FRAMEWORK AGREEMENT ON THE PROMOTION, PROTECTION AND LIBERALIZATION OF INVESTMENT IN APTA PARTICIPATING STATES

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(hereinafter referred to as this Agreement)

The Governments of the Peoples Republic of Bangladesh, the Peoples Republic of China, the Republic of India, the Lao Peoples 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);

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

RECOGNIZING that investment is an important source of knowledge and finance for sustaining the pace of economic, industrial, infrastructure and technology development;

FURTHER RECOGNIZING the need to take action to attract higher and sustainable levels of investment in Participating States;

RECALLING the decision of the APTA Ministers in their Ministerial Declaration adopted at the Second Session of the Ministerial Council in Goa, India on 26 October 2007 to direct the Standing Committee 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;

DETERMINED to further strengthen the position of Participating States as competitive investment destinations through a more liberal and transparent investment environment;

REFERRING to Article 11 of 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 APTA on Amendments to the Asia-Pacific Trade Agreement;

HAVE AGREED AS FOLLOWS:

Article 1. Definitions

For the purposes of this Agreement

1. APTA investor means:

(a) a natural person having the citizenship of a Participating State in accordance with its applicable laws; or

(b) any legal entity duly constituted or otherwise organized under applicable law of a Participating State, whether for profit or otherwise, and whether privately-owned or government-owned, including any corporation, trust, partnership, joint venture, sole proprietorship or association; or

(c) any legal entity duly constituted or otherwise organized under applicable law of any State, whether for profit or otherwise, including any corporation, trust, partnership, joint venture, sole proprietorship or association and owned or controlled, directly or indirectly, by natural persons or legal entities as defined in (a) and (b) above.

2. (a) Investment means every kind of asset invested or acquired by an APTA investor in accordance with the laws of the Participating State in whose territory the investment is made and includes, though not exclusively:

(i) movable and immovable property and other property rights such as mortgage, liens or pledges;

(ii) shares, stocks, debentures and similar forms of participation;

(iii) bonds, loans and other forms of debt instruments;

(iv) Rights to money or to any performance under contract having a financial value;

(v) intellectual property rights, goodwill, technical processes and know-how as conferred by law;

(vi) Business concessions conferred by law or under contract, including concessions to search for, extract or exploit oil and other minerals and other natural resources.

(b) For the purposes of paragraph 1, returns that are invested shall be treated as investments and any alteration in the form in which assets are invested or reinvested shall not affect their character as investments.

3. Returns means the amounts, monetary or in kind, yielded by investments and, in particular, though not exclusively, includes profits, interest, capital gains, dividends, royalties or payments in connection with intellectual property rights, and all kinds of fees.

4. Secretariat means the secretariat of the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP).

Article 2. Objectives

The objectives of this Agreement are to:

(a) substantially increase the flow of investments into Participating States;

(b) jointly promote Participating States as attractive investment destinations;

(c) strengthen and increase the competitiveness of Participating States economic sectors;

(d) progressively reduce or eliminate investment regulations and conditions which may impede investment flows and the operation of investment projects in Participating States;

(e) progressively strive towards a harmonized investment regime among all Participating States;

(f) promote the free flow of investments and transfer of technology among Participating States.

Article 3. Programmes and Action Plans

1. Participating States shall, for the implementation of the obligations under this Agreement, initiate negotiations no later than a date to be decided by the Standing Committee, for the joint development and implementation of the following programmes within a timeframe to be decided:

(a) cooperation and facilitation programme as specified in Schedule I;

(b) promotion and awareness programme as specified in Schedule II;

(c) liberalization programme as specified in Schedule III; and

(d) protection programme as specified in Schedule IV.

2. Participating States shall submit Action Plans for the implementation of the programmes through the secretariat by a date to be decided by the Standing Committee.

3. The Action Plans shall be reviewed every two years by the Ministerial Council after consideration by the Standing Committee to ensure that the objectives of this Agreement are achieved.

Article 4. Transparency

1. Each Participating State shall make available to the Standing Committee through the secretariat all laws, regulations, procedures, administrative rulings of general application which pertain to, or affect, the operation of this Agreement. This shall also apply to international agreements pertaining to or affecting investment to which a Participating State is also a signatory.

2. Each Participating State shall promptly and at least annually inform the Standing Committee through the secretariat of the

introduction of any new or any changes to existing matters set out in paragraph 1 of this article which affect investments or its commitments under this Agreement.

3. Nothing in this Agreement shall require any Participating State 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 5. 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 Participating States where like conditions prevail, or a disguised restriction on investment flows, nothing in this Agreement shall be construed to prevent any Participating State from adopting and implementing measures:

1. which it considers necessary for the protection of its national security, the protection of public morals and maintenance of public order (1) the protection of human, animal and plant life and health, and the protection of articles of artistic, historical and archaeological value;

2. which are aimed at ensuring the equitable or effective imposition or collection of direct taxes in respect of investments or investors of Participating States; or

3. which it considers necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement including those relating to:

(a) the prevention of deceptive and fraudulent practices;

(b) 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;

(c) Safety.

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

Article 6. Institutional Arrangements

1. The Ministerial Council shall review the implementation of this Agreement every two years. For this purpose, the Ministerial Council shall comprise the Ministers authorized to review this Agreement by the Heads of Government of each Participating State.

2. The Standing Committee shall supervise and coordinate the implementation of this Agreement and submit its recommendations for review to the Ministerial Council.

3. For the purpose of implementing paragraph 2, the Standing Committee shall establish a Working Group on Investment (WGI) comprising senior officials from relevant governments of the Participating States.

4. The Working Group on Investment shall meet at least twice yearly and report to the Ministerial Council through the Standing Committee.

5. The ESCAP secretariat shall be the secretariat of the Working Group on Investment.

Article 7. Settlement of Disputes Among Participating States

1. A specific dispute settlement mechanism may be established for the purposes of this Agreement which shall form an integral part of this Agreement.

2. Unless a specific dispute settlement mechanism is established under paragraph 1 of this article, with regard to any dispute among Participating States arising out of, the interpretation or implementation of this Agreement, articles 20 and 21 of APTA shall apply mutatis mutandis.

Article 8. Special Consideration

1. Least developed country Participating States shall be provided flexibility in the submission and implementation of all

Schedules and Action Plans under this Agreement. The Participating States shall provide special concessions to these countries in their Schedules 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 investment relations with other Participating States.

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

Article 9. Modifications and Amendments

The provisions, Schedules and Action Plans of this Agreement may be amended or modified through the consent of all the Participating States and such amendments shall become effective upon acceptance by all Participating States.

Article 10. Supplementary Agreements or Arrangements

The Schedules, Action Plans, Annexes and any other arrangement or agreements arising under this Agreement shall form an integral part of this Agreement.

Article 11. Contact Point

1. Each Participating State shall designate a contact point to facilitate communications between 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 12. Final Provisions

1. In the event of inconsistency between this Agreement and the APTA Framework Agreement on the Promotion and Liberalization of Trade in Services, the relevant provisions of the APTA Framework Agreement on the Promotion and Liberalization of Trade in Services shall apply with regard to liberalization of trade in services as defined in Article I, Paragraph 2(c) of the General Agreement on Trade in Services (commercial presence) of the World Trade Organization and the relevant provisions of this Agreement shall apply with regard to the investment protection measures to be stipulated according to Schedule IV of this Agreement.

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 APTA, this Agreement shall form an integral part of APTA, by becoming Annex III-C thereto.

IN WITNESS WHEREOF, the undersigned, duly authorized representatives of the signatory States, have signed the present Agreement on behalf of their respective Governments. Done at Seoul, this fifteenth day of December two thousand and nine, in one single copy in the English language.

FOR THE PEOPLES REPUBLIC OF BANGLADESH:

Muhammad Faruk Khan

Minister of Commerce

FOR THE PEOPLES REPUBLIC OF CHINA:

Yi Xiaozhun

Vice Minister of Commerce

FOR THE REPUBLIC OF INDIA:

Jyotiraditya M. Scindia lylinister of State for Commerce and Industry

FOR THE LAO PEOPLE'S DEMOCRATIC REPUBLIC:

Nam Viyaketh

Minister of Industry and Commerce

FOR THE REPUBLIC OF KOREA:

Hur Kyung-Wook

The First Vice Minister of Strategy and Finance

FOR THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

Insena Liyanagama

Secretary, Ministry of Export Development and International Trade

SCHEDULE I

COOPERATION AND FACILITATION PROGRAMME

In respect of the Cooperation and Facilitation Programme, Participating States, with the assistance of the secretariat where relevant, shall take:

1. Individual initiatives to:

(a) increase transparency of the Participating States investment rules, regulations, policies and procedures through the publication of such information on a regular basis and by making such information widely available;

(b) simplify and expedite procedures for applications, approvals and implementation of investment projects at all levels; and

(c) expand the number of bilateral agreements for the avoidance of double taxation among the Participating States.

2. Collective initiatives to:

(a) establish a database for APTA Supporting Industries and APTA Technology suppliers;

(b) establish a database to enhance the flow of APTA investment data and information on investment opportunities in APTA;

(c) promote public-private sector linkages through regular dialogues with the APTA business community and other international organizations to identify investment impediments within and outside APTA and propose ways to improve the APTA investment environment;

(d) identify target areas for technical cooperation, e.g. development of human resources, infrastructure, supporting industries, small and medium-sized enterprises, information technology, industrial technology, R and D and coordinate efforts within APTA with other international organizations involved in technical cooperation;

(e) examine the possibility of an APTA Agreement for the avoidance of double taxation.

SCHEDULE II

PROMOTION AND AWARENESS PROGRAMME

In respect of the Promotion and Awareness Programme, Participating States, in cooperation with the secretariat where relevant, shall:

1. Organize joint investment promotion activities, e.g. seminars, workshops, roadshows, investment forums;

2. Conduct regular consultations among investment agencies of Participating States on investment promotion matters;

3. Organize investment-related training programmes for officials of investment agencies of Participating States;

4. Exchange lists of promoted sectors/industries where Participating States could encourage investments from other Participating States and initiate promotional activities;

5. Examine possible ways by which the investment agencies and apex chambers of commerce and industry of Participating States can support the promotion efforts of other Participating States; and

6. Establish a Joint Investment Promotion Committee to facilitate the promotional activities.

SCHEDULE III

LIBERALIZATION PROGRAMME

In respect of the Liberalization Programme, Participating States agree to enter into negotiations to progressively improve their investment regime with a view to promoting freer investment among the APTA Participating States.

SCHEDULE IV

PROTECTION PROGRAMME

In respect of the Protection Programme, Participating States shall:

1. Formulate and conclude an APTA Agreement for the Promotion and Protection of Investments. That Agreement shall include, at a minimum, provisions related to the following issues:

(a) post-establishment national treatment and Most-Favoured Nation treatment to APTA investors;

(b) full security and protection of the investments made in accordance with the legislation of the host country by APTA investors and protection against unreasonable or discriminatory measures impairing the operation, management, maintenance, usd, enjoyment, extension, disposition or liquidation of such investments;

(c) protection against expropriation and nationalization, except for public use, or public purpose, or in the public interest, and under due process of law, on a non-discriminatory basis and upon payment of prompt, adequate and effective compensation;

(d) transfer of the capital, net profits, dividends, royalties, technical assistance and technical fees, interests and other income, accruing from any investments of APTA investors, including a provision for safeguarding the balance of payments;

(e) dispute settlement procedures in cases of dispute relating to an investment between any Participating State and an investor of another Participating State or between Participating States;

(f) the imposition or enforcement of performance requirements.

2. Protect and uphold the principles of intellectual property rights, at a minimum in accordance with the principles and rules of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights.