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COMMUNICATION FROM AUSTRALIA, CANADA, EUROPEAN COMMUNITIES, HONG KONG CHINA, JAPAN, NEW ZEALAND, NORWAY, REPUBLIC OF KOREA, SWITZERLAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU AND THE UNITED STATES

The importance of Mode 3 commitments

The following communication, dated 29 September 2005, from the delegations of Australia, Canada, European Communities, Hong Kong China, Japan, New Zealand, Norway, Republic of Korea, Switzerland, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the United States, is being circulated to the Members of the Council for Trade in Services.

1. It is estimated that between one half and two thirds of world trade in services takes place through commercial presence (Mode 3). Whereas all modes of supply are important, the particular significance of Mode 3 should therefore be recognised.

2. As highlighted by many delegations in recent meetings, UNCTAD, in its 2004 World Investment Report, observes the remarkable and continuing shift in the composition of foreign direct investment (FDI) from goods to services. Specifically, the following findings from UNCTAD's World Investment Report, all of which are particularly relevant for developing countries, merit being highlighted:

- FDI in services can bring capital, skills and technology into a country.
- FDI can help link countries to global value chains in services.
- Developing countries have an offensive interest in FDI. Their outward FDI in services began to grow visibly from the 1990s and their share in the global outward FDI services stock climbed from 1% in 1990 to 10% in 2002, faster than in other sectors.
- FDI in services can improve export competitiveness, as many services serve as inputs into other sectors, including export sectors (both goods and services).
- The benefits are more likely to be realised if the conditions are right, including in terms of appropriate regulatory structures and contribution to competition.

3. In spite of the benefits of opening up the services sector to commercial presence of foreign service suppliers, the supply of services often tends to be subject to significantly more restrictions

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than other sectors of the economy. While recognising WTO members' right to regulate, overly burdensome regulations can stifle business activity and prevent countries from taking full advantage of the benefits of opening up their economy.

4. Most WTO members have long realised that the commercial presence of foreign service providers, and the foreign direct investment such commercial presence generates, can create a stable source of external financing, drive economic growth and generate employment. This is reflected in many members' efforts in improving the investment climate and promoting commercial presence of foreign service suppliers. In addition, research has shown that there is a positive relationship between mode 3 liberalization and the growth of services delivered through mode 4 and mode 1, business process outsourcing for instance.

5. An important component in improving the investment climate is the establishment of a reliable and transparent framework of rules governing the establishment of foreign service providers. The GATS provides the ideal vehicle for signalling to foreign investors that a WTO member is serious in its efforts at establishing and maintaining a favourable climate for the commercial presence of foreign service providers.

6. The co-sponsors urge WTO members to review their existing Mode 3 commitments, and consider how these commitments could be improved with a view toward enhancing the investment climate and attracting higher levels of commercial presence of foreign service providers.

7. Specifically, it would be desirable that commitments in Mode 3 include, in principle, the right to establish new and acquire existing companies, and the right to choose the form of establishment, whether in the form of wholly-owned subsidiaries, joint ventures or branches, as well as the right to acquire real estate connected with the establishment of a commercial presence.

8. Finally, it is also important to ensure that commitments undertaken provide an appropriate level of legal certainty. That can be achieved for instance by removing or at least narrowing wide ranging and unspecified economic needs tests and horizontal limitations. More generally, the co-sponsors urge WTO Members to improve the clarity of their commitments notably by using the scheduling guidelines as a basis.
