

**INTERNATIONAL COLLOQUIUM ON PPP'S
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(UNCITRAL)**

SECTION III: DISPUTE RESOLUTION.

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PURPOSE

“A bamboo that bends is stronger than the oak that resists.”, Japanese Proverb.

PURPOSE: How consolidating the rich and the poor into a PPP. We should not condemn, but seek workable reforms and strengthen them to do better than before.

The benefit of having face to face meetings can never be substituted by video conferencing or blogs, or other multimedia means.

Today PPPs rules and agreement are likely in limbo. In one hand the developing world seek exemptions from international rules on trade. In the other hand the rich countries are exercising their policy space rights in the area of information and communication technology, agriculture, and infrastructure.

BACKGROUND

What is “globalization”? The traditional business school definition has been that globalization enables corporations to seek capital where it is cheapest, produce or outsource where it is most cost-effective and sell where it is most profitable. This has been perceived as an essential component in improving corporation profitability... It is difficult to see how there is even a necessary trade-off between democracy and globalization.

2. ABOUT INTERNATIONAL CONFERENCES.

Let wonder as to whether the outcomes from international conferences and forums will bind all member states do what they feel is their best interest, which may be entirely different than what they have agreed together in the final declarations. Even under WTO agreements, member states often do not do what is required of them to do in spite of its binding nature.

Background (cont'd.)

3. ABOUT THE CURRENT TRADE FRAMEWORK.

The current Trade System has demonstrated conclusively, that it thrives through the degradation of tens of millions of workers and rejects the endless pleas for reform and regulation. Consequences are non-quantifiable in Africa and in other poor countries.

Since the “System” generates predators, and since ‘reforms’ and regulations have dismally failed, it is time to consider a fundamental systemic transformation that begins via the international community, through reinforcement of PPPs by creating a specific institutions. Again, poverty of the poor is a permanent danger to the rich.

Background (Cont'd)

4. ABOUT POLICY FORMULATION

How can a country jump into policy formulation if there is no or poor sustainable local trading network inside the country?

- This is a new era of proactive dialogue, for redefining the role of the governments in today international trade....
- The Diaspora should be included in poor economies, in order to play an active role as “Job Creators, and Investment Advisers”.
- In order to do it PPPs governing rules and laws is the trigger.

5. ABOUT RICH COUNTRIES MAKING THE FUNDING.

On the point about the fact that rich countries are funding... Even if the contributions are not in cash, **LDCs do contribute hugely in kind and through cerebral resources.**

UNCITRAL can become a lean and mean organization in such matters.

Background (Cont'd)

6. ABOUT RISKS:

There are 3 major risks with the new platform for ICJPPP:

1. Pronouncement: What happens after the ICJ releases a pronouncement? Both judgments and advisory opinions should be covered.
2. Mutual Understanding: An examination of the issues on which competent authorities have had difficulties reaching an agreement shows that these are typically matters of treaty interpretation or of applying the arm's length principle underlying Article 9 and paragraph 2 of Article 7 of the OECD Tax Model.
3. Procedural and evidentiary rules for reinforcement: We need to establish rules that will govern the arbitration process and that have not already been provided in the agreement or the Terms of Reference.

RESOLUTIONS

Only in special situations would the panel be allowed to investigate factual issues not been developed in the PPP agreement.

WHAT THE PPPs CAN DO...

There is a common understanding that “the crises” threatens to reinforce poverty as we know it. I reecho some inputs of Pradeep S. Mehta, Secretary General, CUTS International:

For trade to serve as an engine of inclusive growth and development, the PPPs negotiation must remain open, transparent, inclusive, non-discriminatory and rules-based.

Efforts to fight all forms of protectionism should continue. A new diligence on PPPs is one of the core solutions.

The winds of change blowing in many parts of the world today attest to the desire of populations for responsive policies towards achieving prosperity for all.

Let's work together to maximize the opportunities arising from globalization in international trade and investment.

CONCLUSION

This is a momentum... The transition should start now. Our current laws must be completed with some work on the measurement of economic integration, and describe how we measure trade liberalization. The TOS calls on all UNCITRAL and WTO members to activate the existing negotiating mandate and launch early negotiations for a new platform of PPPs about international services agreement and laws. Endorsing this will enhance awareness as to the panoply of diplomatic initiatives that can be taken following a pronouncement of the Court, as well as, to the complexity of the implementation process of PPPs at large.