



COMMUNICATION FROM INDIA

TRADE FACILITATION AGREEMENT FOR SERVICES

The following communication, dated 22 February 2017, from the delegation of India is being circulated to the Members of the Council for Trade in Services, the Council for Trade in Services - Special Session, and the Working Party on Domestic Regulation.

1.1. On 6 October 2016, India tabled its proposal on the 'Concept Note for an Initiative on Trade Facilitation in Services' (S/WPDR/W/55) at the Working Party on Domestic Regulation (WPDR) meeting, with the objective to briefly outline the concept of a Trade Facilitation Agreement for Services (TFS Agreement).

1.2. On 25 November 2016, India presented an Elements Paper (S/WPDR/W/57) at the WPDR meeting proposing the possible elements of the TFS Agreement, as conceived by India, in a more detailed manner.

1.3. India now proposes a draft legal text on a 'Trade Facilitation Agreement for Services' for discussion. The draft legal text has provisions relating to facilitating trade in services, development as well as institutional provisions.

1.4. The draft legal text is attached. India requests that this Communication and draft legal text be circulated to the Members of the WPDR, Council for Trade in Services (CTS) and Council for Trade in Services - Special Session (CTS-SS).

TRADE FACILITATION AGREEMENT FOR SERVICES

DRAFT TEXT FOR DISCUSSION

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PREAMBLE

Members,

Recognizing the significant and growing share of services in the global economy and international trade, the critical role of services in economy-wide and firm-level competitiveness, and the importance of timely and cost-effective delivery of services for Members;

Considering the need to facilitate the movement of information, data, technology and natural and juridical persons to enable services trade in an increasingly globalized and digitized world;

Recognizing the need to focus on regulatory cooperation and mechanisms to facilitate the meaningful implementation of trade in services;

Recognizing the importance of transparency, objectivity, clarity, predictability, impartiality, reasonableness, timeliness, and easing the regulatory burden in providing the basis for realization of the full benefits of trade in services;

Desiring to clarify and improve relevant aspects of GATS Article III (Transparency), Article IV (Increasing the Participation of Developing Countries), Article VI (Domestic Regulation), Article VII (Recognition), Article XIX (Negotiations on Specific Commitments) and the Annex on Movement of Natural Persons Supplying Services under the Agreement, with a view to addressing issues relevant for facilitating trade in services;

Reiterating the need to facilitate the increasing participation of developing and especially least developed country Members in trade in services, including inter alia, through assistance and support for capacity building with a view to strengthening their domestic services capacity, efficiency and competitiveness;

Taking particular account of the serious difficulty of the least-developed country Members in view of their special economic situation and their development, trade and financial needs;

Recognizing the need for effective cooperation on trade facilitation among Members;

Hereby agree as follows:

SECTION I: FACILITATING TRADE IN SERVICES

ARTICLE 1: SCOPE AND DEFINITIONS

1. The provisions of this Agreement, except for Article 2 and Article 8.2, shall apply to all measures by Members affecting trade in services in sectors where specific commitments are undertaken. The provisions of Article 2 and 8.2 of this Agreement shall apply to all measures affecting trade in services.
2. Members recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different Members, the particular need of developing countries to exercise this right. This Agreement should not be construed to prescribe or impose particular regulatory approaches or any particular regulatory provisions in relation to measures affecting the supply of services.
3. Members shall use the definitions and terms established under the General Agreement on Trade in Services, except where specific definitions have been provided under this Agreement.
4. The following terms shall have the meanings as set forth below:
 - (a) "**Authorisation**" refers to the granting of permission to a natural or juridical person to supply a service in or into the territory or a regional sub-division of a Member, and includes a license or a determination that such a person is qualified to supply a service. "Authorization" does not include measures:
 - i. governing the general conduct of business, including locations, times of operation and similar conditions;
 - ii. governing the safety or the impact on human, animal or plant life or health of the service or the physical structures associated with the service; or
 - iii. concerning government procurement.
 - (b) "**Competent authorities**" mean central, regional or local governments or authorities as well as non-governmental bodies in the exercise of the powers delegated by such central, regional or local governments or authorities that are directly or indirectly responsible for permitting or enabling the supply of a service, and includes authorities responsible for:
 - i. qualification and/or licensing requirements and procedures governing the supply of a service;
 - ii. data management, cross-border data transfers, data security and privacy;
 - iii. foreign investment screening and/or approvals;
 - iv. labour market, economic needs and other tests to determine eligibility of service suppliers;
 - v. social security; and
 - vi. immigration formalities.
 - (c) "**Fees and Charges**" refers to fees and charges payable to competent authorities in respect of the supply of a service, including but not limited to, fees and charges by whatever name referred to, in respect of licensing requirements and procedures,

qualification requirements and procedures, immigration formalities, or any authorization for the supply of a service.¹

- (d) "**Immigration formality**" means a visa, permit, pass or other document or electronic authority granting a natural person of a Member temporary entry into the territory of another Member for the supply of or consumption of services.
- (e) "**Licensing procedures**" are administrative or procedural rules that a natural or a juridical person, seeking authorization to supply a service, including the amendment or renewal of a licence, must adhere to in order to demonstrate compliance with licensing requirements.
- (f) "**Licensing requirements**" are substantive requirements, other than qualification requirements, with which a natural or a juridical person is required to comply in order to obtain, amend or renew authorization to supply a service.
- (g) "**Qualification procedures**" are administrative or procedural rules that a natural person must adhere to in order to demonstrate compliance with qualification requirements, for the purpose of obtaining authorization to supply a service.
- (h) "**Qualification requirements**" are substantive requirements relating to the competence of a natural person in relation to the supply a service, and which are required to be demonstrated for the purpose of obtaining authorization to supply a service.
- (i) "**Requirements and Procedures**" collectively refers to all laws, rules, regulations or other requirements and related procedures relevant for the supply of a service, including requirements and procedures pertaining to:
 - i. qualification and/or licensing requirements and procedures governing the supply of a service;
 - ii. data management, cross-border data transfers, data security and privacy;
 - iii. foreign investment screening and/or approvals;
 - iv. labour market, economic needs and other tests to determine eligibility of service suppliers;
 - v. social security; and
 - vi. immigration formalities.

ARTICLE 2: PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1. Each Member shall promptly publish, through printed or to the extent possible through electronic means, all measures of general application relating to the supply of a service, in a non-discriminatory and easily accessible manner so as to enable governments, service suppliers and other interested parties to become acquainted with them. In particular, each Member shall publish the following:

- (a) the official titles, addresses and contact information of relevant competent authorities;
- (b) requirements for authorisation, requirements for periodic renewal of such authorisation and general applicable terms and conditions of such authorisation;
- (c) requirements and procedures relevant for the supply of a service;

¹ Fees do not include fees for the use of natural resources, payments for auction, tendering or other non-discriminatory means of awarding concessions, or mandated contributions to universal service provision.

- (d) the normal timeframe for processing applications relating to authorisation, requirements and procedures;
- (e) fees, charges and penalties imposed by competent authorities on or in connection with the supply of services;
- (f) where applicable, details as regards public hearings or opportunity for comments in relation to any authorisation, requirements and procedures as well as applicable fees and charges;

1.2. Each Member shall publish such information in at least one of the official languages of the WTO.

2 Opportunity to Comment and Information before Entry into Force

2.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to service suppliers and other interested parties to comment on proposed introduction or amendment of any measures relating to the supply of a service.

2.2. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended measures relating to the supply of a service, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable service suppliers and other interested parties to become acquainted with them.

3 Enquiry/Contact Points

Each Member shall establish and maintain appropriate mechanisms for responding to enquiries regarding any measures affecting the supply of a service, including associated requirements and procedures, and standards. Such enquiries may be addressed through the enquiry and contact points established under Articles III and IV of the GATS. The enquiry and contact points, as relevant, shall answer enquiries within a reasonable time period set by each Member.

4 Notification

Each Member shall notify the Committee on Trade Facilitation in Services established under Article 13 of this Agreement (referred as the "Committee") of:

- (a) the official place(s) where the items in subparagraphs 1.1 of this Article have been published;
- (b) the Uniform Resource Locators of the internet website(s) referred to in paragraph 1.1 of this Article;
- (c) the information of the enquiry/contact points referred to in paragraph 3 of this Article.

ARTICLE 3: ADMINISTRATION OF MEASURES

1 Single Window

Each Member shall, to the extent practicable, avoid requiring an applicant to approach more than one competent authority for²:

- (a) each application pertaining to authorization; and
- (b) each application pertaining to requirements and procedures.

² For the avoidance of doubt, the Parties understand that separate competent authorities and application processes will be applicable for authorization and immigration formalities, respectively.

2 Application Timeframes

The competent authorities of a Member responsible for all requirements and procedures relating to authorization and immigration formalities, shall:

- (a) to the extent practicable, permit an applicant to submit an application at any time; and
- (b) allow a reasonable period for the submission of an application where specific time periods for applications exist.

3 Electronic Applications and Acceptance of Copies

The competent authorities of a Member shall:

- (a) as far as practicable, endeavour to accept applications in electronic format; and
- (b) accept copies of documents, which are authenticated in accordance with the Member's domestic law, in place of original documents, unless they require original documents to protect the integrity of the authorisation process.

4 Processing of Applications

4.1. The competent authorities of a Member shall:

- (a) expeditiously process all applications, including applications for extensions and renewals;
- (b) to the extent practicable, provide an indicative timeframe for processing of an application;
- (c) to the extent practicable, ascertain without undue delay the completeness of an application for processing under domestic laws and regulations;
- (d) in case an application is considered complete under the domestic laws and regulations, ensure that the processing of the application is completed within a reasonable period of time, and that the applicant is informed of the decision concerning the application, to the extent possible, in writing;
- (e) at the request of the applicant, provide without undue delay information concerning the status of the application;
- (f) in the case of an application considered incomplete for processing under domestic laws and regulations, within a reasonable period of time, to the extent practicable;
 - i. inform the applicant that the application is incomplete;
 - ii. at the request of the applicant provide guidance on why the application is considered incomplete;
 - iii. provide the applicant with the opportunity to provide the additional information that is required to complete the application; and
 - iv. where none of the above is practicable, and the application is rejected due to incompleteness, ensure that the applicant is informed within a reasonable period of time;
- (g) in the case of a rejected application, to the extent possible, either upon their own initiative or upon the request of the applicant, inform the applicant of the reasons for rejection and, where applicable, the procedures for resubmission of an application.

4.2. The competent authorities of a Member shall ensure that an authorisation, once granted, or an immigration formality, once fulfilled, enters into effect without undue delay subject to the applicable terms and conditions.

5 Appeals and Review

5.1. Each Member shall provide that any person to whom a competent authority issues a decision has the right, within its territory, to:

- (a) an administrative appeal to or review by an administrative authority higher than or independent of the competent authority that issued the decision; and/or
- (b) a judicial appeal or review of the decision.

5.2. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

5.3. Each Member shall endeavour to ensure that, in a case where the decision on appeal or review under subparagraph 5.1 (a) of this Article is not given either:

- (a) within set periods as specified in its laws or regulations; or
 - (b) without undue delay,
- the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.

5.4. Each Member shall ensure that the person referred to in paragraph 5.1 is provided with the reasons for the decision of the competent authority so as to enable such a person to have recourse to procedures for appeal or review where necessary.

6 Information and Verification Requests

Each Member shall ensure that all information and verification requests pertaining to requirements and procedures are:

- (a) simple and expeditious and are not applied in a manner that would constitute a restriction to trade in services; and
- (b) completed without undue delay.

7 Fast- Track Procedure

7.1. Each Member shall, as far as practicable, establish fast-track procedures for authorization and immigration formalities for service suppliers based on the criteria such as:

- (a) past track record and successful fulfilment of requirements and procedures by a service supplier in its previous applications; and
- (b) whether the application pertains to renewal or extension of an authorization and/or immigration formality of a service supplier who is present within the territory of the host Member.

7.2. Such fast-track procedures shall not prevent a Member from requiring any additional declarations and supporting documentation from a service supplier as required under their laws or regulations.

ARTICLE 4: FEES AND CHARGES

Members shall ensure that:

- (a) fees and charges applied are reasonable, transparent, commensurate with the costs incurred by the competent authorities, and do not in themselves restrict or impair the supply of the relevant service; and
- (b) adequate time period is available between the publication and the applicability of any increase in the fees and charges.

ARTICLE 5: ADMINISTRATION OF ECONOMIC NEEDS TESTS

1. Where a Member has scheduled economic needs tests in its schedule of specific commitments, it shall publish information with regard to the criteria on which such tests are based, and details of requirements, procedures and/or guidelines for administration of such tests.
2. Members shall ensure that economic needs tests, where applied, do not impose undue costs on the service supplier, and do not result in undue delays and uncertainty for service suppliers.

ARTICLE 6: PROVISIONS PERTAINING TO RECOGNITION

1 Qualification and Licensing Requirements

1.1. Where a Member imposes licensing or qualification requirements for the supply of a service, in or into the territory or a regional sub-division of a Member, it shall ensure that adequate procedures exist for assessing an applicant's fulfilment of such requirements, including procedures for assessment and verification of qualifications. Where the competent authority considers it relevant, it shall give due consideration to relevant professional experience of the applicant and membership in a relevant professional association in the territory of another Member.

1.2. Where an applicant has presented necessary supporting evidence relating to qualifications and licensing, the competent authority, in verifying and assessing such evidence shall identify any deficiency and inform the applicant of the relevant requirements to meet such deficiency. Such requirements may include, inter alia, course work, examinations, training, and work experience. Where appropriate, each Member shall allow applicants to fulfil such requirements in the home country, host country or any third country jurisdiction.

1.3. Where examinations are required for fulfilment of qualification and licensing requirements, each Member shall ensure that they are scheduled at reasonably frequent intervals. Applicants for examinations shall be allowed a reasonable period to submit applications. Each Member shall, to the extent practicable, having regard to the cost and administrative burden involved, encourage the competent authorities to use electronic means for conducting such examinations and to provide opportunities for conducting such examinations from the home country of the applicant.

2 Recognition Agreements

2.1. Each Member shall afford adequate opportunities and mechanisms to other Members, especially developing country Members, to negotiate their accession to agreements or arrangements pertaining to recognition as referred to in Article VII.1 of the GATS.

2.2. The Committee on Trade Facilitation in Services shall regularly monitor implementation of these agreements or arrangements.

ARTICLE 7: FACILITATING CROSS-BORDER FLOW OF INFORMATION

1. Each Member shall allow cross-border transfer of information by electronic means, including personal information, where such activity is for the purpose of supplying services from the territory of a Member into the territory of any other Member.

2. Each Member may adopt or maintain measures, in accordance with its respective laws and regulations, to protect the personal information, including through laws for the protection of personal information or personal data, sector-specific laws addressing protection of personal data, or laws that provide for the enforcement of contractual obligations assumed by suppliers and recipients with regard to protection of personal information. No Member shall impose any barriers to flow of personal information from its territory to persons in the territory of another Member, merely because the measures that such other Member adopts for the protection of personal information are different from its own.
3. Each Member shall afford adequate opportunities and mechanisms to other Members, especially developing country Members, to negotiate their accession to recognition arrangements pertaining to data privacy and security. The Committee on Trade Facilitation in Services shall regularly monitor implementation of the requirements set out in this paragraph.

ARTICLE 8: FACILITATING CONSUMPTION ABROAD

1 Cross Border Insurance Coverage

In order to enable meaningful access to services consumed in another Member, each Member shall encourage the insurance service providers in its territory to enable insurance coverage in respect of health related services availed of in another Member.

2 Emergency Authorization

Members shall endeavour to expedite the processing of immigration formalities in respect of service consumers who are seeking medical services or such other services that are urgent and/or essential.

ARTICLE 9: PROVISIONS FACILITATING MOVEMENT OF NATURAL PERSONS

1 Grant of temporary entry

1.1. Each Member shall publish or otherwise make publicly available explanatory material on all relevant immigration formalities which pertain to or affect the operation of its commitments relating to the movement of natural persons, including information on the types of business and work related visas or permits issued in respect of the categories of natural persons specified in its schedule of specific commitments.

1.2. Each Member shall put in place adequate mechanisms for separate categories of visas that correspond to each category of natural person in respect of which commitments are taken. Members shall also develop a scheme for a GATS visa applicable for categories of natural persons committed in their schedule of specific commitments.

1.3. The competent authority of each Member responsible for immigration formalities shall, under normal circumstances, rely on the representation of the employer, service supplier, and/or service consumer, regarding the designation and/or competence of the natural person to provide the relevant services.

2 Multiple entry

Each Member shall make best endeavours to grant multiple entry visas to natural persons who are service suppliers of another Member, subject to such natural persons meeting such Member's prescribed immigration formalities.

3 Social Security Contributions

3.1. Each Member shall endeavour to exempt natural persons of another Member engaged in the supply of services from social security contributions in its territory. Such exemption of social security contributions may be based upon an agreement or arrangement with the Member concerned, or may be accorded autonomously.

3.2. In the event such exemption is not possible, and the natural person is unable to avail of the benefits, or can only partially avail of benefits from the social security contribution, then the Member which has collected the contribution, shall refund such contribution, or the unused portion thereof, to the natural person at the time of such natural person's return to his/her home country.

ARTICLE 10: COOPERATION AMONG COMPETENT AUTHORITIES

Members shall endeavour to ensure that their competent authorities cooperate on mutually agreed terms with other Members' competent authorities to facilitate trade in services. The areas for cooperation among competent authorities include:

- (a) exchange of information on requirements and procedures and associated formalities and documentation on a regular basis and sharing experiences regarding implementation;
- (b) work with relevant intergovernmental and non-governmental professional bodies to learn about best practices relating to service related measures;
- (c) exchange of information and sharing best practices on methodologies for collection and compilation of data relating to trade in services and collaboration among statistical organizations with expertise in capturing such data across Members, with a view towards improving information on trade in services and capacity building;
- (d) exchange statistics on trade in services for all four modes of supply to reduce the burden of data collection; and
- (e) provide technical guidance or assistance and support for capacity building to small and medium enterprises with a view to enhancing their role in trade in services.

SECTION II: DEVELOPMENT PROVISIONS

ARTICLE 11: SPECIAL AND DIFFERENTIAL TREATMENT

1. A developing country Member shall not be required to apply the provisions of this Agreement for a period of [X] years from their date of entry into force. Before the end of this transitional time period, upon request by a developing country Member, the Committee may extend the time period to implement these disciplines.
2. Least-developed country Members (LDCs) shall not be required to implement the provisions of this Agreement. LDCs are nonetheless encouraged to implement the provisions of this Agreement to the extent compatible with their special economic situation and their development, trade and financial needs.
3. A Member shall endeavour to accord reduced fees and charges to service suppliers from developing country Members, and in particular from LDCs.
4. Where circumstances allow for the phased introduction of new requirements, procedures, standards and measures relevant to trade in services, Members shall consider longer phase-in period for the applicability of such measures in service sectors and modes of supply of export interest to developing country Members.

ARTICLE 12: TECHNICAL ASSISTANCE

Developed country Members, and to the extent possible other Members, shall provide technical assistance to developing country Members and in particular LDCs, upon their request and on mutually agreed terms and conditions. Technical assistance shall be aimed, inter alia, at:

- (a) developing and strengthening institutional and regulatory capacities to implement the obligations arising under this Agreement;

- (b) assisting service suppliers from developing country Members and LDCs to meet the relevant requirements and procedures in export markets;
- (c) assisting, through public or private bodies and relevant international organizations, service suppliers of developing country Members in building their supply capacity. Such assistance may also be provided directly to the respective service suppliers.

SECTION III: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1 Committee on Trade Facilitation in Services

1.1. A Committee on Trade Facilitation in Services (referred to as the "Committee") shall be established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for the sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in services as well as important regional and domestic organizations in services, including competent authorities in each Member, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- (a) attend meetings of the Committee; and
- (b) discuss specific matters related to the implementation of this Agreement.

1.6. The Committee shall review the operation and implementation of this Agreement two years from its entry into force, and periodically thereafter.

1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement with a view to reaching a mutually satisfactory solution promptly.

1.9. The Committee shall encourage and facilitate consultations among Members and the National Committees on Trade Facilitation in Services to address sectors and modes of supply of export interest to developing countries and LDCs.

2 National Committee on Trade Facilitation in Services

Each Member shall establish and maintain a National Committee on Trade Facilitation in Services or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

ARTICLE 14: FINAL PROVISIONS

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.
 2. Developed country Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members shall implement this Agreement in accordance with Article 11.1 and Article 11.2 respectively.
 3. Nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATS.
 4. All exceptions and exemptions under the GATS shall apply to the provisions of this Agreement.
 5. The provisions of Article XXII and Article XXIII of GATS, as elaborated and applied by the Decision on Certain Dispute Settlement Procedures for the GATS, shall apply to the consultations and settlement of disputes under this Agreement.
 6. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
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