

**FRAMEWORK AGREEMENT ON THE PROMOTION AND LIBERALIZATION OF TRADE IN  
SERVICES AMONG APTA PARTICIPATING STATES**

(hereinafter referred to as "this Agreement")

The Governments of the People's Republic of Bangladesh, the People's Republic of China, the Republic of India, the Lao People's Democratic Republic, the Republic of Korea and the Democratic Socialist Republic of Sri Lanka, Participating States of the Asia-Pacific Trade Agreement (APTA) (hereinafter referred to as "Participating States");

**RECOGNIZING** the growing importance of trade in services for Participating States;

**AFFIRMING** the importance of sustaining economic growth and development in all Participating States through joint efforts in liberalizing trade in services and promoting intra-APTA trade and investment flows;

**RECOGNIZING** that economic cooperation among Participating States will secure a liberal trading framework for trade in services which would strengthen and enhance trade in services among them;

**RECALLING** the decision of the Ministers of Participating States in their Ministerial Declaration adopted at the Second Session of the Ministerial Council in Goa on 26 October 2007 directing the Standing Committee of APTA to adopt modalities for the extension of negotiations into other areas, such as non-tariff measures, trade facilitation, services, and investment, as soon as possible;

**REITERATING** their commitment to the rules and principles of the General Agreement on Trade in Services (hereinafter referred to as "GATS")

**REFERRING** to Article V of GATS on economic integration;

**AFFIRMING** that Participating States shall extend to one another preferences in trade in services;

**RECOGNIZING** the right of the Participating States to regulate, and to introduce new regulations on the supply of services in their territories, in order to meet national policy objectives,

**REFERRING** to Article 11 of the APTA, which states that Participating States shall explore future areas of cooperation with regard to border and non-border measures to supplement and complement the liberalization of trade; and further referring to Article 26 of the APTA

**HAVE AGREED as follows:**

## **Article 1**

### **Definitions**

For the purposes of this Agreement:

- (a) “juridical person” means any legal entity duly constituted or otherwise organised 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;
- (b) “person” means either a natural person or a juridical person;
- (c) a juridical person is:
  - (i) “owned” by persons of a Participating State if more than 50 percent of the equity interest in it is beneficially owned by persons of that Participating State;
  - (ii) “controlled” by persons of a Participating State if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
- (d) “juridical person of another Participating State” means a juridical person which is either:
  - (i) constituted or otherwise organized under the law of that Participating State, and is engaged in substantive business operations in the territory of that Participating State or any other Participating State; or

- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
  - 1. natural persons of that Participating State; or
  - 2. juridical persons of that other Participating State identified under subparagraph (i).
- (e) “natural person of a Participating State” means a natural person who under the law of that Participating State is a national of that Participating State;
- (f) “measure” means any measure by a Participating State, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
- (g) “trade in services” is defined as the supply of a service:
  - (i) from the territory of one Participating State into the territory of any other Participating State;
  - (ii) in the territory of one Participating State to the service consumer of any other Participating State;
  - (iii) by a service supplier of one Participating State, through commercial presence in the territory of any other Participating State;
  - (iv) by a service supplier of one Participating State, through presence of natural persons of a Participating State in the territory of any other Participating State.
- (h) “measures by Participating States 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 Participating States to be offered to the public generally;
  - (iii) the presence, including commercial presence, of persons of a Participating State for the supply of a service in the territory of another Participating States.
- (i) “services” includes any service in any sector except services supplied in the exercise of governmental authority;
- (j) “service supplier” means any person that supplies a service:<sup>1)</sup>

- (k) “supply of a service” includes the production, distribution, marketing, sale and delivery of a service;
- (l) “Secretariat” means the secretariat of the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP);

## **Article 2**

### **Scope**

1. This Agreement applies to measures by the Participating States affecting trade in services.
2. This Agreement shall not apply to:
  - (a) government procurement;
  - (b) subsidies or grants, including government-supported loans, guarantee and insurance, or to any conditions attached to that receipt or continued receipt of such subsidies or grants;
  - (c) services supplied in the exercises of government authority provided that such services are supplied neither on a commercial basis, nor in competition with one or more service providers;
  - (d) measures affecting natural persons seeking access to the employment market of Participating State; and
  - (e) measures regarding citizenship, residence or employment on a permanent basis.
3. Nothing in this Agreement shall prevent a Participating State from applying measures to regulate the entry of natural persons of the other Participating State 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

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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 this 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.

impair the benefits accruing to the other Participating State under the terms of this Agreement as well as the terms of specific commitments undertaken in subsequent negotiations<sup>2)</sup>.

### **Article 3**

#### **Objectives**

The objectives of the Participating States under this Agreement are:

- (a) to enhance cooperation in services amongst Participating States in order to improve the efficiency and competitiveness, and to diversify production capacity, and supply and distribution of services, of their service suppliers within and outside Participating States;
- (b) to substantially reduce restrictions with a view to facilitating trade in services amongst Participating States; and
- (c) to liberalize trade in services by expanding the depth and scope of liberalization beyond those under the GATS.

### **Article 4**

#### **Areas of Cooperation**

1. All Participating States shall participate in the cooperation arrangements under this Agreement.
2. Participating States shall strengthen and enhance existing cooperation efforts in service sectors and develop cooperation in sectors that are not covered by existing cooperation arrangements, through inter alia:
  - (a) establishing or improving infrastructural facilities;
  - (b) joint production, marketing and purchasing arrangements;
  - (c) research and development; and
  - (d) exchange of information.

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<sup>2)</sup> The sole fact of requiring a visa for natural persons of certain Participating States and not for those of others shall not be regarded as nullifying or impairing benefits under a specific commitment.

3. Participating States shall identify sectors for cooperation and formulate Action Plans, Programmes and Understandings that shall provide details on the nature and extent of cooperation.

## **Article 5**

### **Liberalization**

Pursuant to subparagraph (c) of Article 3, Participating States shall liberalize trade in services in a substantial number of sectors by:

- (a) gradually reducing existing discriminatory measures and market access limitations amongst Participating States; and
- (b) refraining from introducing new or more discriminatory measures and market access limitations.

## **Article 6**

### **Special Consideration**

1. The least developed country Participating States shall be provided flexibility in the submission and implementation of all Schedules of specific commitments, Programmes and Action Plans under this Agreement. The Participating States shall, wherever possible, consider special concessions to these economies in their Schedules of specific commitments, Programmes and Action Plans.

2. Special consideration shall be given by Participating States to requests from least developed country Participating States for technical assistance and cooperation arrangements designed to assist them in expanding their relations in trade in services with other Participating States and in taking advantage of the potential benefits of this Agreement.

3. Special consideration in accordance with paragraph 1 of this Article shall also be extended to Sri Lanka.

## **Article 7**

### **Negotiation of Specific Commitments**

1. Participating States shall enter into negotiations on measures affecting trade in specific service sectors. Such negotiations shall be directed towards achieving commitments which are beyond those inscribed in each Participating State's Schedule of specific commitments under the GATS, if that Participating State is a Member of the World Trade Organization. The result of such negotiations shall be set out in the Schedules of specific commitments of each Participating State, which will be annexed to this Agreement as an integral part.
2. Subject to the provisions of Article 6.1, the specific commitments undertaken under paragraph 1 of this Article shall be extended to all Participating States on a Most Favoured Nation (MFN) basis, unless agreed otherwise.
3. For the purpose of making specific commitments, the Participating States shall apply Articles XVI to XVIII and Article XX of GATS.

## **Article 8**

### **World Trade Organization Agreements**

Unless otherwise specified in this Agreement and subject to any future agreements as may be agreed pursuant to reviews of this Agreement by the Participating States under Article 13, the Participating States, whether they are Members of the World Trade Organization or not, hereby agree and reaffirm their commitments to abide by the World Trade Organization agreements as are relevant and applicable to trade in services.

## **Article 9**

### **Exceptions**

Article 35 of APTA shall apply to this Agreement and any arrangements, agreements

and understandings arising therefrom with regard to trade in services.

## **Article 10**

### **Settlement of Disputes**

Unless a specific dispute settlement mechanism is established under this Agreement, Article 21 of APTA shall apply to this Agreement.

## **Article 11**

### **Denial of Benefits**

Subject to prior notification and consultation, a Participating State 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-Participating State to this Agreement;
- (b) in the case of the supply of a maritime transport service, if it established that the service is supplied:
  - (i) by a vessel registered under the laws of a non-Participating State, and
  - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Participating State;or if it is established that the service is cabotage.
- (c) to a services supplier of another Participating State where the Participating State establishes that:
  - (i) where such service supplier is a natural person, such natural person is not a national of the other Participating State, and
  - (ii) where such services supplier is a juridical person, such juridical person is not a 'juridical person of another Participating State' as defined under this Agreement.

## **Article 12**

### **Supplementary Agreements or Arrangements**



Schedules of specific commitments and Understandings arising from subsequent negotiations under this Agreement and any other agreements or arrangements, Action Plans and Programmes arising thereunder shall form an integral part of this Agreement.

### **Article 13**

#### **Other Agreements**

1. This Agreement or any measure taken under it shall not affect the rights and obligations of the Participating States under any existing agreements to which they are parties.
2. Nothing in this Agreement shall affect the rights of the Participating States to enter into other agreements not contrary to the principles, objectives and terms of this Agreement.
3. Upon the signing of this Agreement, Participating States shall promptly notify the Secretariat of any agreements pertaining to or affecting trade in services to which they are a signatory.

### **Article 14**

#### **Institutional Arrangements**

1. The Ministerial Council shall review the implementation of this Agreement every two years.
2. The Standing Committee shall carry out such functions to facilitate the operation of this Agreement and further its objectives, including the organization of the conduct of negotiations, review and supervision of the implementation of this Agreement.
3. For the purpose of implementing paragraph 2 of this Article, the Standing Committee may establish a Working Group on Services, comprising senior officials and experts in specific sectors of trade in services and its subsectors.

4. The Secretariat shall assist the Ministerial Council, the Standing Committee and the Working Group on Services in carrying out their functions, including providing the support for supervising, coordinating and reviewing the implementation of this Agreement.

## **Article 15**

### **Amendments**

1. Subject to paragraph 2 of this Article, this Agreement may be amended through the consent of all the Participating States and such amendments shall become effective upon acceptance by all the Participating States.

2. The modification or withdrawal of any commitment in its schedule shall be governed *mutatis mutandis* by Article 21 of the GATS. References to the Council for Trade in Services shall be to the Standing Committee of APTA. References to arbitration in Article XXI paragraphs 3 and 4 shall be to the Standing Committee of APTA, which may settle the matter upon agreement by at least two thirds of the Participating States.

## **Article 16**

### **Recognition**

1. For the purpose of the fulfillment of its standards or criteria for authorization, licensing or certification of services suppliers, a Participating State may recognize the education or experience obtained, requirements met, or licenses or certifications granted in another Participating State.

2. After the entry into force of this Agreement, upon a request being made in writing by a Participating State to any other Participating State(s) in any regulated service sector, in appropriate cases, the Participating States shall encourage their respective professional bodies to enter into negotiations for developing mutually acceptable

standards and criteria for licensing, temporary licensing and certification of professional services suppliers. Progress in this regard will be reviewed by the Standing Committee.

#### **Article 17**

##### **Contact Point**

1. Each Participating State shall designate a contact point to facilitate communications among the Participating States on any matter covered by this Agreement, including the exchange of information relevant to the implementation and operation of this Agreement.
2. At the request of any Participating State, the contact point of the requested Participating State shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Participating State.

#### **Article 18**

##### **Final Provisions**

1. The terms and definitions and other provisions of the GATS shall be referred to and applied to matters arising under this Agreement for which no specific provision has been made under it.
2. This Agreement shall enter into force upon the deposit of instruments of ratification or acceptance by all signatory Governments with the Executive Secretary of ESCAP, who shall promptly furnish a certified copy thereof to each Participating State. The signatory Governments undertake to deposit their instruments of ratification or acceptance within six months after the date of signing of this Agreement.
3. In accordance with Articles 11 and 26 of the APTA, this Agreement shall form an integral part of the APTA, by becoming Annex III-B thereto.

**IN WITNESS WHEREOF**, the undersigned, being duly authorized by their respective

Governments, have signed the Framework Agreement on the Promotion and Liberalization of Trade in Services among APTA Participating States.

Done at \_\_\_\_\_, \_\_\_\_\_ day of \_\_\_\_\_ two thousand and ten, in one single copy in the English language.

FOR THE REPUBLIC OF KOREA:

FOR THE PEOPLE'S REPUBLIC OF BANGLADESH:

FOR THE PEOPLE'S REPUBLIC OF CHINA:

FOR THE REPUBLIC OF INDIA:

FOR THE LAO PEOPLE'S DEMOCRATIC REPUBLIC:

FOR THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA: