

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

**DRAFT REPORT OF THE STANDING COMMITTEE
OF THE ASIA-PACIFIC TRADE AGREEMENT
ON ITS FIFTY-SIXTH SESSION**

UNCC, Bangkok
29-30 October 2019

I. ORGANIZATION OF THE SESSION

1. The Fifty-sixth session of the Standing Committee of the Asia-Pacific Trade Agreement was held at UNCC, Bangkok, on 29 and 30 October 2019.

A. Attendance

2. The session was attended by the following Participating States of the Asia-Pacific Trade Agreement: Bangladesh, China, India, Lao People's Democratic Republic, Republic of Korea and Sri Lanka. The full list of participants is attached in Annex I.

B. Opening Address

3. In her opening statement, Ms. Mia Mikic, Director, Trade, Investment and Innovation Division, welcomed and thanked all participants in the fifty-sixth session of the Standing Committee. She highlighted the works being carried out by the secretariat to support APTA, including preparation of secretariat notes related to the terms of reference of the fifth round of negotiations on trade in goods, membership expansion activities, implementation of 4th round and World Trade Organization (WTO) notification. She also mentioned recent development in the global and regional trade environment, including increasing trade tensions, issues related to the work of the WTO, and digital trade, and elaborated on their positive and negative impacts on international supply chains and investment. She reminded the Committee of increasing resource constraints faced by the United Nations, which might affect secretariat support to APTA in the absence of tangible progress. Lastly, while emphasizing underused potential of APTA, she encouraged the Committee to make a good progress at its fifty-sixth session.

C. Election of officers

4. The Committee elected Mr. Jihoon Park, Director, Ministry of Economy and Finance of Republic of Korea as the Chair, and Mr. A.H.M. AHSAN, Additional Secretary, Ministry of Commerce of Bangladesh as the Vice-Chair. In his acceptance statement, Mr. Park thanked the delegations for his election as Chair and urged all the Participating States to work towards reaching consensus on the terms of reference of the fifth round of negotiations on trade in goods for its finalization in the current session.

D. Agenda

5. The Committee adopted the following agenda:

- (1) Opening of the session
- (2) Election of officers
- (3) Adoption of the agenda
- (4) Report on Working Group meetings by the Chairs
- (5) Discussion on terms of reference of the fifth round of negotiations on trade in goods
- (6) Progress on notification to the WTO
- (7) Membership expansion
- (8) Discussion on Implementation of the 4th round
- (9) Fifth session of the APTA Ministerial Council
- (10) Dates and venue of the next session of the Committee
- (11) Other matters
- (12) Adoption of the report

II. ACCOUNT OF PROCEEDINGS

A. Report on Working Group meetings

(Item 4 of the agenda)

6. The Committee invited the Chairs of the three Working Groups to report on the outcome of their meetings held on 28 and 29 October 2019 and the Chair of the WG of Trade Facilitation to report on the outcome of that WG meeting held on 19 September in New Delhi. The full reports of the Working Groups as adopted by the Standing Committee are provided in annex 4 to this report.

7. The chair of Working Group on Trade Facilitation informed the Committee that the Working Group participated in the 9th Asia-Pacific Trade Facilitation Forum on 17 and 18 September 2019 in New Delhi, India and held its 5th meeting on 19 September 2019. The Chair of the Working Group on Trade Facilitation reported that the Working Group discussed national work plans/actions and requested all Participating States to submit or update them by the next meeting. The chair also reported that the Working Group continued discussing proposals on new elements for updating the Framework Agreement on Trade Facilitation (FATF) submitted by China and Republic of Korea. The Chair informed the Committee that the Working Group discussed ideas for pilot projects and capacity building activities, including on the important role of ICT in trade facilitation implementation and organization of workshops and/or seminars to share experiences and build capacity for Customs and trade ministries officials.

8. The Chair of the Working Group on Services reported that the Working Group reviewed and discussed the draft text of "the first amendment of the framework agreement on the promotion and liberalization of trade in services among APTA participating states", prepared by India. On "settlement of disputes", the Working Group discussed whether an independent dispute settlement mechanism would be necessary as Article 21 of APTA might not be adequate to resolve disputes of commercial nature that might arise from this agreement.

The Working Group considered that, in case such an independent mechanism is adopted, whether it should be only a services-specific dispute settlement mechanism or a common mechanism for all tracks covered by the APTA. In this regard, the Working Group sought guidance from the Standing Committee. The Chair also reported that the Working Group discussed approaches to identify areas of cooperation and action plans. China would revert on paragraphs 8 and 11 of this report and report of the Working Group on Services intersessionally.

9. The Chair of the Working Group on Investment reported that the Working Group had reviewed the current text of the Framework Agreement on Investment (FAI) based on the proposals contained in the revised position paper from Sri Lanka. The Working Group agreed that each delegation would hold consultations in their respective home countries on the need to make amendments to the FAI based on the view of several delegations that such amendments may be desirable, in particular amendments to Articles 1 to 5 and the four schedules. The Working Group also agreed that each delegation would submit flowcharts of investment approval and an overview of the investment incentive regime in their respective countries, as agreed earlier, to the secretariat by 31 December 2019 for circulation to all members if they had not already done so. China would re-submit revised flowcharts of investment approval and an overview of the investment incentive regime after the regulation for the implementation of the Foreign Investment Law has been passed. The Working Group agreed that additional meetings could be held at the discretion of the Chair.

10. The Chair of the Working Group on Rules of Origin reported that the Working Group had made good progress in revising the Operational Procedures for the Certification and Verification of the Origin of Goods (OCP), including clearing six outstanding articles (Articles 2, 3, 8, 10, 11 and 12) and several provisions in other articles as of the 5th meeting. She also reported that the Working Group had continued working on necessity of adding the words "specimen signatures" (Article 1), issuance date for certificate of origin and specifying reason for retroactive issuance (Article 4) and post importation claims (Article 5). The Working Group decided to further work on implementation of an Electronic Origin Data Exchange System (EODES) and would have additional meeting days in the next meeting to discuss EODES in more details.

11. Regarding the concern raised by the Working Group on Services on the application scope of an independent dispute settlement mechanism, the Committee agreed that the secretariat should prepare a note on the issue and circulate it to the Participating States for their review and further discussion in the next Standing Committee meeting.

B. Discussion on terms of reference of the fifth round of negotiations on trade in goods
(Item 5 of the agenda)

12. The Committee made progress on negotiating the terms of reference of the fifth round of negotiations in trade in goods and agreed to continue their discussions towards finalization of the remaining issues. The Committee requested the secretariat to prepare a table showing coverage and margin of preference of 4th round implementation in the table for modalities and circulate it to all Participating States by 8 November 2019. The Committee further requested all Participating States to review the secretariat's table and by 30 November 2019 provide their numerical offers reflecting agreed higher ambition for the fifth round. India reiterated its position on a "single undertaking" for the 5th round of negotiations as a whole, i.e. all individual tracks (services, trade facilitation, investment, and goods) should be concluded and entered into force at the same time. However, other Participating States reiterated their opinion that the negotiations should follow their individual tracks and be concluded and put into force independently from each other. The current status of the revised terms of reference of the fifth round of negotiations on trade in goods is attached in annex 2.

C. Progress on notification to the WTO
(Item 6 of the agenda)

13. The Committee invited India and the secretariat to report progress on notification to the WTO. The secretariat reported that the WTO requested concurrence of APTA Participating States on the revised WTO document symbol for APTA-related documents in accordance with WTO's new document structure. The Committee agreed to the proposed changes by the WTO secretariat on WTO document symbol for APTA-related documents.

D. Membership expansion
(Item 7 of the agenda)

14. The secretariat reported that, with the support of APTA Participating States, it had organized the APTA Promotion Session to share their views with potential members, including experiences and benefits gained from their participation in APTA, on 19 September 2019 in New Delhi, India. The secretariat also reported that fifteen officials out of twelve countries participated in the session and shared their views on joining APTA; it further reported that Georgia, Kiribati, and Timor-Leste had showed their interest, while Papua New Guinea would take steps to do feasibility study. The Committee requested the secretariat to further follow up with those countries that had joined the session.

E. Discussion on Implementation of the 4th round
(Item 8 of the agenda)

15. The secretariat made a presentation on measuring impacts of implementation of the 4th round using preference utilization ratio (PUR). The Committee thanked the APTA secretariat and expressed its support in carrying out a PUR study for the 4th round and

requested the secretariat to prepare a format for data collection from the Participating States for their consideration as soon as possible.

F. Fifth session of the APTA Ministerial Council

(Item 9 of the agenda)

16. The Committee agreed to decide on organizing the fifth session of the APTA Ministerial Council after finalizing the terms of reference of the fifth round of negotiations on trade in goods.

G. Dates and venue of the next session of the Committee

(Item 10 of the agenda)

17. The Committee tentatively decided to organize its fifty-seventh session in Bangkok in the 1st week of February 2020, subject to progress in narrowing distance among the Participating States on their level of ambition level for the 5th round intersessionally.

H. Other matters

(Item 11 of the agenda)

18. The secretariat introduced the Trade Intelligence and Negotiation Adviser (TINA) and demonstrated its usage to the Committee. The Committee noted the usefulness of the TINA and expressed its gratitude to the secretariat on its development.

19. The representative of the Republic of Korea briefed the Committee on the issue raised by some countries on change of its developing country status in WTO and its impact on the membership of the Republic of Korea in APTA. The representative reported that the Republic of Korea had announced on 25 October 2019 that “it would not seek special and differential treatment for developing country in forthcoming WTO negotiations, which would not affect its membership in APTA”.

I. Adoption of the Report

(Item 12 of the agenda)

20. The Committee adopted the report of its fifty-sixth session on 30 October 2019.

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ANNEX I. LIST OF PARTICIPANTS

Fifty-Sixth Session of the APTA Standing Committee

29-30 October 2019
UNCC, Bangkok

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ANNEX II. REVISED TERMS OF REFERENCE FOR THE FIFTH ROUND OF NEGOTIATIONS ON TRADE IN GOODS (56th SC result Version)

I. INTRODUCTION

The Asia-Pacific Trade Agreement (APTA) completed its Fourth Round of negotiations on tariff concessions in January 2017. The Fourth Round has resulted in a significant extension of product coverage and tariff cuts with concessions accorded on the basis of a positive list approach and margin of preferences. Currently, APTA is just a partial scope agreement with limited product coverage and is lagging behind many other preferential trade agreements in the region. In order to keep APTA relevant in the present context, it is essential to make much deeper and wider commitments on tariff reductions, in particular, to achieve progressive and substantive liberalization with a view towards adopting a Free Trade Area.

In recent years, the Asia-Pacific region has seen the formation or negotiation of mega-trade blocks such as the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP) and the Regional Comprehensive Economic Partnership Agreement (RCEP), which are very ambitious and include commitments on trade in goods, trade in services, investment and other areas of cooperation. Four members of APTA (China, India, the Republic of Korea and Lao PDR) are also members of RCEP which is centered around ASEAN (which includes Lao PDR) and its 6 developing partners (Australia, China, India, Japan, New Zealand, Republic of Korea). The CPTPP also has a comprehensive and ambitious negotiating agenda. The legal texts “cover all aspects of commercial relations” among the member countries, including market access for goods and services, rules of origin, customs, textiles and apparel, e-commerce, cross-border services, financial services, telecommunications, temporary entry, investment, sanitary and phytosanitary standards (SPS), technical barriers to trade (TBT), competition, environment, government procurement, intellectual property, labour, legal issues, trade remedies, cooperation, capacity-building, etc.

Recognizing the important role that APTA can play as an open-ended South-South trade agreement, the Ministers at the fourth Session of the Ministerial Council of APTA in Bangkok on 13 January 2017, decided:

“In consideration of the importance of tariff concessions, we will undertake necessary measures to obtain a mandate for launching the fifth round of negotiation on trade in goods, preferably by the end of 2017. We commit to commence negotiations in trade in goods in parallel with other tracks as early as possible. We direct the Standing Committee to decide the modalities for negotiations on the above issues.

With a view to achieving greater transparency, reducing or eliminating Non-Tariff Barriers for expansion of intra-regional trade among the Participating States, we direct the Standing Committee to explore developing appropriate mechanisms like mutual recognition agreements, harmonization etc. so as to address the issues relating to the

NTMs, including Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) issues.

It is important that APTA contributes its efforts towards promotion of green trade and investment within APTA Participating States. We request the APTA Secretariat to work in this area and provide necessary research inputs and technical assistance, especially to the LDC Participating States and Sri Lanka so that APTA Participating States can promote trade, investment and technology in this area.”

It may be worth noting that an ESCAP Study¹ (which was released during the Fourth Ministerial Council meeting in January 2017) also highlighted that on the basis of elasticity estimates obtained on the basis of the MFN tariffs of APTA in 2011, the Fourth-Round tariff concessions have the potential to register a 189% increase in intra-APTA imports, raising its

II. OBJECTIVES AND PRINCIPLES

A. Objectives

To strengthen the Asia-Pacific Trade Agreement as a comprehensive regional trade agreement in terms of both scope and depth in view of new and emerging developments in the international trading system, and to impart momentum to the process of intraregional trade in the Asia Pacific region, the objectives of the Fifth-Round of Negotiations on trade in goods shall be as follows:

- (a) To substantially reduce the tariffs.
- (b) To enhance transparency for non-tariff measures,
- (c) To start discussion on non-tariff barriers with the objective of minimizing them.
[delete ROK; retain Bangladesh, India, Lao PDR, Sri Lanka; China flexible]

B. Guiding principles

- (a) Conformity with the provisions of the World Trade Organization relating to regional trade agreements, as originally notified in the Enabling Clause², and Decision on a Transparency mechanism for RTAs (TN/RL/18)³;
- (b) Adoption of a positive list approach covering tariff liberalization within a fixed time frame;
- (c) Special and differential treatment to Participating States which are classified as least developed countries (LDCs)⁴, [Bangladesh, Lao PDR, ROK, Sri Lanka: newly graduated LDCs; India: revert; China: Reserved], and to Participating

¹ “APTA: Promoting South-South Regional Integration and Sustainable Development, ESCAP (2017),

² http://www.wto.org/english/docs_e/legal_e/enabling1979_e.htm.

³ http://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=56077&CurrentCatalogueIdIndex=0&FullTextHash=371857150&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

⁴ At present time these include Bangladesh and Lao PDR.

States in the category of Small and Vulnerable Economies (SVEs)⁵ including less than full reciprocity.

III. GUIDELINES AND MODALITIES

A. Tariff reductions

{Reduce tariffs on agreed tariff lines covering at least [x ⇒ **India: up to 40%; China: 80%;** Lao People's Democratic Republic **and RoK: 50%; Sri Lanka: revert**] % of [dutiabale ⇒ **RoK and Sri Lanka will revert: dutiabale**] [Bangladesh and China, India, Lao People's Democratic Republic: **keep dutiabale**] total national tariff lines [X₁% for LDCs/X₂% for Sri Lanka] and [y ⇒ **India: 33.5%(In overall?), RoK: 50%**] % of MOP [**a**Y₁% for LDCs/**b**Y₂% for Sri Lanka ⇒ **RoK: a% for LDCs/b% for Sri Lanka**] for the base year of [Lao People's Democratic Republic: 2017; **RoK: 2018; Bangladesh and China, India: 1 July 2018; Sri Lanka: revert**] and regional import value for the base year [2017 ⇒ **RoK: 2017-2018 average**]; [NEW - **India, RoK:** percentage includes the already offered concessions and incremental value]. [NEW - **Bangladesh and RoK: Any Participating State may grant special concessions for LDCs in accordance with article 7 of APTA.**] [**Bangladesh and India: prefers not to specific number for percentage**]]

Secretariat proposal on reformulation of "A. Tariff reductions" and discussed on 9 May session of the SC:

Coverage in terms of (dutiabale) (total) national tariff lines: India up to 40% of dutiabale tariff lines; China 80% of dutiabale tariff lines; LAO PDR and ROK 50% of dutiabale tariff lines; Bangladesh % to revert; Sri Lanka 40-50% of total national tariff lines]

Reduction by: [X₁% for LDCs/X₂% for Sri Lanka] and [y ⇒ India: 33.5% (In overall?), RoK: 50%] % of MOP [Y₁% for LDCs/Y₂% for Sri Lanka]

Base year, 1 July 2018 and import value based on calendar year: 2018

Note: In the 54th session, these additional comments were entered: [NEW - **India, RoK:** percentage includes the already offered concessions and incremental value]. [NEW - **Bangladesh and RoK: Any Participating State may grant special concessions for LDCs in accordance with article 7 of APTA.**] [**Bangladesh and India: prefer not to specify number for percentage**]

⁵ At present it includes Sri Lanka.

Details (numbers) to be reverted by 31 July 2019:

Country	Tariff line base	% covered	MOP MFN	[MOP for LDC and SVE to be 10 percentage points less than agreed MOP MFN -to agree on]
Bangladesh	Dutiable	15%	25%	
China	Dutiable	>50%	>50%	
India	Dutiable	40%	33.5%, up to 40%	
Lao PDR	Dutiable	15%	40 – 50%	
ROK	Dutiable	50%	50%	
Sri Lanka	Dutiable	15%	25%	

Entry into Force (EIF) and phase-out Margin of Preference (MOP) are optional. Equal annual linear tariff cuts on products covered under the tariff liberalization programme within a period of 5-7 years from the date of implementation, with a longer phase-out for the least developed country Participating States and Sri Lanka;

Any other modality may be decided in the negotiations.

B. Widening the scope of liberalization

Participating States shall consider widening the scope of preferences and concessions beyond tariffs to the following areas:

1. Non-Tariff Measures (NTMs): Participating States shall exchange information on NTMs in a transparent manner (Article 6) with a view to promoting communication and cooperation.

2. Standards and Technical Regulations: Participating States shall exchange information on technical, sanitary/phytosanitary and other standards that could facilitate trade with a view to promoting communication and cooperation.

C. Modalities to conduct the negotiations

The modalities for conducting the negotiations shall follow the agreed modalities adopted for the previous rounds. This means that negotiations will be based on the item-by-item approach and follow bilateral negotiating procedures on the basis of an exchange of request and offer lists by the Participating States.

D. Other guidelines

1. Least Developed Countries

Any Participating State may grant a least developed Participating State, [Bangladesh, Lao PDR, ROK, Sri Lanka: newly graduated LDCs; India: revert; China: Reserved], and to Participating States in the category of Small and Vulnerable Economies (SVEs) special concession without seeking full reciprocity.

2. Indicative timetable and procedures for the Fifth Round

Topic	Timetable
Endeavour to conclude negotiations	2021
Signing by Ministers (Amendment to APTA)	Within six months after the end of negotiations.
Implementation of tariff concessions	Within twelve months after the signing

3. Supervision of procedures for the Fifth Round

The negotiations shall be conducted under the general supervision of the Standing Committee, while the APTA secretariat will provide the necessary secretarial support for the negotiations within available resources.

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ANNEX IV. REPORT OF THE FIFTH WORKING GROUPS MEETINGS

ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC

**REPORT OF THE WORKING GROUPS
OF THE ASIA-PACIFIC TRADE AGREEMENT
ON THEIR FIFTH MEETINGS**

REPORT OF THE FIFTH MEETING OF THE WORKING GROUP ON TRADE FACILITATION (WGTF)

19 September 2019
New Delhi, India

Participating States (PS) of the Working Group participated in the 9th Asia-Pacific Trade Facilitation Forum (APTFF) on 17 and 18 September 2019 and held its 5th meeting on 19 September 2019. This provided the PS with an opportunity to engage participants of the APTFF and promote APTA and its Working Group's activities to them. Also, it enabled PS to gain perspectives on different aspects of trade facilitation and develop ideas for capacity building and potential pilot projects on cross-border trade facilitation for the Working Group.

Agenda Item 1. Opening of the meeting

1. Mr. Ji Hoon Park, Director, Customs Cooperation Division, Ministry of Economy and Finance, Republic of Korea welcomed the delegates, as the Chair of the WGTF.

Agenda Item 2. Adoption of the agenda

2. The Agenda was adopted with no changes.

Agenda Item 3. National work plans/action plans for the acceleration of the implementation of the FATF

3. The WGTF members discussed national work plans/actions to accelerate implementation of the APTA Framework Agreement on Trade Facilitation (FATF). Bangladesh, China and Sri Lanka have presented their national work plans. It was requested that PS who have not submitted theirs or who would like to update their earlier submission to submit as soon, at the latest before the next meeting.

Agenda Item 4. Update of the Framework Agreement on Trade Facilitation

4. The WGTF continued to discuss proposals on new elements for updating the FATF, which were submitted by China and Republic of Korea, specifically on Advance Ruling provision. The Meeting noted that the Articles proposed by China and Republic of Korea are in line with Chapters on Customs Procedures and Trade Facilitation (CPTF) of Regional Comprehensive Economic Partnership (RCEP). Comments on these proposals were requested for PS' inputs by 31 October 2019.

Agenda Item 5. Capacity building and potential pilot projects on cross-border trade facilitation

5. The WGTF discussed ideas for developing pilot projects and capacity building activities, also in cooperation with potential partner institutions. China stressed the importance of capacity building in ICT application for the trade facilitation implementation. Republic of Korea proposed to organize workshops and/or seminars for interested APTA PS to share its experiences and build capacity of Customs and trade ministries officials. PS were requested to submit comments on topics for the proposed capacity building activities. Based

on these comments, Republic of Korea and ESCAP would discuss on the feasibility and details of the programme.

Agenda Item 6. Other matters

6. Republic of Korea informed the meeting that a certain country raised an issue on its developing country status within the WTO. However, in its response, Republic of Korea emphasized that this issue would not impact its participation in APTA.

7. Republic of Korea requested all PS to show flexibility in the 5th round of discussions on trade in goods to speed up the negotiation, and also urged PS to update details on their contact for the Terms of Reference in Trade in Goods to facilitate coordination of their positions prior to the 56th SC.

8. The Chair informed the meeting that his term would expire as of the current meeting and election of a new chair should be conducted at the next WGTF meeting. PS were requested to submit their interest in the chairmanship.

Agenda Item 7. Date and venue for the next meeting

9. The WGTF decided to have its next meeting back to back with the 57th APTA Standing Committee. Exact dates and venue are to be confirmed after consultation with other WGs and at the Standing Committee.

Agenda Item 8. Adoption of the report

10. The WGTF adopted the report of its fifth meeting on 19 September 2019 in New Delhi, India.

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WGTF ANNEX I: LIST OF PARTICIPANTS

Fifth meeting of the Working Group on Trade Facilitation

19 September 2019
New Delhi, India

LIST OF PARTICIPANTS

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ESCAP SECRETARIAT

Ms. Soo-Hyun Kim

Economic Affairs Officer
Trade Policy and Facilitation Section
Trade, Investment and Innovation Division

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REPORT OF THE FIFTH MEETING OF THE WORKING GROUP ON INVESTMENT (WGI)

28 October 2019
UNCC, Bangkok

1. The Working Group on Investment held its fifth meeting at the United Nations Conference Centre in Bangkok on 28 October 2019. The meeting was attended by representatives of the following Participating States: Bangladesh, China, India, Republic of Korea and Sri Lanka. The list of participants is attached as Annex 1.

2. The Working Group elected Mrs. Tilani Silva, Deputy Legal Adviser, Ministry of Foreign Affairs, Government of Sri Lanka as the Chair of this meeting standing in for Mrs. Champika P. Malalgoda, Director General, Board of Investment of Sri Lanka.

Agenda item 1: Opening of the meeting

3. Mr. Marc Proksch, Chief, Investment and Enterprise Development Section of the Trade, Investment and Innovation Division of ESCAP, welcomed the delegates and noted that progress had been rather limited since the fourth meeting of the Working Group. With regard to amendments of the FAI, only the Republic of Korea and Sri Lanka had submitted position papers reflecting opposing positions that were not compatible. Only the Republic of Korea and Sri Lanka had circulated a flow chart of the investment approval process along with an overview of its investment incentive regime. There were no clear position papers regarding schedules I and II of the FAI. It was now up to the members of the Working Group to agree on the way forward. The secretariat would be at their disposal as usual.

Agenda item 2: Adoption of the Agenda

4. The Working Group adopted the following agenda:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Implementation/review of the Framework Agreement on Investment
4. Date and venue for the next meeting of the Working Group.
5. Other matters.
6. Adoption of the report.

Agenda item 3: Implementation/review of the Framework Agreement on Investment

5. The Working Group reviewed the current text of the FAI based on the proposals contained in the revised position paper from Sri Lanka. The delegation from the Republic of Korea held the view that ideally the FAI should not undergo any amendments and that if any amendment had to be made it should add value and not dilute the purpose and scope of the

FAI. The delegations of India and Sri Lanka agreed that the FAI should be reviewed and amended with a view to make it more balanced and conform to developments in the international investment regime. The delegation of China expressed that the amendments should commit to providing stronger protection and a better business environment for investors.

6. The Working Group agreed that each delegation would hold consultations in their respective home countries on the need to make amendments to the FAI based on the view of several delegations that such amendments may be desirable, in particular amendments to articles 1 to 5 and the four schedules. It was agreed that any amendment should be submitted in written form in track change in the current text of the FAI to the secretariat for consolidation and circulation to all Working Group members before 31 December 2019. In particular, delegations would review whether the definition of investment should be asset or enterprise based or a combination thereof and whether portfolio investment should be included in the definition. The delegation of Bangladesh informed the Working Group that Bangladesh would submit its position on the definition of investment in the FAI by 31 December 2019.

7. It was also agreed that each delegation would submit flowcharts of investment approval and an overview of the investment incentive regime in their respective countries, as agreed earlier, to the secretariat by 31 December 2019 for circulation to all members if they had not already done so. China would re-submit revised flowcharts of investment approval and an overview of the investment incentive regime after the regulation for the implementation of the Foreign Investment Law has been passed.

8. The secretariat recommended that all delegations, in reviewing the text of the FAI, consider the formulation of similar articles in existing international investment agreements they were party of to ensure consistency in language and scope of commitment. It also recommended that Participating States should use the opportunity for review to strengthen sustainability provisions in the FAI, for instance in the preambular, in the form of separate articles, and/or as part of article 5 on General Exceptions.

9. Formal meetings of the Working Group are held in principle twice a year. The Working Group agreed that additional meetings could be held at the discretion of the Chair. Any member who is unable to physically attend any meeting will inform the secretariat at least one week in advance and will seek to attend through video link.

Agenda item 4: Date and venue for the next meeting of the Working Group

10. The Working Group agreed to have its sixth meeting in Bangkok immediately before the fifty-seventh Session of the Standing Committee on dates to be determined.

Agenda item 5: Other matters

11. No other matters were discussed.

Agenda item 6: Adoption of the report

12. The Working Group on Investment adopted the report of its fifth meeting on 28 October 2019. The Chair of the Working Group would present the report to the Standing Committee on 29 October 2019.

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WGI ANNEX I: LIST OF PARTICIPANTS

Fifth meeting of the Working Group on Investment

28 October 2019
UNCC, Bangkok

BANGLADESH

Ms. Sharifa Khan, Additional Secretary (HOD), FTA Wing, Ministry of Commerce, Email: sharifanaser@gmail.com, tel: +880 1752723646

Mr. Mir Khairul Alam, Joint Secretary, International Cooperation, Ministry of Industries, Email: kadom6304@gmail.com, tel: +880 1718520388

CHINA

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Mr. Jiaming Chen, Attache, Department of Treaty and Law, Ministry of Commerce, Email: chenjiaming@mofcom.gov.cn

INDIA

Mr. Surinder Pal Singh, Joint Secretary, Department of Economic Affairs, Ministry of Finance, Email: surinder.singh66@gov.in, tel: 011 23092100

REPUBLIC OF KOREA

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SRI LANKA

Mrs. Tilani Silva, Deputy Legal Advisor, Legal Division, Ministry of Foreign Affairs, email: tilanie.silva@mfa.gov.lk, tel: +94-11-2473943

ESCAP SECRETARIAT

Mr. Marcel Proksch

Chief
Investment, Enterprises and Development
Trade, Investment and Innovation Division

* * * * *

REPORT OF THE FOURTH MEETING OF THE WORKING GROUP ON TRADE IN SERVICES (WGS)

28-29 October 2019
UNCC, Bangkok

The fifth meeting of the Working Group on Services (WGS) was held on 28 and 29 October 2019 in Bangkok, Thailand. The fifth meeting was attended by representatives from all Participating States of APTA, except China. The final list of delegates/participants is attached as Annex I. China will be duly informed of the outcome of discussions of the 5th WGS meeting.

Agenda item 1: Opening of the session

1. The session was opened by Ms. Mia Mikic, Director of Trade, Investment and Innovation Division. She welcomed the representatives from the Participating States. She explained to the Participating States about the current situation of the United Nations' budget and human resource constraints, and highlighted the importance of a fruitful meeting of the WG. She informed the Participating States that apologies of absence were received from China, the chair of WGS. She then invited Mr. Jihwan Eo, Deputy Director, Trade Policy Coordination Division, Ministry of Economy and Finance, Republic of Korea, the vice-chairperson of WGS to chair this meeting.

Agenda item 2: Adoption of the agenda

2. The WGS adopted the agenda as attached in Annex II.

Agenda item 3: Agreement on promotion and liberalization of trade in services

3. The WGS reviewed and discussed the draft text of "the first amendment of the framework agreement on the promotion and liberalization of trade in services among APTA participating states", prepared by India. India's position is reflected in the draft text proposed by India. Initial comments made by Bangladesh, Republic of Korea, Lao PDR and Sri Lanka during the fifth session of the WGS are reflected in the draft text attached as Annex III.

4. Attending PSs discussed the appropriateness of the title and explored the possibility of utilizing the approach reflected in the first amendment to the Bangkok Agreement, as reflected in comments made in Annex III.

5. With respect to Article 10 "Settlement of Disputes" of the Framework Agreement on Promotion and Liberalization of Trade in Services among APTA Participating States (Article 16 of Annex III), the WGS discussed whether an independent dispute settlement mechanism would be necessary as Article 21 of APTA may not be adequate to resolve disputes of commercial nature that may arise from this agreement. In this context, in case such independent mechanism is adopted, the PSs discussed if it should be only a services-specific dispute settlement mechanism or a common mechanism for all tracks covered by the APTA.

In this regard, the WGS would like to seek guidance from the Standing Committee. Thereafter, PSs may seek advice from the capital for further discussion in the next meeting.

6. China, which is not present at the session, is requested to furnish their comments on the draft text on the promotion and liberalization on trade in services (Annex III) to the Secretariat by 30 November 2019 for circulation for examination by the attending PSs. On receipt of comments from China, all PSs may firm up their positions to discuss the draft further in the next WGS meeting.

7. As regards the level of ambition under services liberalization, Lao PDR shared its initial position paper in this meeting. The WGS requested Bangladesh to submit its position paper by 30 November 2019 to the Secretariat for circulation to all PSs.

Agenda item 4: Areas of cooperation

8. The WGS discussed approaches to identify areas of cooperation and action plans. Possible approach could be preparation of individual broad action plan by each PS, indicating the scope of cooperation in terms of sectors and specific areas of cooperation to the extent possible and share them with each other. Thereafter, on assessment of the individual action plans of PSs, two or more interested parties will seek to develop concrete action plans among themselves.

9. To facilitate further discussion on the approach to be followed, PSs may seek examples from any existing cooperation agreements and bring them to the discussion in the next meeting.

Agenda item 5: Date and Venue for the 6th meeting of the WGS

10. The WGS decided to follow the same timeframe and venue as the Standing Committee.

Agenda item 6: Other matters

11. The WGS updated the tentative work programme (Annex 4).

Agenda item 7: Adoption of the report

12. The WGS adopted the Report of its 5th meeting. The Chair would report the progress to the Standing Committee on 29 October 2019.

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WGS ANNEX I: LIST OF PARTICIPANTS

Fourth meeting of the Working Group on Trade in Services

28-29 October 2019

UNCC, Bangkok

LIST OF PARTICIPANTS

BANGLADESH

Mr. Noor MM Haq, Joint Secretary, FTA Wing, Ministry of Commerce, Email: Noor.mahbub@gmail.com, tel: +880 1711566961

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INDIA

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LAO PEOPLE'S DEMOCRATIC REPUBLIC

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SRI LANKA

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ESCAP SECRETARIAT

Ms. Mia Mikic	Director Trade, Investment and Innovation Division
Ms. Witada Anukoonwattaka	Economic Affairs Officer Trade Policy and Facilitation Section Trade, Investment and Innovation Division
Mr. Jeong Ho Yoo	Consultant Trade Policy and Facilitation Section Trade, Investment and Innovation Division

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WGS ANNEX II: ANNOTATED AGENDA

Fifth meeting of the Working Group on Trade in Services

28-29 October 2019

Bangkok, Thailand

1. Opening of the session

The secretariat invites the chair to deliver an opening statement.

2. Adoption of the agenda

The Working Group is invited to adopt the agenda.

3. Agreement on promotion and liberalization of trade in services

a) The Working Group is invited to initiate the discussion on the draft text with respect to promotion and liberalization of trade in services, prepared by India based on the Framework Agreement as the guiding document [Secretariat note No.1].

b) The Working Group may consider initiating the discussions on the level of ambition under services liberalization.

4. Areas of cooperation

The Working Group is invited to identify areas of cooperation and action plans.

5. Date and Venue for the 6th meeting of the Working Group on Services

The Working Group will decide on the date and venue for the 6th meeting.

6. Other matters

The Working Group is invited to discuss any other issues not covered in the above specified agenda items.

7. Adoption of the report

The Working Group will adopt the report of its 5th meeting and report the progress to the Standing Committee on 29 October 2019.

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WGS ANNEX III: DRAFT SERVICES AGREEMENT⁶

Fifth meeting of the Working Group on Trade in Services

28-29 October 2019
Bangkok, Thailand

[APPROACH NOTE]

- *The approach taken for amending the Framework Agreement on the Promotion and Liberalization of Trade in Services Among APTA Participating States (hereinafter “the FA”) has been to introduce the amendments to the text of the FA itself.*
- *For the purpose of enabling swift negotiation, the amended FA below indicates all newly introduced text in Italics and Underline form. This would mean that the parties need to devote their negotiating capital only to the Italicised and Underlined text, and not to the text that has already been agreed.*
- *Such an approach would also ensure easy readability and understanding of the consolidated and amended FA.*

Above note has been included to explain the approach adopted for drafting the TIS text and will not be part of the text]

[FIRST AMENDMENT TO THE FRAMEWORK AGREEMENT ON THE PROMOTION AND LIBERALIZATION OF TRADE IN SERVICES AMONG APTA PARTICIPATING STATES]

Comment: Attending PSs discussed the appropriateness of the title, and explored the possibility of utilizing the approach reflected in the first amendment to the Bangkok Agreement whereby a footnote to this title can be added: “The first amendment of the framework agreement on the promotion and liberalization of trade in services among APTA participating states; this Agreement, which was hitherto called the framework agreement on the promotion and liberalization of trade in services among APTA participating states shall henceforth be called the [Agreement on the promotion and liberalization of trade in services among APTA participating states].” Attending PSs agreed to revert.

⁶ The draft text was prepared by India based on the Framework Agreement on the Promotion and Liberalization of Trade in Services Among APTA Participating States. It was submitted to WGS at the 4th WGS meeting on 6.05.2019. India’s position is reflected in the draft text proposed by India. Initial comments made by Bangladesh, Republic of Korea, Lao PDR, and Sri Lanka during the fifth session of the WGS are reflected. China, which is not present at the session, is requested to furnish their comments for circulation by the Secretariat for examination by the attending PSs. On receipt of comments from China, all PSs to firm up their positions to discuss the draft further in the next WGS meeting.

(hereinafter referred to as "**this Agreement**")

The Governments of the People's Republic of Bangladesh, the Peoples of 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**");

[RECALLING that the Participating States had signed the Framework Agreement on the Promotion and Liberalization of Trade in Services (hereinafter, "Framework Agreement") on the twenty fourth day of August two thousand and eleven, and now seek to enter into this First Amendment Agreement with a view to operationalizing the provisions of the Framework Agreement relating to liberalization of service sectors:]

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;

Commented [c1]: Should merge with Recalling at the first part

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

1. 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 per cent 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;
 - (iii) *"affiliated" with another person when it controls, or is controlled by, that other person; or when it and the other person are both controlled by the same person;*
Comment: Text is acceptable to PSs attending in this meeting.
- (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;⁷
- (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

⁷Where 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.

Commission for Asia and the Pacific (UNESCAP);

2. Terms which have not been defined herein, shall be accorded the same meaning as provided under the General Agreement on Trade in Services.

Comments: Text is acceptable to PSs attending in this meeting.

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.
 - (f) Cabotage in maritime transport services

Comments:

Text is acceptable [ROK]

PSs will seek advice from the capital [Sri Lanka, Bangladesh, Lao PDR].

3. The Participating States understand that “measures by a Participating State” means measures taken by: (i) central, regional, or local governments and authorities; and (ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities. In fulfilling its obligations and commitments under this Agreement, each Participating State shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory.

Comments:

Text is acceptable to PSs attending in this meeting.

4. *The GATS Annexes, namely, Annex on Air Transport Services, Annex on Financial Services, and Annex on Telecommunications shall apply to this Agreement, mutatis mutandis.*

Comments:

PSs will seek advice from the capital [ROK, Sri Lanka, Bangladesh, Lao PDR].

5. *The [Annex on Movement of Natural Persons] shall form an integral part of this Agreement.*

Comments:

PSs proposed to delete paragraph 5 and affirm to GATS annex on MNP [ROK, Sri Lanka].

PSs will seek advice from the capital [Bangladesh, Lao PDR].

Commented [AA2]: India to propose a text for Annex on MoNP

6. 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 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.⁸

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

⁸The 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.

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.
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 the 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 8 to 10 XVI to XVIII and 11 of this Agreement Article XX of GATS.

Comments:

- For the purpose of making specific commitments, the Participating States shall apply Articles 8 to 10 XVI to XVIII and 11 of this Agreement Article [with due regards to Article 6.] [Bangladesh, Sri Lanka, Lao PDR]
- PSs will seek advice from the capital on the additional text proposed by Bangladesh, Lao PDR and Sri Lanka [ROK].

Commented [c3]: To reflect special consideration (Art.6)

Article 8

Market Access

1. With respect to market access through the modes of supply defined in paragraph (g) of Article 1, each Participating State shall accord services and service suppliers of the other Participating States treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule of specific commitments.⁹

⁹ If a Participating State undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(g)(i) and if the cross-border movement of capital is an essential part of the service itself, that Participating State is thereby committed to allow such movement of capital. If a Participating State undertakes a market-access commitment in relation to the supply of a service through the mode of supply referred to in Article 1(g)(iii), it is thereby committed to allow related transfers of capital into its territory.

Comments:

- **Text is acceptable to PSs attending this meeting**

2. In sectors where market access commitments are undertaken, the measures which a Participating 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 test;¹⁰
- (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.

Comments:

- **Text is acceptable to PSs attending this meeting.**

3. Each Participating State shall endeavour to reduce the requirements for a service supplier of the other Participating States to establish or maintain a representative office or any form of juridical person or to be resident in its territory, as a condition for the cross-border supply of a service.

Comments:

- **The phrase is GAT+. PSs concerned about legal implication (particularly the term “shall endeavour”). PS asked India to give a reference of the paragraph [ROK, Bangladesh, Sri Lanka, Lao PDR]**

Article 9

National Treatment

1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Participating State shall accord to services and service suppliers of the other

¹⁰ Sub-paragraph 2(c) does not cover measures of a Participating State which limit inputs for the supply of services.

Participating States, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.¹¹

2. A Participating State may meet the requirement of paragraph 1 by according to services and service suppliers of the other Participating States, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.

3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of a Participating State compared to like services or service suppliers of the other Participating States.

Comments:

- **Text of paragraph 1-3 is acceptable to PSs attending this meeting.**

ARTICLE 10

Additional Commitments

The Participating States may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 8 or 9, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Participating State's Schedule of specific commitments.

Comments:

- **Text is acceptable to PSs attending this meeting.**

Article 11

Schedule of Specific Commitments

1. Each Participating State shall set out in a schedule the specific commitments it undertakes under Articles 8, 9 and 10. With respect to sectors where such commitments are undertaken, each Schedule of specific commitments 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.*

Comments:

¹¹ *Specific commitments assumed under this Article shall not be construed to require the other Participating State to compensate for any inherent competitive disadvantages which result from the foreign character of the relevant services or service suppliers*

- Each Participating State shall set out in a schedule the specific commitments it undertakes under Articles 8, 9 and 10, [with due regards to Article 6] [Bangladesh, Sri Lanka, Lao PDR]
- PSs saw the reference to special consideration was already indicated in Article 7, and then it is not necessary to repeat [ROK]. PSs will seek advice from the capital on the additional text proposed by Bangladesh [ROK]

2. Measures inconsistent with both Articles 8 <Market Access> and 9 <National Treatment> shall be inscribed in the column relating to Article 8 <Market Access>. In this case the inscription will be considered to provide a condition or qualification to Article 9 <National Treatment> as well.

3. Schedules of specific commitments of each Participating State shall be annexed to this Agreement and shall form an integral part of this Agreement.

Comments:

- Text of paragraph 1-3 is acceptable to PSs attending this meeting .
-

Article 12

Modification of Schedules

1. A Participating 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 Participating States of its intent to so modify or withdraw a commitment no later than 3 months before the intended date of implementation of the modification or withdrawal.

2. At the request of any other Participating State, the modifying Participating State shall enter into negotiations with a view to reaching agreement on any necessary compensatory adjustment. In such negotiations and agreement, the Participating 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.

3. Any compensatory adjustment pursuant to this Article shall be accorded on a non-discriminatory basis to all Participating States.

4. If the Participating States concerned are unable to reach an agreement on the compensatory adjustment, the matter shall be resolved under the [Dispute Settlement Mechanism]. The modifying Participating State may not modify or withdraw its commitment until it has made compensatory adjustments in conformity with the findings of the arbitration.

5. If the modifying Participating State implements its proposed modification or withdrawal and does not comply with the findings of the arbitration, any Participating State that participated in the arbitration may modify or withdraw substantially equivalent benefits in conformity with those findings. Such a modification or withdrawal may be implemented solely with respect to the modifying Participating State.

Comments:

- **PS proposed to delete the Article. (The same position was made in RCEP [ROK].**
- **PSs proposed to use GATS Article XXI language in this Article. [Bangladesh, Sri Lanka]**
- **PS will seek advice from the Capital [Lao PDR]**

Article 13 (*Old 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 [], 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 there from with regard to trade in services.~~

Comments:

PSs agreed to delete the Article 9 and replace by Article 14 and 15.

Article 14
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 the other Participating State, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Participating State of measures:

(a) necessary to protect public morals or to maintain public order;¹²

Comments:

PSs proposed a deletion of text in footnote 7 to follow GATS language [*“The public order exception may be invoked by a Participating 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.”*][ROK, Sri Lanka, Lao PDR, Bangladesh]

¹² The public order exception may be invoked by a Participating 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.

- (b) necessary to protect human, animal or plant life or health;
- (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
- (i) the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
- (ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
- (iii) safety;
- (d) inconsistent with Article 9, provided that the difference in treatment is aimed at ensuring the equitable or effective¹³ imposition or collection of direct taxes in respect of services or service suppliers of any other Participating State.

Comments:

PSs will seek advice from the capital on footnote 8 [Sri Lanka, Lao PDR]

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

Comments:

Text is acceptable [ROK]

PSs will seek advice from the capital [Sri Lanka, Lao PDR, Bangladesh].

Article 15

Security Exceptions

1. Nothing in this Agreement shall be construed:

¹³ Measures that are aimed at ensuring the equitable or effective imposition or collection of direct taxes include measures taken by a Participating 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 Participating State's territory; or

(ii) apply to non-residents in order to ensure the imposition or collection of taxes in the Participating 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 Participating State in order to ensure the imposition or collection of taxes on such consumers derived from sources in the Participating 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 Participating State's tax base.

Tax terms or concepts in Article 13(1)(d) 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 Participating State taking the measure.

- (a) to require a Participating State to furnish any information, the disclosure of which it considers contrary to its essential security interests; or
- (b) to prevent a Participating State from taking any action which it considers necessary for the protection of its essential security interests:
- (i) action relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - (ii) action relating to fissionable and fusionable materials or the materials from which they are derived;
 - (iii) action taken in time of war or other emergency in international relations;
 - (iv) action taken so as to protect critical public infrastructure, including communications, power and water infrastructure from deliberate attempts intended to disable or degrade such infrastructure; or

Comments:

Text of paragraph 1b (iv) is added from GATS. PS proposed to add a footnote to paragraph 1b (iv) using the same language as India-ROK CEPA [ROK]
PSs will seek advice from the Capital [Bangladesh, Sri Lanka, Lao PDR]

- (c) to prevent a Participating 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 Participating State shall inform the other Participating State to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

Comments:

Text of paragraph 2 is acceptable to PSs attending this meeting

3. Nothing in this Agreement shall be construed to require a Participating State to accord the benefits of this Agreement to a service supplier of any other Participating State where the first Participating State adopts or maintains measures in any legislation or regulations which it considers necessary for the protection of its essential security interests with respect to a non-Participating State or a service supplier of a non-Participating State, that would be violated or circumvented if the benefits of this Agreement were accorded to such a service supplier.

Comments:

Text of paragraph 3 is in India-ROK CEPA. Text is acceptable [ROK]
PSs will seek advice from the capital [Sri Lanka, Bangladesh, Lao PDR].

[Article 16 (*Old 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]

Comments:

Attending PSs discussed whether an independent dispute settlement mechanism would be necessary as Article 21 of APTA may not be adequate to resolve disputes of commercial nature that may arise from this agreement.

In this context, in case such mechanism is adopted, the PSs discussed if it should be a services-specific dispute settlement mechanism or a common mechanism for all tracks covered by the APTA.

In this context, attending PSs will refer this matter to the SC. Thereafter, all PSs may seek advice from the capital.

-

Article 17 (Old Article 10)
Denial of Benefits

~~Subject to prior notification and consultation,~~ a Participating State may deny the benefits of this Agreement:

Comments:

PSs proposed to keep the deleted text [ROK, Sri Lanka, Bangladesh, Lao PDR]

- (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 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.

[2. Subject to prior notification and consultation, a Participating State may deny the benefits of this Agreement to the supply of a service from or in the territory of another Participating State, if the Participating State establishes that the service is supplied by a service supplier that is owned or controlled by a person of a non- Participating State and the denying Participating State

- (i) does not maintain diplomatic relations with the non- Participating State; or*
(ii) adopts or maintains measures with respect to the non- Participating State that prohibit transactions with the enterprise or that would be violated or circumvented if the benefits of this Agreement were accorded to the service supplier.]

Comments:

PS will seek advice from the capital on having paragraph 2(i). [ROK]

PSs will seek advice from the capital on having paragraph 2. [Sri Lanka, Lao PDR, Bangladesh]

Article 18 (Old 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 there under shall form an integral part of this Agreement.

Article 19 (Old 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 20 (Old 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 21 (*Old Article 15*) **Amendments**

1. Subject to ~~paragraph 2~~ [Article--: *Modification of Schedule of Commitments*] 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.~~

Comments:

PSs proposed to make a decision after the position on Article 12 is finalized [ROK, Sri Lanka, Lao PDR, Bangladesh].

Article 22 (Old Article 16) **Recognition**

1. For the purpose of the fulfilment of its standards or criteria for authorization, licensing or certification of services suppliers, ~~a each Participating State may recognize~~ shall give due consideration to any requests by any other Participating State to recognise the education or experience obtained, requirements met, or licenses or certifications granted in another Participating State. Such recognition may be based upon an agreement or arrangement with the other Participating State, or otherwise be accorded autonomously.

Comments:

- **PSs proposed to keep the language of the Framework Agreement [ROK].**

- PSs proposed to keep the language similar to GATS Article VII:

“For the purpose of the fulfilment of its standards or criteria for authorization, licensing or certification of services suppliers, ~~a~~ each Participating State ~~may recognize~~ ~~shall give due consideration to any requests by any other Participating State to recognise~~ the education or experience obtained, requirements met, or licenses or certifications granted in another Participating State. *Such recognition [which may be achieved through harmonization or otherwise.] may be based upon an agreement or arrangement with the other Participating State, or otherwise be accorded autonomously.*” [Sri Lanka, Lao PDR].

PS will seek advice from the capital [Bangladesh].

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.

Comments:

PS agreed to delete the text [ROK].

PSs will seek advice from the capital [Sri Lanka, Bangladesh, Lao PDR].

3. *Each Participating State shall afford adequate opportunities and mechanisms to other Participating States, to negotiate their accession to agreements or arrangements pertaining to recognition as referred to in Paragraph 1. The Standing Committee shall regularly monitor implementation of these agreements or arrangements.*

Comments:

PSs will seek advice from the capital [Bangladesh, Sri Lanka, Lao PDR, ROK].

Article 23
Domestic Regulation

- 1. In sectors where specific commitments are undertaken, each Participating State shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.*

Comments:

Text of paragraph 1 is acceptable to attending PSs. Text is similar to GATS Article VI [ROK, Sri Lanka, Lao PDR, Bangladesh].

- 2. (a) Each Participating 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 Participating 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 Participating State shall ensure that the procedures in fact provide for an objective and impartial review.

(b) The provisions of sub-paragraph (a) shall not be construed to require a Participating State to institute such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

Comments:

Text of paragraph 2 is acceptable to attending PSs. Text is similar to GATS Article VI [ROK, Sri Lanka, Lao PDR, Bangladesh].

3. Where authorisation is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Participating State shall:

- (a) 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;
- (b) in the case of an incomplete application, at the request of the applicant, promptly identify all the additional information that is required to complete the application and provide the opportunity to remedy deficiencies within a reasonable timeframe;
- (c) at the request of the applicant, without undue delay provide, information concerning the status of the application; and
- (d) if an application is terminated or denied, to the maximum extent possible, inform the applicant in writing and without delay the reasons for such action. The applicant will have the possibility of resubmitting, at its discretion, a new application.

Comments:

PSs will seek advice from the capital on text of 3b and 3d [ROK, Sri Lanka, Lao PDR, Bangladesh].

4. With a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements, do not constitute unnecessary barriers to trade in services, the Participating 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 Participating 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.

Comments:

Text of paragraph 4 is acceptable to attending PSs [ROK].

PSs will seek advice from the capital [Sri Lanka, Lao PDR, Bangladesh].

5. (a) Pending the incorporation of disciplines pursuant to paragraph 4, for sectors where a Participating State has undertaken specific commitments and subject to any terms, limitations, conditions or qualifications set out therein, a Participating State shall not apply licensing and qualification requirements and procedures and technical standards that nullify or impair such specific commitments in a manner which:

- (i) does not comply with the criteria outlined in paragraphs 4(a), 4(b) or 4(c); and*
- (ii) could not reasonably have been expected of that Participating State at the time the specific commitments in those sectors were made.*

(b) In determining whether a Participating State is in conformity with the obligation under paragraph 5(a), account shall be taken of international standards of relevant international organisations¹⁴ applied by that Participating State.

Comments:

Text of paragraph 5 is acceptable to attending PSs [ROK].

PSs will seek advice from the capital [Sri Lanka, Lao PDR, Bangladesh]

6. In sectors where specific commitments regarding professional services are undertaken, each Participating State shall provide for adequate procedures to verify the competence of professionals of the other Participating State in accordance with provisions of paragraph 5.

Comments:

Text of paragraph 6 is acceptable to attending PSs .

Article 26 (*Old 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 27 (*Old 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.

¹⁴ The term "relevant international organisations" refers to international bodies whose membership is open to relevant bodies of both Parties.

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 on the twenty fourth day of August two thousand and eleven, in eight originals in the English language, all texts being equally authentic.*~~

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed the First Amendment to the Framework Agreement on the Promotion and Liberalization of Trade in Services among APTA Participating States.

Done on the [] day of [] two thousand and [], in [] originals in the English language, all texts being equally authentic.

Comments:

PSs will revert after the title is finalized [Bangladesh, ROK, Lao PDR, Sri Lanka, India].

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 REPUBLIC OF KOREA:

_____ [●]

FOR THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA:

_____ [●]

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WGS ANNEX IV: WORK PROGRAMME OF NEGOTIATIONS

Fifth meeting of the Working Group on Trade in Services

28-29 October 2019

Bangkok, Thailand

Negotiations in Services Tentative work Programme

	Activities	Target date to complete	Remarks
1	Finalize ToR	done	
2	Position papers by PSs	30 November 2019	Bangladesh to submit so that in next WGS meeting focused discussions can take place.
3	<ul style="list-style-type: none">• Identify areas of cooperation• Finalise cooperation frameworks	<ul style="list-style-type: none">• 6th meeting• To be decided	<ul style="list-style-type: none">• PSs may discuss approach to follow• Discussions on cooperation framework continue from the 5th meeting of WGS onwards.
4	Working on draft text on services agreement	May 2019 (start) – March 2020	India circulated the draft text on 8 May 2019. Attending PSs gave their initial comments in the 5 th meeting. China is requested to submit its comments by 30 November 2019.
5	Negotiations on schedules of specific commitment for services liberalisation (to be annexed to services text)	<p>April – October 2020</p> <ul style="list-style-type: none">• Common commitments (offer)• Additional requests• Negotiations on schedule of specific commitment	Negotiations can start after submission of position papers and after substantial progress are made on the draft text.

		<ul style="list-style-type: none"> • Complete the schedule (MFN) 	
6	Recognition	June– December 2020 <ul style="list-style-type: none"> • Finalize areas • Draw a plan for meetings of respective professional bodies (back-to-back with meetings of WGS?) 	Timeline will be confirmed only after PSs have consulted professional bodies.
7	Finalise texts of services agreement with schedules	October 2020	PSs are in best endeavor to complete the negotiations by 2020.
8	Signing of agreement	2020	To be guided by SC

Note:

1. Items at S.N. 3 and 6 above can be also discussed in sub-working groups. -- The WGS will decide if SWGs are necessary in the 6th WGS meeting.

2. Please note that the WG meetings (back to back with SC meeting) are to be scheduled only twice every year. However, in order to complete the negotiations by 2020, PSs will decide if more meetings of WGS negotiations will be needed.

* * * * *

REPORT OF THE FOURTH MEETING OF THE WORKING GROUP ON RULES OF ORIGIN (WGROO)

28 -29 October 2019
UNCC, Bangkok

The Working Group on Rules of Origin held its fifth meeting in Bangkok, Thailand on 28 - 29 October 2019. The meeting was attended by representatives of the following Participating States of APTA: Bangladesh, China; India; Lao People's Democratic Republic; the Republic of Korea (ROK) and Sri Lanka. The final list of participants is attached as Annex I.

Agenda item 1: Opening of the session

1. Mr. Sangwon Lim, Trade, Investment and Innovation Division, United Nations ESCAP welcomed the participants to this meeting. He, representing the secretariat, encouraged the Working Group to try to resolve pending provisions for the revised text of the Operational Procedures for the Certification and Verification of the Origin of Goods (OCP) with presence of all the participating states as much as possible.

Agenda item 2: Election of officers

2. Considering that many participants were joining the meeting for the first time, the Working Group wished to have a chair with good background on past works of the Working Group. In this connection, the Working Group elected Ms. Chen Jia Yun, General Administration of Customs of China as the chair. In her remarks, Ms. Chen expressed thanks to the participants for their confidence in her and her desire to have a fruitful discussion to resolve the pending provisions as many as possible.

Agenda item 3: Adoption of the Agenda

3. The Working Group adopted the agenda, which is attached as Annex II.

Agenda item 4: Discussions on the Operational Procedures for the Certification and Verification of the Origin of Goods

4. After this meeting, the Working Group cleared 6 outstanding Articles (Article 2, 3, 8, 10, 11 and 12).

5. On the title, the Working Group reached a consensus on keeping the current wording with no change.

6. On Article 1, the Working Group discussed necessity of adding the words "specimen signatures" but could not reach a consensus. The Working Group decided to continue working on this issue and requested participants to embark on further domestic consultation on their positions or propose revised wording.

7. On Article 3, with the concurrence of Bangladesh, the Working Group reached a consensus on the provision.

8. With regards to Article 4, the Working Group reached a consensus on having a provision on retroactive issuance. The Working Group discussed an issue of either 7 or 14 days for issuance as well as specifying reason for retroactive issuance. On the issue of either 7 or 14 days, the Working Group discussed reasons for their preferred options in details. India, as the only state preferring 7 days, would take back reasons given by other participating states to the capital for further domestic consultation. On specifying reason for retroactive issuance, the Working Group did not reach a consensus and decided to continue discussion.

9. On Article 5(2), the Working Group reached a consensus on the wording for provision on exemption for submission of original certificate of origin. The Working Group also discussed a revised proposal made by ROK on post importation claims, as attached in Annex III. Several participating states expressed their difficulty in this provision because they did not have it in their domestic regulations. The Working Group requested participating states to further review ROK's proposal and share their comments through the secretariat intersessionally.

10. On Article 10, with the concurrence of Bangladesh, the Working Group reached a consensus on the provision.

11. On Article 11, with the concurrence of Bangladesh, the Working Group reached a consensus on the provision. China made a presentation on its experience in implementing an Electronic Origin Data Exchange System (EODES). The Working Group recognized a need for extensive work on implementation of Article 11 and discussed measures for facilitating this work, including organizing additional sessions and technical training. The Working Group decided to have additional session on EODES in connection with the next meeting. China agreed to prepare a note on implementation of EODES by the end of 2019 and send it to the secretariat for circulation to all the participating states.

12. The Working Group noted that the participating states agreed, during the 2nd Working Group meeting, to review the Articles 13, 14 and 15 proposed by India and provide their comments on them. India urged the participating states to expedite providing their inputs on these Articles.

Agenda item 5: Date and venue for the 6th meeting of the Working Group on Rules of Origin

13. The Working Group would have its next meeting back-to-back with the next session of the Standing Committee, subject to confirmation of the dates. The Working Group decided to have additional meeting days to discuss EODES in details, also in parallel with the session of the Standing Committee, comprising three and half days in total.

Agenda item 6: Other matters

14. The Working Group did not have any other matters to discuss.

Agenda item 7: Adoption of the report

15. The Working Group adopted the report of its 5th meeting on 29th October 2019 and agreed that the chair would report the progress to the Standing Committee on 29th October 2019. The Working Group thanked the Chair for conducting the meeting very successfully as well as the secretariat for its support.

* * * * *

WGROO ANNEX I: LIST OF PARTICIPANTS

Fourth meeting of the Working Group on Rules of Origin

28-29 October 2019
UNCC, Bangkok

LIST OF PARTICIPANTS

BANGLADESH

Mr. A.H.M. Ahsan, Joint Secretary, FTA Wing, Ministry of Commerce, Email: ahsan_6522@yahoo.com, tel: +880 1827100237

Mr. Raich Uddin Khan, First Secretary, International Trade & Agreement, National Board of Revenue, Email: raichkhan@gmail.com, tel: +880 1711935785

CHINA

Ms. Jiayun Chen, Senior Customs Officer, Department of Duty Collection, General Administration of Customs, Email: chenjiayun@customs.gov.cn

Ms. Yuhua Zhang, Senior Customs Officer, Customs National Supervision Bureau for Duty Collection (Shanghai), Email: liu_xiang@customs.gov.cn

INDIA

Mr. Sanjeet Singh, OSD, Department of Revenue, Ministry of Finance, Email: sanjeet.singh@gov.in, tel: 8130870728

LAO PEOPLE'S DEMOCRATIC REPUBLIC

Mr. Somphone Phady, Deputy Director of Trade in Services Division, Ministry of Industry and Commerce, Email: somphone.p@laomoic.org

REPUBLIC OF KOREA

Mr. Jongchul Baek, Deputy Director, Customs Cooperation Division, Ministry of Economy and Finance, email: bbaek@korea.kr, tel: +82 44 215 4451

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SRI LANKA

Mr. Jagath Abeywarna, Deputy Director, Department of Commerce, Ministry of Industry and Commerce, email: jagath@doc.gov.lk, tel: +94777245453

Mr. Anil Sirimanna, First Secretary (Commercial), Embassy of Sri Lanka in Bangkok, email: anilsirimanna@yahoo.com, tel: +66 62114 6878

ESCAP SECRETARIAT

Mr. Sangwon Lim	Economic Affairs Officer Trade Policy and Facilitation Section Trade, Investment and Innovation Division
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Ms. Sohee Gwag	Expert on Regional Cooperation in Trade and Investment Trade, Investment and Innovation Division
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WGROO ANNEX II: AGENDA

Fourth meeting of the Working Group on Rules of Origin

28-29 October 2019

UNCC, Bangkok

1. Opening of the session
2. Election of Officers
3. Adoption of the agenda
4. Discussions on the Operational Procedures for the Certification and Verification of the Origin of Goods
5. Date and Venue for the next meeting of the Working Group
6. Other matters
7. Adoption of the report

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WGROO ANNEX III: ROK's proposed text on post-importation claims relating to Artic.5

Fourth meeting of the Working Group on Rules of Origin

28-29 October 2019

UNCC, Bangkok

Post-Importation Claims for Preferential Treatment

1. Each Party, subject to its laws and regulations, shall provide that where a good would have qualified as an originating good when it was imported into the territory of that Participating State, the importer of the good may, within a period specified by the laws and regulations of the importing Participating State, after the date on which the good was imported, apply for a refund of any excess duties, deposit or guarantee paid as the result of the good not having been accorded preferential tariff treatment, on presentation of the following to the customs authority of the importing Participating State:

- (a) a Certificate of Origin and other evidence that the good qualifies as an originating good; and
- (b) such other documentation in relation to the importation as the customs authority may require to satisfactorily evidence the tariff preference claimed.

2. Notwithstanding paragraph 1, each Participating State may require, in accordance with its domestic laws and regulations, that the importer notify to the customs authority of the Importing Participating State its intention to claim preferential tariff treatment at the time of importation.

* * * * *

WGROO ANNEX IV: Updated text of OCP and Verification of the Origin of Goods from the 5th Meeting of WGROO

Fourth meeting of the Working Group on Rules of Origin

28-29 October 2019

UNCC, Bangkok

CURRENT TEXT	China and RoK's Proposal
<p>OPERATIONAL PROCEDURES FOR THE CERTIFICATION AND VERIFICATION OF THE ORIGIN OF GOODS</p> <p>The Parties to the Asia-Pacific Trade Agreement, done on 2 November 2005 (hereinafter referred to as the "Participating States"):</p> <p>For the purpose of implementing the Rules of Origin under the Asia-Pacific Trade Agreement (hereinafter referred to as "APTA"), by developing the present operational procedures for the certification and verification of origin and other related administrative matters.</p> <p>Have agreed as follows:</p>	<p>OPERATIONAL PROCEDURES FOR THE CERTIFICATION AND VERIFICATION OF THE ORIGIN OF GOODS</p> <p>The Parties to the Asia-Pacific Trade Agreement, done on 2 November 2005 (hereinafter referred to as the "Participating States"):</p> <p>For the purpose of implementing the Rules of Origin under the Asia-Pacific Trade Agreement (hereinafter referred to as "APTA"), by developing the present operational procedures for the certification and verification of origin and other related administrative matters.</p> <p>Have agreed as follows:</p>
<p>Article 1: Issuing Authorities</p> <p>(1) The Certificates of Origin shall be issued by an authority/ authorities designated by the government of the exporting Participating State (hereinafter referred to as "Issuing Authorities").</p> <p>(2) Each Participating State shall communicate the names and addresses of their respective Issuing Authorities and shall provide specimens of their official seals for the endorsement of Certificates of Origin to the other Participating States. Any change in the above information and specimens shall be promptly communicated to the other</p>	<p>Article 1: Issuing Authorities</p> <p>(1) The Certificates of Origin shall be issued by an authority/ authorities designated by the government of the exporting Participating State (hereinafter referred to as "Issuing Authorities").</p> <p>(2) Each Participating State shall communicate the names and addresses of their respective Issuing Authorities and shall provide [specimen specimens signatures: 7.3.2018 – [of the officials – Bangladesh] Lao PDR/INDIA/Sri Lanka] and specimens of their official seals for the endorsement of Certificates of Origin to the</p>

Commented [44]: Laos: specimen signatures and official stamps (the seal can be effective only with signature according to domestic law)
Sri Lanka: flexible on signature. It will go on consensus on the current text.
China, ROK: don't need to provide signature
Chair: ask Laos to check with Customs. The current clause doesn't block having signature in CoO, but means no verification about signature.

Participating States.	other Participating States through the Secretariat 14 days before they take effect. Any change in the above information and specimens shall be promptly communicated to the other Participating States through the Secretariat.
<p align="center">Article 2: Application</p> <p>(1) The exporter and/or the manufacturer of products qualified for preferential treatment shall apply in writing (manually or electronically) to the relevant Issuing Authorities requesting the pre-exportation verification/registration of the origin of the products. The result of the verification/registration, subject to review periodically or whenever appropriate, shall be accepted as supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products of which, by their nature, origin can be easily verified.</p> <p>(2) At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or its authorized representative shall apply in writing (manually or electronically) to the Issuing Authorities for the Certificate of Origin and submit the Certificate of Origin duly completed together with the appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin.</p> <p>(3) The Issuing Authorities shall have the right, in verifying the application for a Certificate of Origin, to request any supporting documents to be furnished by the applicant in order to ascertain the conformity of the goods with the Rules of Origin under the APTA and the present Procedures.</p> <p>(4) The Issuing Authorities shall</p>	<p align="center">Article 2: Application</p> <p>(1) The exporter and/or the manufacturer of products qualified for preferential treatment shall apply in writing (manually or electronically) to the relevant Issuing Authorities requesting the pre-exportation verification/registration of the origin of the products. The result of the verification/registration, subject to review periodically or whenever appropriate, shall be accepted as supporting evidence in verifying the origin of the said products to be exported thereafter. The pre-exportation verification may not apply to products of which, by their nature, origin can be easily verified.</p> <p>(2) At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or its authorized representative shall apply in writing (manually or electronically) to the Issuing Authorities for the Certificate of Origin and submit the Certificate of Origin duly completed together with the appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin.</p> <p>(3) The Issuing Authorities shall have the right, in verifying the application for a Certificate of Origin, to request any supporting documents to be furnished by the applicant in order to ascertain the conformity of the goods with the Rules of Origin under the APTA and the present Procedures.</p> <p>(4) The Issuing Authorities shall</p>

<p>scrutinize each application for a Certificate of Origin to ensure that:</p> <p>(a) the application and the Certificate of Origin have been duly completed and signed by the exporter or authorized signatory or submitted electronically;</p> <p>(b) the origin of the goods is in conformity with the Rules of Origin under the APTA;</p> <p>(c) the other statements/entries on the Certificate of Origin correspond to the supporting documentary evidence submitted; and</p> <p>(d) the tariff item number, description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, correspond to the goods to be exported.</p>	<p>scrutinize each application for a Certificate of Origin to ensure that:</p> <p>(a) the application and the Certificate of Origin have been duly completed and signed by the exporter or authorized signatory or submitted electronically;</p> <p>(b) the origin of the goods is in conformity with the Rules of Origin under the APTA;</p> <p>(c) the other statements/entries on the Certificate of Origin correspond to the supporting documentary evidence submitted; and</p> <p>(d) the tariff item number, description, quantity and weight of goods, marks and number of packages, number and kinds of packages, as specified, correspond to the goods to be exported.</p>
<p>Article 3: Certificate of Origin</p> <p>(1) The Certificate of Origin shall be on an ISO A4 size paper in conformity with the specimen text set out in Annex-II to APTA, which shall be printed in English.</p> <p>(2) The Certificate of Origin shall comprise one original and one copy or duplicate to be retained by the Issuing Authority. The colour of the Certificate of Origin shall be determined by each exporting Participating State and notified to the other Participating States and the Secretariat.</p> <p>(3) Each Certificate of Origin shall bear a unique reference number separately given by each place of office of issuance.</p> <p>(4) The original shall be forwarded by the exporter to the importer for submission to the Customs Authority at the port or place of importation.</p>	<p>Article 3: Certificate of Origin</p> <p>(1) The Certificate of Origin shall be on an ISO A4 size paper in conformity with the specimen text set out in Annex-II to APTA, which shall be printed in English.</p> <p>(2) The Certificate of Origin shall comprise one original and one copy or duplicate to be retained by the Issuing Authority. The colour of the Certificate of Origin shall be determined by each exporting Participating State and notified to the other Participating States through the Secretariat.</p> <p>(3) Each Certificate of Origin shall bear a unique reference number separately given by each place of office of issuance.</p> <p>(4) The original shall be forwarded by the exporter to the importer for submission to the Customs Authority at the port or place of importation.</p>
<p>Article 4: Issuance of Certificate of Origin</p>	<p>Article 4: Issuance of Certificate of Origin</p>

<p>(1) A Certificate of Origin shall be issued manually or electronically by the Issuing Authorities of the exporting Participating State at the time of exportation or within three working days from the date of shipment whenever the products to be exported can be considered originating in that Participating State within the meaning of the Rules of Origin under the APTA. A Certificate of Origin shall be valid for one year from the date of issuance.</p> <p>(2) Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Unused spaces shall be crossed out to prevent any subsequent addition.</p> <p>(3) Under Rule 2, 3 or 4 of Annex II to the APTA, the Issuing Authority of the exporting Participating State shall indicate, in Box 8 of the Certificate of Origin, the relevant rules and applicable percentage of regional content.</p> <p>(4) In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the Issuing Authorities for a certified true copy of the original. The copy shall be made on the basis of the relevant documents kept in the dossier of the Issuing Authority. This copy should bear the words "CERTIFIED TRUE COPY" in Box 3, as well as the date when the original Certificate of Origin was issued. The certified true copy of a Certificate of Origin shall be issued within the validity period of the original Certificate of Origin.</p>	<p>(1) A Certificate of Origin shall be issued manually or electronically by the Issuing Authorities of the exporting Participating State at the time of exportation or within 14 days [7 days: India] from the date of shipment whenever the products to be exported can be considered originating in that Participating State within the meaning of the Rules of Origin under the APTA. A Certificate of Origin shall be valid for one year from the date of issuance. In exceptional cases where the Certificate of Origin has not been issued India/ROK/Sri Lanka/China/Laos: at the time of exportation or within 14 days [7 days: India] from the date of shipment at the request of the exporter, the Certificate of Origin shall be issued retroactively with the validity of 1 year from the date of shipment, in which case it is necessary to indicate "ISSUED RETROACTIVELY" in Box 3. [Bangladesh, INDIA, Sri Lanka: The issuing Authority shall also record reasons in Box 3 stating the exceptional circumstances due to which the Certificate of Origin has been issued retroactively.] In such cases, the importer claiming preferential treatment for the product may, [Lao PDR] subject to the domestic laws, regulations administrative rules of the importing Party, provide the Customs Authority of the importing Party with the Certificate of Origin issued retroactively. (8 May 2019) Bangladesh and India to confirm</p> <p>(2) Neither erasures nor superimposition shall be allowed on the Certificate of Origin. Unused spaces shall be crossed out to prevent any subsequent addition.</p> <p>(3) Under Rule 2, 3 or 4 of Annex II to the APTA, the Issuing Authority of the</p>
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Commented [CC5]: [29 October 2019]India will revert intersessionally, after positively considering other's PS' concerns

	<p>exporting Participating State shall indicate, in Box 8 of the Certificate of Origin, the relevant rules and applicable percentage of regional content.</p> <p>(4) In the event of theft, loss or destruction of a Certificate of Origin, the exporter may apply in writing to the Issuing Authorities for a certified true copy of the original. The copy shall be made on the basis of the relevant documents kept in the dossier of the Issuing Authority. This copy should bear the words “CERTIFIED TRUE COPY” in Box 3, as well as the date when the original Certificate of Origin was issued. The certified true copy of a Certificate of Origin shall be issued within the validity period of the original Certificate of Origin.</p>
<p>Article 5: Presentation of the Certificate of Origin</p> <p>(1) An original Certificate of Origin shall be submitted for preferential treatment to the Customs Authority at the time of lodging the import entry for the products concerned.</p> <p>(2) The Certificate of Origin shall be submitted to the Customs Authority of the importing Participating State within its validity period.</p> <p>(3) Where a Certificate of Origin is submitted to the relevant Customs Authority of the importing Participating State after the expiration of its validity, such Certificate is still to be accepted when failure to observe the time limit results from <i>force majeure</i> or other valid causes beyond the control of the exporter.</p> <p>(4) In all cases, the relevant Customs Authority in the importing Participating State may accept such Certificate of Origin provided that the products were imported</p>	<p>Article 5: Presentation of the Certificate of Origin</p> <p>(1) An original Certificate of Origin shall be submitted for preferential treatment to the Customs Authority at the time of lodging the import entry for the products concerned.</p> <p>(2) Notwithstanding anything contained in Article 5 (1), the Customs Authority of the importing Participating State may exempt submission of original Certificate of Origin in accordance with its domestic laws and regulations.</p> <p>[Exceptionally, if a claim for preferential treatment is made without producing the Certificate of Origin, the Customs Authority of the importing Participating State may require a guarantee in any of its modalities or may take any action necessary in order to preserve fiscal interests, as a pre condition for the completion of the importation operations]</p>

before the expiration of the validity of the Certificate of Origin

(5) Where the origin of a product is not in doubt, the discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the Customs Authority of the importing Participating State for the purpose of carrying out the formalities for importing the products shall not *ipso-facto* invalidate the Certificate of Origin, if it does in fact correspond to the said products.

~~subject to and in accordance with the laws and procedures of the importing Participating State.~~ (None of PS indicated it was their proposal: China, Laos and Sri Lanka – delete it, and India, ROK and Bangladesh: flexible. If any PS have any concerns, they revert intersessionally, otherwise, this para will be deleted in the next meeting.)]

(3) The Certificate of Origin shall be submitted to the Customs Authority of the importing Participating State within its validity period.

(4) Where a Certificate of Origin is submitted to the relevant Customs Authority of the importing Participating State after the expiration of its validity, such Certificate is still to be accepted when failure to observe the time limit results from *force majeure* or other valid causes beyond the control of the exporter.

(5) In all cases, the relevant Customs Authority in the importing Participating State may accept such Certificate of Origin provided that the products were imported before the expiration of the validity of the Certificate of Origin

(6) Where the origin of a product is not in doubt, the discovery of minor discrepancies between the statements made in the Certificate of Origin and those made in the documents submitted to the Customs Authority of the importing Participating State for the purpose of carrying out the formalities for importing the products shall not *ipso-facto* invalidate the Certificate of Origin, if it does in fact correspond to the said products.

[(7) [ROK] Exceptionally, where a good was originating when it was imported into the territory of the importing Party, but the importer of the good did not claim preferential tariff

Commented [CC6]: 4th meeting (may 2019)

Current practices of post importation claim for preferential treatment (the case of exporter seeking preferential treatment after importation, not the case of retroactive issuance of CoO)

China: sometimes conduct physical inspection on imported goods in comparison with document (CoO). after the release of goods by Customs Authority, it is difficult to identify the nature of goods since it might be already consumed) For China-ROK FTA, both parties use electronic CoO and post importation claim can be utilized with declaration of willingness to enjoy preference treatment during importation, already collected electronic data and financial deposit. However, for APTA, there would not be sufficient information on imported goods after release of goods. Only China-ROK, not other FTAs, has the provision of post importation claim.

Laos: this practice is not accepted

Sri Lanka: need to revert to Customs Authority

ROK: Customs Authority allows grace period for importers to decide whether importer will claim preferential treatment or not. In case of Korea, clearance comes first and followed by verification after release of goods. When fraud is found later, importer will be punished hardly, so trader will try to avoid fraud. China raised a question to ROK on retroactive issuance of CoO even 6 months after shipment. Explained that post importation claim provision in China-Korea FTA provided benefits, so intended to extend this benefit to APTA.

Considering the circumstances of PSs are different from RoK, RoK will revert its own proposal intersessionally.

	<p>treatment at the time of importation, that importer may, within the period specified in the Party's legislation or within one year following the date of importation, [Lao PDR] subject to the domestic laws, regulations administrative rules of the importing Party, claim preferential tariff treatment and apply for a refund of any excess duties paid as a result of the good not having been accorded preferential tariff treatment, upon presentation to the importing Party of:</p> <p>(a) a written or electronic declaration or statement, in accordance with the legislation of the importing Party, that the good was originating at the time of importation;</p> <p>(b) a copy of a Certificate of Origin demonstrating that the good was originating; and</p> <p>(c) such other documents related to the importation of the good as the importing Party may require.]</p> <p>(7) [Alternative, ROK] Each Party, subject to its laws and regulations, shall provide that where a good would have qualified as an originating good when it was imported into the territory of that Participating State, the importer of the good may, within a period specified by the laws and regulations of the importing Participating State, after the date on which the good was imported, apply for a refund of any excess duties, deposit or guarantee paid as the result of the good not having been accorded preferential tariff treatment, on presentation of the following to the customs authority of the importing Participating State:</p> <p>(a) a Certificate of Origin and other evidence that the good qualifies as an originating good; and</p>
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	<p>(b) such other documentation in relation to the importation as the customs authority may require to satisfactorily evidence the tariff preference claimed.(8) [Alternative, ROK] Notwithstanding paragraph 7, each Participating State may require, in accordance with its domestic laws and regulations, that the importer notify to the customs authority of the Importing Participating State its intention to claim preferential tariff treatment at the time of importation.</p>
<p>Article 6: Origin Verification</p> <p>(1) The Customs Authority of the importing Participating State may request the Issuing Authority of the exporting Participating State for a retroactive random check and/or when it has reasonable doubt as to the authenticity of the documents or as to the accuracy of the origin status of the goods in question.</p> <p>(2) The request shall be accompanied by the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin may be inaccurate.</p> <p>(3) The Customs Authority of the importing Participating State may suspend the preferential treatment while awaiting the result of the verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction and there is no suspicion of fraud.</p> <p>(4) The Issuing Authority receiving a request for verification shall respond to the request promptly and reply within three (3) months after receipt of the request. The verification process, including the actual</p>	<p>Article 6: Origin Verification</p> <p>(1) The Customs Authority of the importing Participating State may request the Competent Authority of the exporting Participating State for a retroactive random check and/or when it has reasonable doubt as to the authenticity of the documents or as to the accuracy of the origin status of the goods in question.</p> <p>(2) Each Participating State shall communicate the information on contact details of their focal points for verification of Certificate of Origin and any change thereof to the other Participating States, through the Secretariat.]</p> <p>(3) The request shall be accompanied by the Certificate of Origin concerned and shall specify the reasons and any additional information suggesting that the particulars given on the said Certificate of Origin may be inaccurate.</p> <p>(4) The Customs Authority of the importing Participating State may suspend the preferential treatment while awaiting the result of the verification. However, it may release the goods to the importer subject to any administrative measures deemed necessary, provided that they are not held to be subject to import prohibition or restriction</p>

process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the Issuing Authority within six (6) months. While the process of the verification is being undertaken, subparagraph (3) shall be applied. In the cases where the Customs Authority of the importing Participating State does not receive any reply within four (4) months after the making of the request, the Customs Authority may deny the claim for preferential treatment. In case the reply does not supply enough information to confirm the authenticity of the documents or the origin of the goods, the concerned authorities shall resolve the issue through bilateral consultation within three (3) months, failing which the preferential treatment may be denied.

Note:

① For the Republic of Korea the term “Issuing Authority” for Origin Verification purposes is the Customs Authority.

and there is no suspicion of fraud.

(5) The Issuing Authority receiving a request for verification shall respond to the request promptly and reply within three (3) months after receipt of the request. The verification process, including the actual process and the determination of whether the subject goods are originating or not, should be completed and the result should be communicated to the Issuing Authority within six (6) months. While the process of the verification is being undertaken, subparagraph (3) shall be applied. In the cases where the Customs Authority of the importing Participating State does not receive any reply within four (4) months after the making of the request, the Customs Authority may deny the claim for preferential treatment. In case the reply does not supply enough information to confirm the authenticity of the documents or the origin of the goods, the concerned authorities shall resolve the issue through bilateral consultation within three (3) months, failing which the preferential treatment may be denied.

[India: (6) The issuing authority receiving a request for verification shall respond to the request, within: fifteen (15) days of the date of receipt of the request, if the request pertains to the authenticity of the seal and signatures of the issuing authority; thirty (30) days of the date of receipt of the request, if the request is to seek a copy of the application made by the exporter or manufacturer under Article 2; ninety (90) days from the date of receipt of request, if the request is on the grounds of suspicion of the accuracy of the information regarding the origin of the product. Such period can be extended through mutual

Commented [47]: [differentiated periods for reply according the nature of requests]

China, Laos, ROK: same position as before, no need to specify reply period

Sri Lanka: in principle agree with the purpose. Modification is needed to make it more operational. will propose modified text [further investigation or additional information change]

need to hear India's intention of proposal [visit verification]

Chair: need to exchange positions whether PSs can accept the concept of visit verification since it is a new thing.

Laos, Sri Lanka: can accept the concept, but need to be changed the tone so it would not be used as a NTM.

ROK: revert later. need time to discuss internally. Has visit verification provision under other FTAs, but not sure about APTA.

China: flexible with the concept, but the detailed procedure should be discussed (not agree with direct contact to Chinese exporters without engagement of Customs Authority)

Sri Lanka: agree with India in principle and will propose modified text (including reply period and visit verification) intersessionally.

	<p>consultation for a period no more than sixty (60) days upon request of the exporting Party.</p> <p>(6) If on receiving the results of the verification check pursuant to clauses (4), the Customs Authority of the importing Party deems it necessary to request for further investigative actions or information, the customs authorities of the importing Party shall communicate the fact to the issuing authority of the exporting Party. The term for the execution of such new actions or for the presentation of additional information shall be not more than ninety (90) days, from the date of the receipt of the request for the additional information.</p> <p>(7) If, on receiving the results of the verification pursuant to clauses (4) or clause (4) and (5), the customs authorities of the importing Party deems it necessary, it may deliver a written request to the Issuing Authority of the exporting Party to facilitate a visit to the premises of the producer/manufacturer/exporter, with a view to examining the records, production processes, as well as the equipment and tools utilized in the manufacture of the good under verification. The request for a verification visit shall be made within 30 days of the receipt of the verification report referred to in clause (4) or/and clause (5). The requested party shall inform the dates of the visit within 45 days of the receipt of request and shall give a notice of at least 21 days to the requesting party and exporter/producer/manufacturer so as to enable arrangements for the visit.</p> <p>(8) The competent authorities of the exporting Party shall accompany the authorities of the importing Party in their above-mentioned visit, which may include the participation of specialists who shall act as observers. Each Party could designate specialists, who shall be neutral and have no</p>
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	<p>interest whatsoever in the verification. Each Party may deny the participation of such specialists whenever the latter represent the interests of the companies involved in the verification.</p> <p>(9) Once the visit is concluded, the participants shall subscribe to a "Record of Visit". The said record shall contain the following information: date and place of the carrying out of the visit; identification of the origin certificates which led to the verification; identification of the goods under verification; identification of the participants, including indications of the organs and institutions to which they belong; and a record of proceedings.]</p> <p>[India requests other PS to consider the proposal for having clear timelines for different types of verification to bring predictability in the process and make suggestions]</p>
<p>Article 7: Record Keeping Requirements</p> <p>(1) An application for a Certificate of Origin and all documents related to such application shall be retained by the Issuing Authorities for a period of not less than two (2) years from the date of issuance.</p> <p>(2) Information relating to the accuracy of the Certificate of Origin shall be furnished upon request of the importing Participating State.</p> <p>(3) Any information communicated between the Participating States shall be treated as confidential and shall be used for the verification of Certificates of Origin only.</p>	<p>Article 7: Record Keeping Requirements</p> <p>(1) An application for a Certificate of Origin and all documents related to such application shall be retained by the Issuing Authorities for a period of not less than INDIA: two (2) five (5) [Bangladesh, China, RoK, Mongolia, Sri Lanka, Lao PDR: three (3)] years from the date of issuance.</p> <p>(2) Information relating to the accuracy of the Certificate of Origin shall be furnished upon request of the importing Participating State.</p> <p>(3) Any information communicated between the Participating States shall be treated as confidential and shall be used for the verification of Certificates of Origin only.</p> <p>INDIA: (4) Communications between the Participating States in connection with verification of origin shall not be disclosed by the exporting Participating State to any person, except to the extent necessary for</p>

Commented [48]: Will wait for India's confirmation if it can accept 3 years
ROK: asked secretariat to circulate the text to India to confirm
Laos: asked to include Mongolia in circulation

	<p>carrying out the verification, till such time the determination of origin is completed by the Customs Authority of the importing Participating State. [India to propose it as part of Article 6]</p> <p>(5) An exporter and/or manufacturer who applies for a Certificate of Origin under the APTA shall maintain appropriate commercial accounting records for production and supply of the goods qualifying for preferential treatment and keep all commercial and customs documentation relating to the material used in the production of the good, for at least five (5) years from the date of issue of the Certificate of Origin.]</p>
<p>Article 8: Special Cases</p> <p>When the destination of all or parts of the products exported to a specified port of a Participating State is changed, before or after their arrival in the importing Participating State, the following procedures shall be observed:</p> <p>(1) If the products have already been submitted to the Customs Authority in the specified importing Participating State, the Certificate of Origin shall, following a written application by the importer, be endorsed to this effect for all or parts of products by the said authorities and the original returned to the importer.</p> <p>(2) If the change of destination occurs during transportation to the importing Participating State as specified in the Certificate of Origin, the exporter shall apply in writing, accompanied by the issued Certificate of Origin, for the issuance of new Certificate/s of Origin for all or parts of products.</p>	<p>Article 8: Special Cases</p> <p>When the destination of all or parts of the products exported to a specified port of a Participating State is changed, before or after their arrival in the importing Participating State, the following procedures shall be observed:</p> <p>(1) If the products have already been submitted to the Customs Authority in the specified importing Participating State, the Certificate of Origin shall, following a written application by the importer, be endorsed to this effect for all or parts of products by the said authorities and the original returned to the importer.</p> <p>(2) If the change of destination occurs during transportation to the importing Participating State as specified in the Certificate of Origin, the exporter shall apply in writing, accompanied by the issued Certificate of Origin, for the issuance of new Certificate/s of Origin for all or parts of products.</p>
Article 9: Supporting Documents of	Article 9: Supporting Documents of

<p style="text-align: center;">Direct Transportation</p> <p>Under Rule 5(b) of Annex II to APTA, where the goods are transported through the territory outside the Participating States, the following documents shall be presented to the customs authorities of the importing Participating State:</p> <p>(1) the through Bill of Lading issued in the exporting Participating State;</p> <p>(2) the Certificate of Origin issued by the Issuing Authority of the exporting Participating State;</p> <p>(3) the original commercial invoice in respect of the goods; and</p> <p>(4) supporting documents which prove the compliance with Rule 5(b) of Annex II to APTA.</p>	<p style="text-align: center;">Direct Transportation</p> <p>Under Rule 5(b) of Annex II to APTA, where the goods are transported through the territory outside the Participating States, the following documents shall be presented to the customs authorities of the importing Participating State:</p> <p>(1) [ROK] (9.5.2019 replace its proposal) Any transport document which, when read in combination, cover the entire transport route of a good from the Exporting Participating State to the Importing Participating State - [7.3.2018 Bangladesh – delete airway bill, [Lao PDR] truck bill,] -; the through Bill of Lading issued in the exporting Participating State; [Sri Lanka: reserved to revise the text; India: agree in principle but reserved to propose an improved wording] (9.5.2019) China, Laos and Sri Lanka will revert it later.</p> <p>(2) the Certificate of Origin issued by the Issuing Authority of the exporting Participating State;</p> <p>(3) the original commercial invoice in respect of the goods; and</p> <p>(4) supporting documents which prove the compliance with Rule 5(b) of Annex II to APTA.</p>
<p style="text-align: center;">Article 10: Cooperation of the Participating States</p> <p>(1) When it is suspected that fraudulent acts regarding the Certificate of Origin have been committed, the authorities in the Participating States concerned shall co-operate in taking action against the persons involved, and undertake legal sanctions against fraudulent acts according to their respective domestic legislations.</p>	<p style="text-align: center;">Article 10: Cooperation of the Participating States</p> <p>(1) When it is suspected that fraudulent acts regarding the Certificate of Origin have been committed, the authorities in the Participating States concerned shall co-operate in taking action against the persons involved, and undertake legal sanctions against fraudulent acts according to their respective domestic legislations.</p>

Commented [49]: ROK: since thorough B/L is not common for some non-APTA PSs (eg. Hong Kong), it is needed to capture other forms of transport documents.
ROK proposed a new wording:
“Any transport document which, when read in combination, cover the entire transport route of a good from the Exporting Participating State to the Importing Participating State”
China: for new wording by RoK, need to check internally. Has concern about the reliability of issuers (some documents may be fabricated fraudulently)
Laos: since Laos is land locked country, it would like to insert “truck bill”. To reply new wording by ROK, any text which can include “truck bill” would be okay.
Sri Lanka: to reply new wording by RoK, it will revert later after consultation with Customs Authority

ROK proposed a new text, and China, Laos and Sri Lanka will revert later

<p>(2) In the case of any dispute concerning origin determination, classification, goods or other matters, the competent authorities concerned in the importing and exporting Participating States shall consult each other with a view to resolving the dispute, and the result shall be communicated to other Participating States.</p> <p>(3) Each Participating State shall designate a focal point or focal points to ensure the effective and efficient implementation of the Rules of Origin under the APTA</p>	<p>(2) In the case of any dispute concerning origin determination, classification, goods or other matters, the competent authorities concerned in the importing and exporting Participating States shall consult each other with a view to resolving the dispute, and the result shall be communicated to other Participating States.</p> <p>(3) Each Participating State shall designate a focal point or focal points to ensure the effective and efficient implementation of the Rules of Origin under the APTA. The information shall be only exchanged by focal points through the Secretariat.</p> <p>(4) Participating States shall hold at least one meeting each year to review, evaluate and effectively facilitate the implementation of this Chapter.]</p>
	<p>Article 11: Electronic Origin Data Exchange System</p> <p>Participating States shall develop an Electronic Origin Data Exchange System to ensure the effective and efficient implementation of this Chapter in a manner jointly determined by the Participating States.</p>
<p>Article 11: Exhibition Purposes</p> <p>(1) Products sent from one Participating State for exhibition in another Participating State and sold during or after the exhibition shall benefit from the preferential tariff treatment provided in the APTA, on the condition that the Products meet the requirements of Rules of Origin under the APTA and provided it is shown to the satisfaction of the relevant Government authorities of the importing Participating State that:</p>	<p>Article 12: Exhibition Purposes</p> <p>(1) Products sent from one Participating State for exhibition in another Participating State and sold during or after the exhibition shall benefit from the preferential tariff treatment provided in the APTA, on the condition that the Products meet the requirements of Rules of Origin under the APTA and provided it is shown to the satisfaction of the relevant Government authorities of the importing Participating State that:</p>

<p>(a) the exporter has dispatched those products from the territory of the exporting Participating State to the importing Participating State where the exhibition is held and has exhibited them there;</p> <p>(b) the exporter has sold the goods or transferred them to a consignee in the importing Participating State; and</p> <p>(c) the products have been sold during the exhibition or immediately thereafter to the importing Participating State in the state in which they were sent for the exhibition.</p> <p>(2) For the purpose of implementing the above provisions, the Certificate of Origin must be produced to the relevant Government authorities of the importing Participating State.</p> <p>(3) Paragraph 1 shall apply to exhibitions, fairs or similar shows or displays where the products remain under Customs control during the events.</p>	<p>(a) the exporter has dispatched those products from the territory of the exporting Participating State to the importing Participating State where the exhibition is held and has exhibited them there;</p> <p>(b) the exporter has sold the goods or transferred them to a consignee in the importing Participating State; and</p> <p>(c) the products have been sold during the exhibition or immediately thereafter to the importing Participating State in the state in which they were sent for the exhibition.</p> <p>(2) For the purpose of implementing the above provisions, the Certificate of Origin must be produced to the relevant Government authorities of the importing Participating State.</p> <p>(3) Paragraph 1 shall apply to exhibitions, fairs or similar shows or displays where the products remain under Customs control during the events.</p>
	<p>[INDIA] Article 13: Denial of the Preferential Treatment</p> <p>(1) The Customs Authority of importing Participating State may deny the claim for preferential tariff treatment or recover unpaid duties in accordance with its laws and regulations, when:</p> <p>(a) The Customs Authority of the importing Participating State determines that the goods does not meet the requirements of the Rules of Origin under the agreement;</p> <p>(b) The exporter and/or manufacturer of the goods fails to maintain records or documentation necessary for determining the origin of the good or refuses a request for a verification visit or denies access to the records, documents or production facilities during a verification visit;</p> <p>(c) The information provided by an Issuing Authority of the exporting</p>

	<p>Participating State to the Customs Authority of the importing Participating State in response to a request for verification is insufficient to determine that the good is an originating good; and</p> <p>(d) The Issuing Authority of the exporting Participating State fails to provide sufficient information in pursuance to a written request for verification within stipulated time lines stated in article 9.</p> <p>(2) In cases where preferential tariff treatment is denied by the customs Authority of the importing Participating State, after following the due process provided under its domestic laws, a copy of the decision, containing the grounds of rejection, shall be provided to the importer and the Issuing Authority.</p> <p>(3) Upon denial of preferential tariff treatment, an appeal against such decision may be filed with the appropriate appellate authority in accordance with the customs law of the importing Participating State.</p> <p>(4) Nothing in this agreement shall be construed to override the application of domestic laws of the importing Participating State to the action taken by its Customs Authority in the course of verification and subsequent determination of origin, including provisions relating to timelines, interim measures, penalties and appeal.</p>
	<p>[INDIA] Article 14: Prospective Restoration of Preferential Benefits</p> <p>(1) Where preferential treatment to a good has been denied by the Customs Authority of the importing Participating State in terms of Article 12, the exporter and/or manufacturer may demonstrate to the Issuing Authority of the exporting Participating State that the manufacturing conditions were modified so as to fulfil the</p>

	<p>requirements of the Rules of Origin under the APTA.</p> <p>(2) The Issuing Authority of the exporting Participating State, may, if it is satisfied that the goods fulfil the requirements of the Rules of Origin under the APTA as a consequence of the modifications carried out by exporter and/or manufacturer in the manufacturing conditions, send the information received from the exporter and/or manufacturer detailing the modifications in manufacturing conditions to the Customs Authority of the Importing Participating State. The Customs Authority of the Importing Participating State may, upon receipt of the said information, require additional information or request for a verification visit to the premises of the exporter and/or manufacturer, if deemed necessary, for satisfying itself regarding the veracity of the information provided by the exporter and/or manufacturer.</p> <p>(3) The Customs Authority of the importing Participating State shall take into consideration, the information received or the outcome of the verification visit undertaken pursuant to Paragraph 2, and either:</p> <p>(a) inform the exporter and/or manufacturer, through the Issuing Authority of the exporting Participating State, its satisfaction regarding compliance with the Rules of Origin as a consequence of the modifications to the manufacturing conditions; or</p> <p>(b) inform the exporter and/or manufacturer, through the Issuing Authority of the exporting Participating State, how the modifications to the manufacturing conditions are found insufficient.</p>
	<p>[INDIA] Article 15: Temporary Suspension of Preferential Treatment</p>

	<p>(1) The Participating State may suspend the tariff preference in respect of a good originating in an exporting Participating State, when the withdrawal is justified due to persistent failure to comply with the provisions of the Rules of Origin under the APTA by a producer (s) in the exporting Participating State or a persistent failure on part of the Issuing Authority to respond to a request for verification.</p> <p>(2) The Exporting Participating State shall, within fifteen days of suspension of the tariff preference in respect of a good, be notified of the reasons for such suspension. Upon receipt of the notification for suspension, the competent authority of exporting Participating State may request for consultations, which may take place by any means, including e-mail communications, video conference and/or meetings and may also involve joint verification visits as may be mutually agreed.</p> <p>(3) Pursuant to the consultations and such measures as may be mutually agreed, the concerned Participating States shall resolve to:</p> <p>(a) restore tariff preference in respect of the good with retrospective effect; or</p> <p>(b) restore tariff preference in respect of the good with prospective effect, subject to implementation of any mutually agreed measures; or</p> <p>(c) continue with the suspension of preferential benefits to the good, subject to remedies in terms of Article 13 remaining available.</p> <p>For the proposed Articles 13, 14 and 15 by India, other PS are requested to review and make comments</p>
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