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COMMUNICATION FROM BOLIVIA, BRAZIL, CHILE, CHINA, COLOMBIA, CUBA, DOMINICAN REPUBLIC, ECUADOR, EGYPT, GUATEMALA, INDIA, INDONESIA, MEXICO, NICARAGUA, PAKISTAN, PERU, PHILIPPINES AND THAILAND

Review of Progress as established in Paragraph 15 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93)

The following communication, dated 29 March 2004, from the delegations of Bolivia, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nicaragua, Pakistan, Peru, Philippines and Thailand is being circulated to the Members of the Council for Trade in Services.

I. INTRODUCTION

1. The delegations of Bolivia, Brazil, Chile, China, Colombia, Cuba, Dominican Republic, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nicaragua, Pakistan, Peru, Philippines and Thailand present this contribution¹ for the consideration of all Members. Pursuant to paragraph 15 of the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), this contribution is intended to initiate a discussion in the Council for Trade in Services in its Special Session about the extent to which Article IV of the GATS is being implemented in the on-going negotiations.

2. The Doha Work Programme seeks to place the needs and interests of developing and least-developed Members at the centre of the negotiations. Paragraph 2 of the Doha Ministerial Declaration states, "...*The majority of WTO Members are developing countries. We seek to place their needs and interests at the heart of the Work Programme adopted in this Declaration...*". In this regard, the effective implementation of the objectives established in the Preamble, and Articles IV and XIX of the GATS namely to increase the participation of developing Members in world trade - through the negotiation of specific commitments - with a view towards promoting their economic growth and development, is necessary.

3. We believe that a systematic and careful review is required within the framework of the current negotiations to determine the extent to which commercially meaningful market access and national treatment commitments have been offered to developing Members. The initial offers that have been presented by developed Members thus far, in our assessment, have not responded to the requests made and interests expressed by developing Members.

4. In light of the above, this contribution attempts to address the extent to which initial offers tabled by developed Members have contributed to the operationalization of the obligations established in Article IV of the GATS. Consequently, it focuses on the question of whether initial offers

¹ This proposal is not a legal text. It is submitted solely for the purpose of negotiation and does not prejudice the position of any Member regarding the issues raised in it. The proponents reserve their right to modify or complement the contents of this proposal at a later stage.

presented by developed countries provide meaningful market access in sectors and modes of supply in which a number of developing Members have expressed specific interest in obtaining meaningful market access commitments through their requests and proposals. Although there are other sectors and modes of supply of present and potential interest for developing Members, the co-sponsors of this contribution, in the first phase of this collective review exercise, have focused on an issue of significant relevance to many developing Members: the movement of natural persons - Mode 4.

5. The need to achieve effective liberalisation in this mode of service supply during the current services negotiation has been identified as a common interest by many developing Members. To date, several negotiating proposals have been presented by Members, either individually or together with other Members, as well as individual requests presented to their trading partners seeking effective liberalisation in Mode 4. However, initial offers have not met the needs identified and emphasized by developing Members throughout this process.

II. ASSESSMENT OF PROGRESS ON COMMON ELEMENTS IDENTIFIED IN NEGOTIATING PROPOSALS AND REQUESTS MADE BY DEVELOPING MEMBERS

6. To date, the interest expressed by developing Members through negotiating proposals and requests allow them to identify common elements to address the main issues of concern. These common elements *inter alia* relate to ideas for improving mode 4 commitments, either by undertaking new market access commitments or by increasing the effectiveness of existing ones by eliminating the restrictions. The elements included in various communications presented by developing Members could be used as criteria to assess the extent of commercially meaningful market access and national treatment commitments being offered, and thus ensure the effective implementation of paragraph 15 of the guidelines. The elements are:

- (a) *Expansion of Commitments in categories de-linked to Mode 3:* Developing Members have requested to expand the scope of commitments by covering a wider range of service provider categories and occupations in order to balance the asymmetrical absence of commitments for categories of personnel de-linked from the commercial presence. In addition, the requests seek to expand market access beyond categories such as Intra Corporate Transferees (ICTs) and Business Visitors to include other categories such as Contractual Service Suppliers (CSS) and Independent Service Providers (ISP)². Only a few initial offers introduce additional categories into their horizontal commitments³. However, these new categories offered are related to personnel linked to commercial presence and do not cover different levels of skills.
- (b) *Attached Restrictions:* Developing Members have requested the elimination of a variety of restrictive conditions that are attached to the mode 4 commitments, which further erode the value of existing commitments. In addition, requests seek to establish clear and objective criteria for some of the conditions attached to the mode 4 commitments. The existing attached conditions include *inter alia* restrictions on the duration of stay, pre-employment conditions and other requirements, economic needs, labour market and management needs tests, quantitative restrictions through numerical quotas, discriminatory tax treatment, requirements for work permits, residency and citizenship requirements, recognition of professional qualifications, wage parity, and others. Only a few of the initial offers have removed some of the

² Communication from India S/CSS/W/12, Negotiating Proposal from a Group of Developing Members, TN/S/W/14.

³ Informal Note by the Secretariat "Categories of Natural Persons Subject to Commitments under Mode 4" Job(03)/195.

restrictions and requirements attached to previous commitments, while the majority of initial offers remain silent on this aspect.

- (c) *Work Permits and Visas Procedures:* One of the main restrictions that exist in Mode 4 commitments is that they remain subject to cumbersome and non-transparent administrative procedures and regulations. Consequently, developing Members have requested the need to address this concern by means of establishing transparent and objective criteria either as an additional commitment under Article XVIII or by introducing a Service Provider Visa. In addition, developing Members have expressed interest in further discussing the application and processing for visas and work permits procedures under the Working Party on Domestic Regulation. Initial offers made thus far remain silent on this issue as well.
- (d) *Predictability of Commitments:* Developing Members have asked for clarifications regarding existing categories and for the introduction of common understanding on different service provider categories. Having common understanding would contribute to increase the predictability and transparency of commitments in Mode 4. The objective is not to achieve perfect harmonization of categories in the domestic regimes of all Members, but use of certain common categories of interest to all Members. The informal note presented by the WTO Secretariat titled "Categories of natural persons subject to Commitments under Mode 4"⁴ presents an interesting review of the categories of natural persons applied in the horizontal section of existing schedules and initial offers. It may be noted in this regard that few Members have offered to add definitions to a category in their schedule of commitments.

III. CONCLUSIONS

6. After analysing the initial offers presented by developed Members, in our assessment, most of these offers do not show any real improvement to the existing commitments in Mode 4. Some Members have not introduced any improvement to the existing commitments; others have only introduced some minor changes aimed at clarifying and only in a few cases expanding the scope of commitments. Basically commitments continue to be limited to categories of personnel related to commercial presence despite the expressed interest of developing Members for commitments in categories de-linked from commercial presence as well.

7. While it is recognised that this is the first set of offers presented, many developing Members have expressed disappointment at the level of ambition shown in this particular area, which is crucial to effectively implement the objectives of Article IV of the GATS. Developing Members in general have comparative advantages only in a narrow range of services activities. The primary mode for most of these relates to Mode 4. The liberalisation of this mode of supply would, therefore, provide effective market access to service providers from developing Members and contribute significantly to the implementation of Article IV of the GATS.

⁴ Ibid.