

China-Pakistan Free Trade Agreement Agreement on Trade in Services

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AGREEMENT ON TRADE IN SERVICES

BETWEEN

**THE GOVERNMENT OF THE PEOPLE'S REPUBLIC
OF CHINA**

AND

**THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF
PAKISTAN**

Preamble

The Government of the People's Republic of China ("China") and the Government of the Islamic Republic of Pakistan ("Pakistan") hereinafter referred to collectively as "the Parties" and individually as "a Party".

Committed to strengthening the all-weather friendship between the Parties;

Recalling the Free Trade Agreement between the Government of the People's Republic of China and the Government of the Islamic Republic of Pakistan ("the Free Trade Agreement") signed between the Parties in the witness of the Presidents of China and Pakistan in Islamabad on the twenty- fourth day of November two thousand and six;

Recalling Article 83 of the Free Trade Agreement which writes " Unless otherwise agreed by the Parties, they shall negotiate trade in services after the conclusion of the negotiations of this Agreement" so as to progressively liberalize and eliminate substantially all discrimination and /or prohibition of new or more discriminatory measures with respect to trade in services between the Parties;

Resolved to enhance co-operation in trade in services between the Parties to improve efficiency and competitiveness, as well as to diversify the supply and distribution of services of the respective service suppliers of the Parties;

Recognizing the right of the Parties to regulate, and to introduce new regulations, on the supply of services in the territories of the Parties in order to meet national policy objectives;

Have agreed as follows:

Part I DEFINITIONS AND SCOPE

Article 1 Definitions

“GATS” means the General Agreement on Trade in Services;

"measure" means any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form;

“person” means a natural or a juridical person;

“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;¹

“juridical person of another Party” means a juridical person which is either:

- (i) constituted or otherwise organised under the law of the country of that other Party, and is engaged in substantive business operations in the territory of the country of that Party; or

¹ In order to prevent the possibility of companies of a third party unduly benefiting from this Agreement, companies of a third party registered in the territory of the country of the other Party, their offices, liaison offices, “shell companies” and “mail box companies” are not service suppliers of the other Party under this Agreement.

- (ii) in the case of the supply of a service through commercial presence, owned or controlled by:
 - (a) natural persons of the country of that Party; or
 - (b) juridical persons of the country of that other Party identified under subparagraph (i) of this paragraph;

a juridical person is;

- (i) “owned” by persons of the country of a Party if more than 50 per cent of the equity interest in it is beneficially owned by persons of that country;
- (ii) “controlled” by persons of the country of a Party if such persons have the power to name a majority of its directors or otherwise to legally direct its actions; and
- (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;

"supply of a service" includes the production, distribution, marketing, sale and delivery of a service;

"commercial presence" means any type of business or professional establishment, including, *inter alia*, through the constitution, acquisition or maintenance of a juridical person, as well as branches or representative offices within the territory of a Party for the purpose of supplying a service;

"natural person of a Party" means a natural person who resides in the territory of a Party, and who under the law of that Party is a national of that Party;

"services" means any service in any sector except services supplied in the exercise of governmental authority;

"service supplier" means any person that supplies a service;

"trade in services" is defined as the supply of a service

- (i) from the territory of a Party into the territory of the other Party ("cross-border");
- (ii) in the territory of a Party to the service consumer of the other Party ("consumption abroad");
- (iii) by a service supplier of a Party, through commercial presence in the territory of the other Party ("commercial presence");
- (iv) by a service supplier of a Party, through presence of natural persons of a Party in the territory of the other Party ("presence of natural persons");

Article 2 Scope and Coverage

1. This Agreement applies to measures by the Parties affecting trade in services.

2. This Agreement shall not apply to:

- (a) services supplied in the exercise of governmental authority within the territory of each Party;
- (b) regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial sale.
- (c) subsidies or grants provided by a Party;
- (d) in respect of air transport services, traffic rights, however granted, or services directly related to the exercise of traffic rights, except measures affecting:
 - i) aircraft repair and maintenance services
 - ii) the selling and marketing of air transport services; and
 - iii) computer reservation system services
- (e) cabotage in maritime transport services; and
- (f) measures affecting natural persons seeking access to the employment market of a Party, or measures regarding citizenship, residence or employment on a permanent basis.

3. Nothing in this Agreement shall prevent a Party from applying measures to regulate the entry of natural persons of the country of the other Party into, or their temporary stay in, its country's 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 Party under the terms of this Agreement.

4. Article 53 (Settlement of Disputes between the Parties) of the Free Trade Agreement shall apply, *mutatis mutandis*, to measures affecting the supply of service by a service supplier of the country of a Party through commercial presence in the territory of the other Party, in sectors which are scheduled in a Party's Schedule of Specific Commitments in Annex I to this Agreement.

Part II OBLIGATIONS AND DISCIPLINES

Article 3 Transparency

Article III of the GATS is, *mutatis mutandis*, incorporated into and shall form an integral part of this Agreement.

Article 4 Disclosure of Confidential Information

Article III *bis* of the GATS is, *mutatis mutandis*, incorporated into and shall form an integral part of this Agreement.

Article 5 Domestic Regulation

1. In sectors where specific commitments are undertaken, each Party shall ensure that all measures of general application affecting trade in services:

- (a) are administered in a reasonable, objective and impartial manner;
- (b) based on objective and transparent criteria, such as competence and the ability to supply the service;

- (c) not more burdensome than necessary to ensure the quality of the service;
 - (d) in the case of licensing procedures, not in themselves a restriction on the supply of the service.
2. The disciplines of paragraph 1 may be reviewed, in order to take into account the disciplines agreed under Article VI of the GATS, with a view to their incorporation into this Agreement.
3. Where authorization is required for the supply of a service on which a specific commitment has been made, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under its domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of the Party shall provide, without undue delay, information concerning the status of the application.
4. The Parties shall consult periodically with a view to determining the feasibility of removing any remaining citizenship requirement for the licensing or certification of each other's service suppliers.

Article 6 Mutual Recognition

1. A Party may recognise the education or experience obtained, requirements met, or licences or certification granted in the country of the other Party for purposes of the fulfilment, in whole or in part, of its standards or criteria for the authorisation, licensing, or certification of service suppliers of the other Party.

2. Recognition referred to in paragraph 1 of this Article, which may be achieved through harmonisation or otherwise, may be based upon an agreement or arrangement between the Parties or may be accorded unilaterally.

3. Both Parties shall facilitate development of mutual recognition arrangements among professional or regulatory bodies through facilitating discussion among these bodies and exchange of information on focal points to be appointed by both Parties.

Article 7 Monopolies and Exclusive Service Suppliers

1. Each Party shall ensure that any monopoly supplier of a service in its country's territory does not, in the supply of the monopoly service in the relevant market, act in a manner inconsistent with the Party's commitments under this Agreement.

2. Where a Party's monopoly supplier competes, either directly or through an affiliated company, in the supply of a service outside the scope of its monopoly rights and which is subject to that Party's specific commitments, the Party shall ensure that such a supplier does not abuse its monopoly position to act in its country's territory in a manner inconsistent with such commitments.

3. The provisions of this Article shall also apply to cases of exclusive service suppliers, where a Party, formally or in effect:

- (a) authorises or establishes a small number of service suppliers; and
- (b) substantially prevents competition among those suppliers in its country's territory.

Article 8 Business Practices

1. The Parties recognise that certain business practices of services suppliers, other than those falling under Article 7 (Monopolies and Exclusive Service Suppliers), may restrain competition and thereby restrict trade in services.

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

Article 9 Emergency Safeguards Measures

1. The Parties note that the multilateral negotiations pursuant to Article X of the GATS on the question of emergency safeguard measures are based on the principle of non-discrimination. Upon the conclusion of such multilateral negotiations, the Parties shall conduct a review for the purpose of discussing appropriate amendments to this Agreement so as to incorporate the results of such multilateral negotiations.

2. In the event that the implementation of this Agreement causes substantial adverse impact to a service sector of a Party before the conclusion of the multilateral negotiations referred to in paragraph 1 of this Article, the affected Party may request for consultations with the other Party for the purposes of discussing any measure with respect to the affected service sector. Any measure taken pursuant to this paragraph

shall be mutually agreed by the Parties concerned. The Parties concerned shall take into account the circumstances of the particular case and give sympathetic consideration to the Party seeking to take a measure.

Article 10 Payments and Transfers

1. Except under the circumstances envisaged in Article 11 (Restrictions to Safeguard the Balance-of-Payments), a Party shall not apply restrictions on international transfers and payments for current transactions relating to trade in services.

2. Nothing in this Agreement shall affect the rights and obligations of the Parties as members of the International Monetary Fund (hereinafter referred to in this Article as “the Fund”) under the Articles of Agreement of the International Monetary Fund, as may be amended, including the use of exchange actions which are in conformity with the Articles of Agreement of the International Monetary Fund, provided that a Party shall not impose restrictions on any capital transactions inconsistently with its commitments under this Agreement regarding such transactions, except under Article 11, or at the request of the Fund.

Article 11 Restrictions to Safeguard the Balance of Payments

Where a Party is in serious balance of payments and external financial difficulties or threat thereof, it may adopt or maintain restrictions on trade in services in accordance with Article XII of the GATS.

Article 12 General Exceptions and Security Related

Article XIV and XIV *bis* of the GATS, including any footnotes, are incorporated into and shall form part of this Agreement, *mutatis mutandis*.

Article 13 Cooperation

The Parties shall strengthen cooperation efforts in services sectors, including sectors which are not covered by existing cooperation arrangements. The Parties shall discuss and mutually agree on the sectors for cooperation and develop cooperation programmes in these sectors in order to improve their domestic capacities, efficiencies and competitiveness.

Part III Specific Commitments

Article 14 Market Access

1. With respect to market access through the modes of supply identified in Article 1, a Party shall accord services and service suppliers of the other Party treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.

2. In sectors where market-access commitments are undertaken, the measures which a Party shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory^{2 3}, unless otherwise specified in its Schedule, 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;

² The "territory" shall have the same meaning as Article 4 and Article 5 of the Free Trade Agreement

- (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;
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.

Article 15 National Treatment

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

2. A Party may meet the requirement of paragraph 1 of this Article by according to services and service suppliers of the other Party, 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 the Party compared to like services or service suppliers of any other Party.

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

Article 16 Additional Commitments

The Parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles 14 (Market Access) and 15 (National Treatment) including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Party's Schedule.

Article 17 Schedule of Specific Commitments

1. The specific commitments undertaken by each Party under Article 14 (Market Access), Articles 15 (National Treatment), and Article 16 (Additional Commitments) are set out in the schedule included in Annex I. With respect to sectors where such commitments are undertaken, each Schedule specifies:

- (a) terms, limitations and conditions on market access;
- (b) conditions and qualifications on national treatment;
- (c) undertakings relating to additional commitments; and

- (d) where appropriate, the time-frame for implementation of such commitments and the date of entry into force of such commitments.
2. Measures inconsistent with both Article 14(Market Access) and Article 15 (National Treatment) shall be inscribed in both the columns relating to Articles 14 and 15.
3. The Parties' schedules of specific commitments shall be annexed to this Agreement upon completion of the negotiations and shall form an integral part thereof.

Part IV OTHER PROVISIONS

Article 18 Contact Point

1. Each Party shall designate a contact point to facilitate communications between the Parties 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 Party, the contact point of the requested Party shall identify the office or official responsible for the matter and assist in facilitating communication with the requesting Party.

Article 19 Review

1. Three years after the entry into force of this Agreement and in pursuit of the objectives and purposes of this Agreement, the Free Trade Commission may review this Agreement, taking into account the developments and regulations on trade in services of the Parties as well

as the progress made at the World Trade Organization and other Specialized Forums.

2. At the request of the other Party, both Parties may review and modify the Agreement when necessary.

Article 20 Committee on Trade in Services

1. For the purposes of the effective implementation and operation of this Agreement, the Committee on Trade in Services (hereinafter referred to in this Article as “the Committee”) shall be established.

2. The Committee shall perform the following functions:

- (a) reviewing commitments, with respect to measures affecting trade in services in this Agreement, with a view to achieving further liberalisation on a mutually advantageous basis and securing an overall balance of rights and obligations;
- (b) reviewing the implementation and operation of this Agreement;
- (c) reviewing and discussing issues concerning the effective implementation of Articles 6 (Mutual Recognition) and 9 (Emergency Safeguard Measures);
- (d) reporting the outcome of discussions of the Committee to the Free Trade Commission; and
- (e) carrying out any other functions as may be delegated by the Free Trade Commission in accordance with Article 75 (Free Trade Commission) of the Free Trade Agreement.

3. The Committee shall be:
 - (a) composed of representatives of the Parties;
 - (b) co-chaired by officials of the Parties.

4. The Committee shall hold its inaugural meeting within one year of the entry into force of this Agreement. Subsequent meetings shall be held at such venues and times as the Parties may mutually agree.

5. The Committee may establish working groups to address specific issues.

Article 21 Amendments

This Agreement may be amended by agreement in writing by the Parties and such amendments shall enter into force in accordance with the provisions of Article 25.

Article 22 Miscellaneous Provisions

1. The GATS Annexes, namely: Annex on Movement of Natural Persons Supplying Services, Annex on Air Transport Services, Annex on Financial Services, and Annex on Telecommunications, unless otherwise agreed by the Parties, shall apply to this Agreement, *mutatis mutandis*.

2. This Agreement shall include (a) the Annexes and the contents therein which shall form an integral part of this Agreement, and (b) all future legal instruments agreed pursuant to this Agreement.

3. Except as otherwise provided in this Agreement, this Agreement or any action taken under it shall not affect or nullify the rights and obligations of a Party under existing agreements to which it is a party.

Article 23 Dispute Settlement

For settlement of disputes, the provisions of Chapter X (Dispute Settlement) of the Free Trade Agreement shall apply to this Agreement.

Article 24 Denial of benefits

1. Subject to prior notification and consultation, a Party may deny the benefits of this Agreement to:

- (a) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party and the juridical person has no substantial business activities in the territory of the other Party, or
- (b) service suppliers of the other Party where the service is being supplied by a juridical person that is owned or controlled by persons of the denying Party and the juridical person has no substantial business activities in the territory of the other Party.

2. A Party may deny the benefits of this Agreement to a service supplier of the other Party where the Party establishes that the service is being supplied by a juridical person that is owned or controlled by persons of a non-Party, and that denying Party does not maintain diplomatic relations with the non-Party.

Article 25 Entry into Force

The Parties shall notify each other the completion of the domestic legal procedures necessary for the entry into force of this Agreement through diplomatic channels in writing. This Agreement shall enter into force 30 days after the date of sending the latter notification.

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

DONE at Wu Han, the twenty-first day of two thousand and nine, in duplicate in Chinese and English languages, both texts being equally authentic.

For and on behalf
of the Government of
the People's Republic of China

For and on behalf
of the Government of
the Islamic Republic of Pakistan
