



**EXPERT GROUP ON
SAARC AGREEMENT ON TRADE IN SERVICES:
FOURTH MEETING**

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**DRAFT
SAARC AGREEMENT ON TRADE IN SERVICES (SATIS)**

as revised during the

**THIRD MEETING OF THE EXPERT GROUP ON
SAARC FRAMEWORK AGREEMENT ON TRADE IN SERVICES
(SAARC SECRETARIAT, KATHMANDU, 21-22 MAY 2009)**

Preamble

The Governments of the South Asian Association for Regional Cooperation (SAARC) Member States comprising the Islamic Republic of Afghanistan, People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to individually as "Contracting State" and collectively as "Contracting States";

Being committed to strengthen SAARC economic cooperation to maximise the realization of the region's potential for trade and development for the benefit of their people, in a spirit of mutual accommodation, with full respect for the principles of sovereign equality, independence and territorial integrity of all States;

Recognising that regional trading arrangements both in goods and services in SAARC shall act as avenues for achieving objectives of economic development and growth in the region by expanding intraregional investment and production opportunities;

Noting that the Agreement on South Asian Free Trade Area (SAFTA) provides for trade liberalization on a preferential basis in trade in goods;

Being convinced of the increasing role that the services sector is playing in the economies and trade of the Contracting States; and immense potential to augment intra-regional trade in services in a mutually beneficial manner; and also

Recognizing further that Least Developed Countries **and Small and Vulnerable Economies (to be discussed further at its fourth meeting)** in the region need to be accorded special and differential treatment commensurate with their development needs;

Have agreed as follows:

Article 1

Definitions

For the purposes of this Agreement:

- 1. a juridical person is:**
 - 1.1 owned** by persons of a Contracting State if more than 50 per cent of the equity interest in it is beneficially owned by persons of that Contracting State;
 - 1.2 controlled** by persons of a Contracting State if such persons have the power to name a majority of its directors or otherwise to legally direct its actions;
 - 1.3 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;
- 2. 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;
- 3. aircraft repair and maintenance services** mean such activities when undertaken on an aircraft or a part thereof while it is withdrawn from service and do not include so-called line maintenance;
- 4. commercial presence** means any type of business or professional establishment, including through:
 - 4.1 the constitution, acquisition or maintenance of a juridical person, or
 - 4.2 the creation or maintenance of a branch or a representative office,within the territory of a Contracting State for the purpose of supplying a service;
- 5. computer reservation system (CRS) services** mean services provided by computerized systems that contain information about air carriers' schedules, availability, fares and fare rules, through which reservations can be made or tickets may be issued;

6. **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;
7. **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;
8. **juridical person of the other Contracting States** means a juridical person which is either:
 - 8.1 constituted or otherwise organized under the law of the other Contracting States, and is engaged in substantive business operations in the territory of the other Contracting States, or a non-Contracting State;
 - 8.2 in the case of the supply of a service through commercial presence, owned or controlled by:
 - 8.2.1 natural persons of the other Contracting States; or
 - 8.2.2 juridical persons of the other Contracting States, identified under paragraph 8.1.
9. **measure** means any measure by a Contracting State, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;
10. **measures by Contracting States** means measures taken by:
 - 10.1 central, regional, or local governments and authorities; and
 - 10.2 non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;
11. **measures by Contracting States affecting trade in services** include measures in respect of:
 - 11.1 the purchase, payment or use of a service;
 - 11.2 the access to and use of, in connection with the supply of a service, services which are required by the Contracting States to be offered to the public generally;
 - 11.3 the presence, including commercial presence, of persons of a Contracting State for the supply of a service in the territory of the other Contracting State;
12. **monopoly supplier of a service** means any person, public or private, which in the relevant market of the territory of a Contracting State is authorized or established formally or in effect by that Contracting State as the sole supplier of that service;

- 13. natural person of a Contracting State** means a natural person who resides in the territory of the Contracting State or elsewhere and who under the law of that Contracting State:
- 13.1 is a national of that Contracting State; or
- 13.2 **[has the right of permanent residence in that Contracting State;]**
- 14. person** means either a natural person or a juridical person;
- 15. 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 Schedule of the Contracting States,
- (ii) otherwise, the whole of that service sector, including all of its subsectors;
- 16. services** includes any service in any sector except services supplied in the exercise of governmental authority;
- 17. selling and marketing of air transport services** mean opportunities for the air carrier concerned to sell and market freely its air transport services including all aspects of marketing such as market research, advertising and distribution. These activities do not include the pricing of air transport services nor the applicable conditions;
- 18. service consumer** means any person that receives or uses a service;
- 19. service of the other Contracting States** means a service which is supplied:
- 19.1 from or in the territory of the other Contracting States, or in the case of maritime transport, by a vessel registered under the laws of the other Contracting States, or by a person of the other Contracting States which supplies the service through the operation of a vessel and/or its use in whole or in part; or
- 19.2 in the case of the supply of a service through commercial presence or through the presence of natural persons, by a service supplier of the other Contracting States;

20. **service supplier** means any person that supplies a service;¹
21. **supply of a service** includes the production, distribution, marketing, sale and delivery of a service; and
22. **trade in services** is defined as the supply of a service:
- 21.1 from the territory of a Contracting State into the territory of the other Contracting State (**cross-border**);
 - 22.2 in the territory of a Contracting State to the service consumer of the other Contracting State (**consumption abroad**);
 - 22.3 by a service supplier of a Contracting State, through commercial presence in the territory of the other Contracting State (**commercial presence**);
 - 22.4 by a service supplier of a Contracting State, through presence of natural persons of a Contracting State in the territory of the other Contracting State (**presence of natural persons**).

[Article 2

(Proposal by Bangladesh)

Objectives, Principles and Modalities

- (a) The objectives of this Agreement are to promote and enhance trade in services among the Contracting States in a mutually beneficial manner through:
- (i) establishing a framework for regional cooperation in service sector aimed at promoting the interest of all Contracting States on a mutually advantageous basis and securing an overall balance of rights and obligations while giving due respect to national policy objectives.
 - (ii) liberalizing and promoting trade in services in accordance with Article V 3 of General Agreement on Trade in Services.

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.

- (iii) improving the efficiency and competitiveness of their service sector
 - (iv) ensuring equitable benefits to all Member States taking into account their respective levels and patterns of economic development.
- (b) The Agreement shall be governed by the following principles:
- (i) expansion of trade in services under this Agreement shall be made through the commitment and operational modalities which are GATS plus.
 - (ii) While maintaining the consistency with Article V, 3 the commitments under this Agreement shall take into consideration the national policy objectives of the individual service sector and the level of economic development in the Contracting States.
 - (iii) Commitments would be undertaken through successive rounds of negotiations in regular intervals for gradual expansion of regional trade in services through positive list approach based on request and offer lists.)
 - (iv) Special needs of Least Developed Contracting States shall be recognized by adopting concrete measures in their favour.]

[Article 2 – Original proposal

Objectives and Modalities

- (a) The objectives of this Agreement are
- (i) to help achieve Contracting States their developmental objectives through expanding trade in services with the help of regional cooperation among them;
 - (ii) to be GATS-consistent; and
 - (iii) to be GATS-plus in commitments.
- (b) The modalities for negotiations would include:
- (i) A positive-list approach;
 - (ii) Negotiations based on request-offer lists; and
 - (iii) Time-bound implementation]

[Article 2

(Proposal by India)

[The general understanding on principle and guidelines as agreed upon in Annex-... will guide this Agreement.]

Article 3

Scope

1. This Agreement applies to measures by Contracting States as defined in Article 1.10 and measures by the Contracting States affecting trade in services as defined in Article 1.11.
2. This Agreement shall not apply to:
 - (a) government procurement;
 - (c) services supplied in the exercise of governmental authority; and
 - (d) transportation and non-transportation air services, including domestic and international services, whether scheduled or non-scheduled, and related services in support of air services² other than:
 - (i) aircraft repair and maintenance services
 - (ii) the selling and marketing of air transport services; and
 - (iii) computerized reservation system services.
4. The supply of services which are not technically or technologically feasible when this Agreement comes into force shall, when they become feasible, also be considered for possible incorporation at future amendments under Article-32.
5. This Agreement shall not apply to measures affecting natural persons seeking access to the employment market of a Contracting State, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis.
6. Nothing in this Agreement shall prevent a Contracting State from applying measures to regulate the entry of natural persons of the other Contracting State into, or their temporary stay in, its territory, including those measures necessary to

² The Contracting States understand that ground handling services are part of related services in support of air services.

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 impair the benefits accruing to the other Contracting State under the terms of - a specific commitment undertaken under this Agreement.³

Article 4

MFN Treatment

1. Commitments undertaken under this Agreement [**other than those made exclusively made by the non-LDCs, to Least Developed Contracting States**] shall be extended unconditionally to all Contracting States.
2. If, after this Agreement enters into force, a Contracting State enters into any agreement on trade in services with a non-Contracting State, it shall give consideration to a request by the other Contracting State for the incorporation herein of treatment no less favourable than that provided under the aforesaid agreement. Any such incorporation should maintain the overall balance of commitments undertaken by each Contracting State under this Agreement.

Article 5

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Contracting State shall accord to services and service suppliers of any other Contracting State, 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 suppliers⁴.
2. A Contracting State may meet the requirement of paragraph 1 by according to services and service suppliers of the other Contracting State, 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

³ The sole fact of requiring visa for natural persons of certain Contracting State and not for those of other Contracting States shall not be regarded as nullifying or impairing benefits under a specific commitment.

⁴ Specific commitments assumed under this Article shall not be construed to require any Contracting State to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers.

service suppliers of a Contracting State compared to like services or service suppliers of the other Contracting State.

Article 6

Market Access

1. With respect to market access through the modes of supply defined in paragraph 21 of Article 1, each Contracting State shall accord services and service suppliers of the other Contracting State treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments⁵.
2. In sectors where market access commitments are undertaken, the measures which a Contracting State 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 of specific commitments, 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 test⁶;
 - (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.

Article 7

⁵ If a Contracting State undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1 (21) and if the cross-border movement of capital is an essential part of the service itself, that Contracting State is thereby committed to allow such movement of capital. If a Contracting State undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(21) (iii), it is thereby committed to allow related transfers of capital into its territory.

⁶ This paragraph 2(c) does not cover measures of a Contracting State which limit inputs for the supply of services.

Additional Commitments

The Contracting States may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 5 ~~and~~ or 6, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Contracting State's Schedule of specific commitments.

Article 8

Schedule of Specific Commitments

1. Each Contracting State shall set out in a schedule the specific commitments it undertakes under Articles 5, 6 and 7. With respect to sectors where such commitments are undertaken, each Schedule shall specify:
 - a. terms, limitations and conditions on market access;
 - b. conditions and qualifications on national treatment;
 - c. undertakings relating to additional commitments;
 - d. where appropriate the time-frame for implementation of such commitments; and
 - e. the date of entry into force of such commitments
2. Measures inconsistent with both Articles 5 and 6 shall be inscribed in the column relating to Article 6. In this case the inscription will be considered to provide a condition or qualification to Article 5 as well.
3. The Contracting States' schedules of specific commitments shall be annexed to this Agreement upon completion of the negotiations and shall form an integral part thereof.

Article 9

Modification of Schedules

1. A Contracting State may modify or withdraw any commitment in its Schedule, at any time after three years have elapsed from the date on which that commitment entered into force, in accordance with the provisions of this Article. It shall notify the other Contracting States of its intent to so modify or withdraw a commitment no later than three months before the intended date of implementation of the modification or withdrawal.

2. At the request of the other Contracting States, the modifying Contracting State shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Contracting State shall endeavour to maintain a general level of mutually advantageous commitments not less favourable to trade than that provided for in Schedules of specific commitments prior to such negotiations. The Contracting States shall endeavour to conclude negotiations on such compensatory adjustment to mutual satisfaction within six months, failing which recourse may be had to the provisions of Article 27 of this Agreement.
3. Compensatory adjustments shall be made on a most-favoured-nation basis.
4. The modifying Contracting State may not modify or withdraw its commitment until it has made compensatory adjustment with the requesting country or in accordance with the decision taken following the procedure of Article 27 of this Agreement.

Article 10

Progressive Liberalisation

1. The Schedules of Specific Commitments annexed to the Agreement shall be reviewed after every three years, or earlier if mandated by SAFTA Ministerial Council (SMC). [In this process, there shall be due respect for the national policy objectives and the level of development of the Contracting States, both overall and in individual sectors.]

Article 11

Domestic Regulations

1. In sectors where specific commitments are undertaken, each Contracting State shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each Contracting State shall maintain or institute as soon as practicable judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier of the other Contracting State, 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 Contracting State shall ensure that the procedures in fact provide for an objective and impartial review.

3. The provisions of paragraph 2 shall not be construed to require a Contracting State to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.
4. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Contracting State shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Contracting State shall provide, without undue delay, information concerning the status of the application.
5. With the objective of ensuring that domestic regulation, including measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Contracting States shall jointly review the results of the negotiations on disciplines on these measures, pursuant to Article VI.4 of the WTO General Agreement on Trade in Services (GATS), with a view to their incorporation into this Agreement. The Contracting States note that such disciplines aim to ensure that such requirements are *inter alia*:
 - (a) based on objective and transparent criteria, such as competence and the ability to supply the service;
 - (b) not more burdensome than necessary to ensure the quality of the service;
 - (c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
6. Pending the incorporation of disciplines pursuant to paragraph 5, in sectors where a Contracting State has undertaken specific commitments, a Contracting State shall not apply licensing and qualification requirements and technical standards that nullify or impair such specific commitments in a manner which:
 - (a) does not comply with the criteria outlined in paragraphs 5(a), 5(b) or 5(c); and
 - (b) could not reasonably have been expected of that Contracting State at the time the specific commitments in those sectors were made.
7. In determining whether a Contracting State is in conformity with the obligation under paragraph 6, account shall be taken of international standards of relevant international organizations⁷ applied by that Contracting State.

⁷ The term "relevant international organizations" refers to international bodies whose membership is open to the relevant bodies of all Contracting States.

8. In sectors where specific commitments regarding professional services are undertaken, each Contracting State shall provide for adequate procedures to verify the competence of professionals of any other Contracting State.

Article 12

Recognition

1. For the purposes of the fulfilment of its standards or criteria for the authorisation, licensing or certification of services suppliers, a Contracting State may recognise the education or experience obtained, requirements met, or licenses or certifications granted in the other Contracting State.
2. After the entry into force of this Agreement, upon a request being made in writing by a Contracting State to any other Contracting State(s) in any regulated service sector, the Contracting State shall ensure that their respective professional bodies negotiate and conclude, within a reasonable time, in that service sector for mutual recognition of education, or experience obtained, requirements met, or licenses or certifications granted in that service sector, with a view to the achievement of early outcomes. Such recognition, which may be achieved through harmonization or otherwise, may be based upon an agreement or arrangement among the Contracting States. Any delay or failure by these professional bodies to reach and conclude agreement on the details of such agreement or arrangements shall not be regarded as a breach of a Contracting State's obligations under this paragraph and shall not be subject to Article 27 relating to dispute settlement in this Agreement. Progress in this regard will be continually reviewed by the Parties in the course of the review of this Agreement pursuant to Article 10.
3. Where a Contracting State recognizes, by agreement or arrangement, the education or experience obtained, requirements met or licenses or certifications granted in the territory of a country that is not a Contracting State to this Agreement, that Contracting State shall accord the other Contracting State, upon request, adequate opportunity to negotiate its accession to such an agreement or arrangement or to negotiate comparable ones with it. Where a Contracting State accords recognition autonomously, it shall afford adequate opportunity for the other Contracting State to demonstrate that the education or experience obtained, requirements met or licenses or certifications granted in the territory of that other Contracting State should also be recognized.
4. **[The Contracting States agree that they shall not be responsible in any way for the settlement of disputes arising out of or under the agreements or arrangements for mutual recognition concluded by their respective professional, standard-setting or self-regulatory bodies under the provisions of this Article and that the provisions shall not apply to disputes arising out of, or under, the provisions of such agreements or arrangements.]**

5. **[Wherever appropriate, recognition should be based on regionally agreed criteria. In appropriate cases, Contracting States shall work in cooperation with relevant inter-governmental and non-governmental organizations towards the establishment and adoption of common regional standards and criteria for recognition and common regional standards for the practice of relevant services trades and professions.] (Nepal)**

Article 13

Monopolies and Exclusive Service Suppliers

1. Each Contracting State 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 Contracting State's Schedule of specific commitments.
2. Where a Contracting State'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 Contracting State's Schedule of specific commitments, the Contracting State 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. If a Contracting State has reason to believe that a monopoly supplier of a service of the other Contracting State is acting in a manner inconsistent with paragraphs 1 or 2 above, it may request that Contracting State establishing, maintaining or authorizing such supplier to provide specific information concerning the relevant operations in its territory.
4. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Contracting State, 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 14

Business Practices

1. The Contracting States recognize that certain business practices of service suppliers, other than those falling under Article 13, may restrain competition and thereby restrict trade in services.

2. A Contracting State shall, at the request of another Contracting State, enter into consultations with a view to eliminating practices referred to in paragraph 1. The Contracting State addressed shall accord full and sympathetic consideration to such a request and shall co-operate through the supply of publicly available non-confidential information of relevance to the matter in question. The Contracting State addressed shall also provide other information available to the requesting Contracting State, subject to its domestic law and to the conclusion of satisfactory agreement concerning the safeguarding of its confidentiality by the requesting Contracting State.

Article 15

Safeguard Measures

1. The Contracting States note the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Contracting States shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.
2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Contracting State before the conclusion of the multilateral negotiations referred to in paragraph 1 of this Article, the affected Contracting State may request for consultations with the other Contracting State for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph shall be mutually agreed by the Contracting States concerned. The Contracting States concerned shall take into account the circumstances of the particular case and give sympathetic consideration to the Contracting State seeking to take a measure.

Article 16

Subsidies

1. Except where provided in this Article, this Agreement shall not apply to subsidies or grants provided by a Contracting State, or to any conditions attached to the receipt or continued receipt of such subsidies or grants, whether or not such subsidies or grants are offered exclusively to domestic services, service consumers or service suppliers. If such subsidies or grants significantly affect trade in services committed under this Agreement, any Contracting State may request for consultations which shall be accorded sympathetic consideration.

2. Pursuant to this Agreement, the Contracting States may, on request, provide information on subsidies related to trade in services committed under this Agreement to any requesting Contracting State.
3. The Contracting States shall review the treatment of subsidies when relevant disciplines are developed by the WTO.
4. Provisions of dispute settlement under this Agreement shall not apply to any request made or consultations held under the provisions of this Article or to any dispute that may arise between the Contracting States out of or under the provisions of Paragraphs-1&2 of this Article.

Article 17

Payments and Transfers

1. Except under the circumstances envisaged in Article 18 a Contracting State 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 Contracting States as 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 Contracting State shall not impose restrictions on any capital transactions inconsistently with its specific commitments regarding such transactions, except under Article 18 or at the request of the Fund.

Article 18

Restrictions to Safeguard ~~and~~ the Balance of Payments

1. In the event of serious balance of payments and external financial difficulties or threat thereof, a Contracting State may adopt or maintain restrictions on trade in services in respect of which it has obligations under Articles 5 and 6 or has made Additional Commitments including on payments or transfers for transactions relating to such commitments. It is recognized that particular pressures on the balance of payments of a Contracting State in the process of economic development 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.
2. The restrictions referred to in paragraph 1 shall:
 - (a) not discriminate among the Contracting States

- (b) be consistent with the Articles of Agreement of the International Monetary Fund;
 - (c) avoid unnecessary damage to the commercial, economic and financial interests of the other Contracting States;
 - (d) not exceed those necessary to deal with the circumstances described in paragraph 1;
 - (e) be temporary and be phased out progressively as the situation specified in paragraph 1 improves;
3. Any restrictions adopted or maintained under paragraph 1, or any changes therein, shall be promptly notified to the other Contracting States.
 4. The Contracting State adopting any restrictions under paragraph 1 shall commence consultations with the other Contracting States in order to review the restrictions adopted by it.

Article 19

Transparency

1. Each Contracting State may publish promptly and, except in emergency situations, at least fourteen days prior to the entry into force of 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 Contracting State is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Contracting State shall respond promptly to all requests by the other Contracting State for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1. Each Contracting State shall also establish one or more enquiry points to provide specific information to other Contracting State, upon request, on all such matters. Enquiry Points need not be depositories of laws and regulations.

Article 20

Disclosure of Confidential Information

Nothing in this Agreement shall require any Contracting 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 22

Areas for Cooperation

With a view to augment trade in services among Contracting States, measures outlined below would be focused upon within an agreed timeframe:

- (i) Development of regulatory capacity: The Contracting States would provide for cooperation among respective regulatory bodies of the Contracting States for exchange of experiences and best practices. For facilitating the cooperation, working groups may be formed for specific sectors of interest comprising the relevant national authorities and stakeholders. These working groups could report to the institutional mechanisms for overseeing the implementation of this Agreement as provided in Article 28.
- (ii) Cooperation for collection and exchange of statistics and regulations: A Working Group under the SAARC-STAT comprising central bank officials and others concerned would be constituted. They would also develop a compendium of domestic regulations and seek to improve collection of trade statistics in services.
- (iii) Cooperation in WTO/GATS Negotiations: Contracting States shall cooperate and coordinate their positions in the GATS negotiations, as far as possible.

[Article 23

Technical Assistance to LDCs

Or

[Special and Differential Treatment for LDCs and SVEs]

Or

[Technical Cooperation with LDCs] (India)

In addition to other provisions of this Agreement, all Contracting States shall provide, wherever possible, special and more favourable treatment to least developed contracting states and [Small and Vulnerable Economies (SVEs)] as stated in the following subparagraphs:

- a. Contracting States shall provide enhanced market access to Least Developed **[and Small and Vulnerable Economies]** Contracting States while undertaking commitments on a request-offer basis.
- b. The Least Developed **[and Small and Vulnerable Economies]** Contracting States shall enjoy the flexibility in undertaking commitment in terms of number of sectors, modes of supply and timeframe consistent with their

development, financial and trade needs or administrative and institutional capabilities.

- c. Technical assistance shall be provided to LDC Contracting States for enhancing their supply capabilities in service sectors and infrastructure development; for research and capacity building programmes; and for catering to the institutional and regulatory needs with a view to strengthening their domestic service capacity, efficiency and competitiveness. Such technical assistance may be provided bilaterally or through sub-regional/ regional projects under Economic Window of SAARC Development Fund as per its Charter and Bye-laws. A detailed plan of action including timeframe for technical assistance in these areas shall be prepared in 12 months after entry into force of the Agreement.

[The Agreement would evolve provisions for technical assistance to LDCs for enhancing their supply capabilities in services sectors and infrastructure development and for catering to their institutional and regulatory needs. One of the measures needing immediate attention is initiating research and capacity building programmes for LDCs that would be funded from the SAARC Development Fund (SDF). A detailed plan of action including timeframe on this would be prepared within six months of entry into force of this Agreement.]]

Article 24

General Exceptions

1. Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination against any Contracting State, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by either Contracting State of measures:
 - (a) necessary to protect public morals or to maintain public order;⁸
 - (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

⁸ The public order exception may be invoked by a Contracting State, including its legislative, governmental, regulatory or judicial bodies, only where a genuine and sufficiently serious threat is posed to one of the fundamental interests of society.

protection of confidentiality of individual records and accounts;

(iii) safety;

(d) inconsistent with Article 5, provided that the difference in treatment is aimed at ensuring the equitable or effective⁹ imposition or collection of direct taxes in respect of services or service suppliers of other Contracting States.

~~2. [Nothing in this Agreement shall prevent a Contracting State from adopting or maintaining measures under which it accords more favourable treatment to persons of a non-Contracting State than that accorded to persons of the other Contracting State to this Agreement as a result of a bilateral double taxation avoidance agreement between the Contracting State and such non-Contracting State.]~~

Article 25

Security Exceptions

1. Nothing in this Agreement shall be construed:
 - (a) to require a Contracting State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
 - (b) to prevent a Contracting State from taking any action which it considers necessary for the protection of its essential security interests:

⁹ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Contracting State 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 Contracting State's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Contracting State'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 the other Contracting State in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Contracting State's territory; or

(v) distinguish service suppliers subject to tax on world-wide 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 Contracting State's tax base.

Tax terms or concepts in paragraph 1(d) of this Article 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 Contracting State taking the measure.

- (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;
 - (iv) relating to protection of critical public infrastructure, including communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure;
- (c) to prevent a Contracting State from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. Each Contracting State shall inform the other Contracting States to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Article 26

Denial of Benefits

1. Subject to prior notification and consultation, a Contracting 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 country that is not a Contracting State to this 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-Contracting State, and
 - (ii) by a person which operates and/or uses the vessel in whole or in part but which is of a non-Contracting State;
2. Contracting State may deny the benefits of this Agreement to a service provider of the other Contracting State where the Contracting State establishes that the service is being

provided by an enterprise that is owned or controlled by persons of a non-Contracting State and that has no substantive business operations in the territory of the other Contracting State.

(To be read along with Article-I (8))

Article 27

Dispute Settlement and Enforcement

For the purposes of this Agreement the mechanisms available as per Articles 19 and 20 of the Agreement on South Asian Free Trade Area (SAFTA) would be applicable and enforced through Article 28 of this Agreement.

Article 28

Institutional Mechanism

The SAFTA Ministerial Council (SMC) constituted under the Article 10 of SAFTA Agreement shall be the highest decision-making body for the purpose of this Agreement and shall be responsible for administration and implementation of this Agreement and all decisions and arrangements made within its legal framework.

The SAFTA Committee of Experts (CoE) shall monitor, review and facilitate implementation of the provisions of this Agreement and undertake any task assigned to it by the SMC. The SAFTA COE shall submit this report to SMC every six months.

Article 29

Withdrawal

Any Contracting State may withdraw from this Agreement at any time after its entry into force as per Article 21 of the SAFTA Agreement.

Article 30

Entry into Force

This Agreement shall enter into force on upon completion of formalities, including ratification by all Contracting States and issuance of a notification thereof by the SAARC Secretariat. This Agreement shall be an adjunct to the SAFTA Agreement.

Article 31

Annexes

The following Annexes attached to this Agreement form an integral part of this Agreement:

- a.
- b.
- c.

Article 32

Amendments

This Agreement may be amended by consensus in the SAFTA Ministerial Council. Any such amendment will become effective upon the deposit of instruments of acceptance with the Secretary General of SAARC by all Contracting States.

Article 33

Depository

This Agreement will be deposited with the Secretary General of SAARC, who will promptly furnish a certified copy thereof to each Contracting State.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

DONE in On This, In ~~Nine~~ **Ten** Originals In The English Language All Texts Being Equally Authentic.]