

~~[Footnote] For the EU, [XX, YY], the Annex applies only in respect of the supply of a service pursuant to their commitments in the Agreement.]~~

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.

3. 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 as not applied in such a manner as to nullify or impair the benefits accruing to any Party under this Annex and the terms of a specific commitment¹.

~~In the event there is consensus to include in other Annexes provisions on agreed standards for the entry and temporary stay of natural persons, the Parties agree to revisit the language "this Annex and the terms of a specific commitment" on the application of Article 1.3 to those commitments.~~

Article 2. Transparency

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.

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1. Each Party shall make publicly available information on the requirements and procedures 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 and procedures.

2. The information referred to in paragraph 1 shall include, where applicable, the following information:

- a) categories of visa, permits or any similar type of authorization regarding entry and temporary stay;
- b) documentation required and conditions to be met;
- c) method of filing an application and options on where to file, such as consular offices or online;
- d) application fees and indicative processing time;
- e) the maximum period of stay under each type of authorization described in subparagraph (a);
- f) conditions of any available extensions or renewal;
- g) rules regarding accompanying dependents;
- h) available review and/or appeal procedures;
- j) relevant laws of general application pertaining to the entry and temporary stay of natural persons.

~~3. For greater certainty, the sole fact that a Party grants 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 for practicing a profession. Such requirements shall not be inconsistent with the obligations of the Parties under this Agreement.~~

This paragraph will be moved to a different part of the Annex and be de linked from transparency.

EU propose: This Article will be the last paragraph of Article 5.

Article 3. Scheduling of Commitments on Entry and Temporary Stay of Natural Persons

1. In scheduling commitments pursuant to Parts I and II of this Agreement, each Party shall set out in its Schedule the commitments it undertakes for the entry and temporary stay in its territory of the categories of natural persons of another Party, which shall specify the conditions and limitations for entry and temporary stay, and include the

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period of stay and any possibility for extension of stay, for each category of natural person specified by that Party.

2. A service supplier covered by a specific commitment undertaken in accordance with paragraph 1, shall be allowed to supply the service in accordance with the terms of the commitment.

3. For greater certainty, the sole fact that a Party grants 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 for practicing a profession. Such requirements shall not be inconsistent with the obligations of the Parties under this Agreement.

4. In accordance with its laws and regulations, a Party may, on a non-discriminatory basis, derogate from its commitments on entry and temporary stay set out in its schedule in cases where the entry and temporary stay of a natural person of another Party might adversely affect:

- a) the settlement of a collective 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.

~~[CA/CO/EU/MU/NO propose; CL/IS/MX/PK considering: Article 4. Specific commitments~~

~~[CA/CL/CO/EU/IS/JP/MU/NO propose; CR/KR/LI/MX/PK considering: 1. With respect to the supply of a service as defined in article I 1.2(d) (Mode 4), the schedule of each Party shall include commitments pursuant to Article I 3 (Market Access) and Article I 4 (National Treatment) at least with respect to intra corporate transferees and business visitors².]~~

~~[CA/CO/EU/MU/NO propose; CL/JP/LI/PK considering: 2. Each Party shall:]~~

- a) ~~[CA/CL/CO/EU/JP/MU/NO propose; LI/PK considering: [EU/CL propose: For every sector committed at least for the supply of a service as described in Article I 1:2 (c) [Mode 3]] allow entry and temporary stay for intra corporate transferees, without economic needs tests, for a period of at least one year or for a sufficient period to cover the duration of the contract, which is less.]~~

² 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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- b) ~~[CA/CO/EU/MU/NO] propose; CL/JP/PK considering; [EU/CL] propose:~~
For every sector committed at least for the supply of a service as described in Article I 1:2 (c) ~~[Mode 1,2,3]] allow entry and temporary stay of business visitors, without economic needs tests, for a period of up to 90 days per calendar year or for a sufficient period to cover the purpose of the visit, whichever is less.]~~
- e) ~~[CA/CL/CO/EU/JP/MU/NO] propose; PK considering; [CO/MU] oppose:~~
endeavour to] allow entry and temporary stay of contractual service suppliers and/or independent professionals, ~~[EU] oppose: without economic needs tests]~~ for a cumulative period of 3 months in any 12 months period or for the duration of the contract, whichever is less.]] ~~[, CO propose: for every sector committed at least for the supply of a service as described in Article I 1:2(a) [Mode 1]].]~~

Article 45. Entry and Temporary Stay Related Requirements and Procedures

~~Parties have agreed to set aside the issue of placement and have agreed to work on substance.~~

[EU proposes: ^[Footnote]

^[Footnote] The EU abides to Article 5 in conformity with its Declaration in Appendix [XX].]

~~X. Subject to the competent authorities' discretion, documents required from the applicant[s] for applications for the grant of entry and temporary stay of short term visitors for business purposes should be commensurate with the purpose for which they are collected.~~

1. Each Party shall ensure that fees charged by competent authorities for the processing of applications for entry and temporary stay do not unduly impair or delay trade in services under this Agreement.

2. Subject to the competent authorities' discretion, documents required from the applicant[s] for applications for the grant of entry and temporary stay of short-term visitors for business purposes should be commensurate with the purpose for which they are collected.

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2.3. Complete applications for the grant of entry and temporary stay shall be processed as expeditiously as possible.

3.4 The competent authorities of a Party shall endeavor to provide, without undue delay, information in response to any reasonable request from an applicant concerning the status of an application.

4.5. If the competent authorities of a Party require additional information from the applicant in order to process the application, they shall endeavour to notify, without undue delay, the applicant.

5.6. The competent authorities of each Party shall notify the applicant of the outcome of the application promptly after a decision has been taken.

If the application is approved, the competent authorities of each Party shall notify the applicant of the period of stay and other relevant terms and conditions.

If the application is declined, the competent authorities of a Party shall, upon request or upon their own initiative make available to the applicant information on any available review and/or appeal procedures.

7. Parties recognize the importance of multiple entry visas in facilitating entry of natural persons covered under this Annex. ~~[EU opposes: and as permitted by Parties' domestic laws, Parties [EU proposes: may] [EU opposes: will endeavor to] issue multiple entry visas, where appropriate.*[EU proposes: [Footnote] [Footnote] This provision shall not apply to the EU.]~~

*NO/IS/LI are still considering this

6.8. Parties shall endeavor to accept and process applications in electronic format.

[EU proposes: EU Declaration regarding cooperation on return and readmission

The enhanced movement of persons following from the provisions of Article 5 of the Annex on Movement of Natural Persons requires full cooperation on return and readmission of persons staying on the EU territory in contravention of EU rules for entry and stay, in accordance with obligations under customary international law.

To this end, in the event that the EU has concluded a bilateral agreement on return and readmission of own nationals with another Party, and the EU considers that such bilateral agreement is not being implemented by that other Party, the EU may suspend the

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application of the provisions of Article 5 of the Annex on Movement of Natural Persons with regard to the service suppliers of that Party.

In the event that a Party refuses to negotiate a readmission agreement at the request of the EU, or such negotiations are not completed within a reasonable period of time, the EU may suspend the application of Article 5 of the Annex on Movement of Natural Persons with regard to the service suppliers of that Party.]

{EU propose:

Cooperation on return and readmission

~~1. The Parties acknowledge that the enhanced movement of persons following from the provisions of Article 1 of the present Protocol requires full cooperation on return and readmission of persons staying on the territory of a Party in contravention of its rules for entry and stay, in accordance with obligations under customary international law.~~

~~2. To this end, in the event that a Party has concluded, or will conclude, a bilateral agreement on return and readmission of own nationals with another Party (“bilateral agreement”), the Party, which considers that its bilateral agreement is not being implemented by the other Party to that bilateral agreement, may suspend the application of the provisions of Article 1 of the present Protocol with regard to the service suppliers of the latter.~~

~~3. To this end, in the event that a Party refuses to negotiate a readmission agreement at the request of another Party over a protracted period of time, or such negotiations are not completed within a reasonable period of the time, the requesting Party in this regard may suspend the application of the provisions of Article 1 of the present Protocol with regard to the service suppliers of the latter.]~~

~~{CH oppose: **Article X. Labor Disputes**~~

~~1. In accordance with its laws and regulations, a Party may, on a non-discriminatory basis, derogate from its commitments on entry and temporary stay set out in its schedule in cases where the entry and temporary stay of a natural person of another Party might adversely affect:~~

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- a) — the settlement of a collective 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.]

This issue will be revisited together with the EU Proposal on CRP Guidelines on MNP.

[CA/CO/EU/MU/NO propose: CL/IS/MX/PK considering: Article X. Specific commitments

[CA/CL/CO/EU/IS/JP/MU/NO propose: ~~CR~~/KR/~~LI~~/MX/PK considering: 1. With respect to the supply of a service as defined in article I-1.2(d) (Mode 4), the schedule of each Party shall include commitments pursuant to Article I-3 (Market Access) and Article I-4 (National Treatment) at least with respect to intro-corporate transferees and business visitors.]

CA/CO/EU/MU/NO propose; CL/JP/~~LI~~/PK considering: 2. Each Party shall:]

(a)[CA/CL/CO/EU/JP/MU/NO propose; ~~LI~~/PK considering: [EU/CL propose: For every sector committed at least for the supply of a service as described in Article I-1:2 (c) [Mode 3]] allow entry and temporary stay of intra-corporate transferees, without economic needs tests, for a period of at least one year or for a sufficient period to cover the duration of the contract, whichever is less.

(b) [CA/ CO/EU/MU/NO propose; CL/JP/PK considering: [EU/CL propose: For every sector committed at least for the supply of a service as described in Article I-1:2 (c) [Mode 1,2,3]] allow entry and temporary stay of business visitors, without economic needs tests, for a period of up to 90 days per calendar year or for a sufficient period to cover the purpose of the visit, whichever is less.]

(c) [CA/CL/CO/EU/JP/MU/NO propose; PK considering: [CO/MU oppose: endeavour to] allow the entry and temporary stay of contractual service suppliers and/or independent professionals, [EU oppose: without economic needs tests] for a cumulative period of 3 months in any 12 months period or for the duration of the contract, whichever is less.]] [.CO propose: for every sector committed at least for the supply of a service as described in Article I-1:2(a) [Mode 1]].]

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