

COMMUNICATION FROM COLOMBIA

Examples of Measures Relating to Administrative Procedures
for Obtaining Visas or Entry Permits

The following communication from the delegation of Colombia, dated 5 July 2004, is being circulated to members of the Working Party on Domestic Regulation.

I. GENERAL

1. The private sector in Colombia has identified administrative measures relating to procedures for obtaining and renewing visas or entry permits as the main obstacle to trade. The surveys conducted by the public and private sectors lead to the conclusion that most of these measures make it difficult, or indeed impossible, for Colombian enterprises to compete in international markets, and therefore constitute barriers to trade. This directly affects trade in services supplied through the four modes recognized under the GATS.

2. Various studies show that administrative procedures relating to migration affect any trade that requires the movement of natural persons from one territory to another. The type of persons affected in Colombia include, *inter alia*: (i) business visitors who need to travel frequently to make or monitor their investments, persons involved in pre- and post-sales services, persons travelling to trade fairs and business meetings; (ii) intra-corporate transferees, such as auditors, lawyers, and support staff needed to deal with matters relating to employees linked to Colombian enterprises located abroad, technical assistance for maintenance and repair of machinery, trainees; (iii) contract suppliers and independent professionals offering professional and technical services in the areas of engineering, architecture, auditing, advertising, consulting, etc. Singers, painters, writers and sportsmen and sportswomen supplying recreational, cultural and sporting services have also been affected.

3. In recent discussions on the subject of trade and migration¹ and negotiating proposals submitted to the Special Session of the Council for Trade in Services, it has been recognized that administrative measures relating to procedures for obtaining visas or entry permits for natural persons providing services constitute one of the main obstacles and undermine the value of existing commitments. These proposals mention that the problem has a variety of sources, such as procedural delays, the complexity of the formalities, high costs, lack of transparency, etc. Matters are made worse by excessive discretionality and the failure of migration policies to draw a clear distinction between temporary movement and permanent immigration.

¹ Symposium on the Movement of Natural Persons (Mode 4) under the GATS, 11 and 12 April 2002; Expert Meeting on Mode 4, UNCTAD, 29-31 July 2003; Seminar on Trade and Migration organized by the OECD, the IOM and the World Bank, 12-14 November 2003.

4. In many cases, we are dealing with regulatory issues that can be tackled through different approaches. Certain Members have suggested different alternatives² for finding effective solutions to the problem, the aim being to ensure that the commitments of Members in the area of market access are not rendered meaningless by the existence of procedures that are lacking in objective criteria and transparency and that are more burdensome than necessary.

5. In order to stimulate discussions relating to administrative procedures, we have provided, in Section II below, a series of examples of regulatory measures relating to the procedures for processing and obtaining visas or entry permits for service suppliers.

II. EXAMPLES OF MEASURES RELATING TO ADMINISTRATIVE PROCEDURES IN CONNECTION WITH VISA APPLICATIONS AND THE FORMALITIES FOR OBTAINING VISAS OR ENTRY PERMITS

6. What follows is a series of examples of administrative measures imposed by the immigration authorities for the issuance of visas or entry permits. These examples are the result of a detailed study of cases provided by Colombian companies and service suppliers that face formalities of this kind on a daily basis, incur considerable expense, and confront obstacles which often make their business impossible. The examples cover such elements as visa processing time, application fees, documents, requirements and conditions for visa application, publication of formalities, etc.

7. To facilitate discussion, the examples are grouped together as follows:

- Application requirements and procedures
- Necessary documentation
- Processing time and length of stay
- Application fees
- Administration

8. Application requirements and procedures:

- Applications must be submitted personally.
- A prior appointment is required. Appointments are granted up to eight months following the submission of the application.
- Once the application has been received, a personal interview is required before a reply can be given.
- Visas are processed in the capital only.
- The passport is retained during processing (in some cases, passports remain up to two months in the Consulate). This requirement prevents the applicant from going on other business trips.
- Visas will only be granted/renewed if the applicant has visas from other countries.

² Communication from India (S/CSS/W/12) of 24 November 2000; Communication from a group of developing countries (TN/S/W/14); Review of Progress as Established in Paragraph 15 of the Guidelines and Procedures for Negotiations on Trade in Services (TN/S/W/19).

9. Necessary documentation:

- Each visa application requires, *inter alia*, an employment certificate, a copy of the salary statement, bank statements, police record, educational certificates and qualifications, etc. Originals of the documents must be presented.
- Applicants must provide hotel reservations and original air tickets. Obtaining the originals of these documents means paying for them without any certainty that the visa will be granted.
- There is a lack of transparency in the publication of the documentation required and relevant information.
- The documents and procedures for renewing a visa are the same as those for obtaining a visa for the first time.

10. Processing time and length of stay:

- The processing time is excessively long. It can take up to three months to receive a reply once the papers have been submitted. In cases requiring a prior appointment, it can take even longer - up to one year.
- Authorized length of stay is very limited (one month).
- No multiple visas are granted.

11. Application fees:

- Visa application fees are high, perhaps higher than the approximate value of the services rendered. The applicant pays the equivalent of up to US\$160 for each application, an amount which is not refunded if the visa is denied.
- Given the complexity of the process, the applicant will inevitably have to pay additional costs, such as travel to the capital, hotel reservations, etc.

12. Administration:

- Absence of pre-established procedures and lack of predictability in the administration of procedures.
- Lack of transparency in the procedures for obtaining visas or entry permits.

III. GATS PROVISIONS RELATING TO ADMINISTRATIVE PROCEDURES

13. In examining the above examples, it might be useful to take account of certain provisions of the GATS in order to help focus our discussions and find effective solutions to the problems.

- Colombia recognizes and attaches great importance to the right of Members to regulate and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives.
- Nevertheless, there are specific cases in which, though the intentions may be legitimate, regulations could be applied in such a way as to undermine the

commitments that have been negotiated. Consequently, the various elements of *Article VI* of the GATS are important to this analysis. On the one hand, paragraph 1 seeks the full implementation of the commitments assumed and stipulates that Members shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. At the same time, paragraph 4 is intended to address the trade-restrictiveness and burdensome nature of measures to ensure that they do not become unnecessary barriers to trade in services and undermine the liberalization of trade in services undertaken by Members.

- The *Annex on Movement of Natural Persons Supplying Services under the Agreement* contains elements which clarify and supplement the provisions of the Agreement as regards the scope of services supplied under Mode 4. Colombia does not question the full right of governments to regulate the entry or temporary stay of natural persons in their territory and the exclusion from the scope of the Agreement of any measure that affects the permanent access of persons to the labour market. However, with respect to measures of a temporary nature, the Annex establishes, among others, one fundamental element that is relevant to our discussions, namely the limitation of the regulatory capacity of governments to apply measures which in no case nullify or impair the benefits accruing to any Member.

14. Colombia is not questioning the actual fact of requiring a visa. Its main concern revolves around the administrative procedures involved in applying for and obtaining a visa or entry permit, to the extent that they constitute trade barriers which could nullify or impair the benefits accruing to a Member.

IV. CONCLUSIONS AND ISSUES TO BE CONSIDERED IN THE FUTURE

15. The above considerations lead to the conclusion that the introduction of burdensome administrative measures can result in trade barriers that prevent service suppliers from handling, in a prompt and efficient manner, offers and business trips abroad. This, in its turn, leads to loss of business and a consequent decrease in trade in services.

16. The WTO services negotiations provide us with the opportunity to address certain substantive and procedural issues in this connection. This is why Colombia has tabled negotiating proposals in the framework of the ongoing negotiations, and in specific requests to its trading partners³, has stressed the need to find effective solutions aimed at facilitating trade in services and ensuring the full implementation of specific commitments made.

17. In the case of goods, the multilateral system has recognized the need to establish disciplines to facilitate the flow of products. Thus, Articles V, VIII and X of the GATT lay down a set of legal rules aimed at streamlining procedures and minimising the costs associated with exports and imports of goods. As regards services, the GATS establishes a number of important principles, for example Article III, IV, VI and XVIII and the Annex on Natural Persons Supplying Services Under the Agreement, which should be taken into consideration in these discussions. Other WTO agreements probably also address issues that could be relevant to these discussions.

18. In order to contribute to the debate regarding the development of disciplines under Article VI:4, we have provided below a series of questions aimed at stimulating and focusing our discussions:

³ Communication from a group of developing countries, TN/S/W/14, of 3 July 2003; specific requests submitted to 13 of Colombia's trading partners.

- (a) Is there a relationship between the administrative procedures pertaining to visas and possible disciplines under Article VI:4?
- (b) Which of the above examples could be described as measures covered by Article VI:4, and which could be covered by Articles XVI and XVII of the GATS? Which of these measures could be classified as measures of the two types?
- (c) According to a Secretariat document, licensing procedures are "administrative procedures relating to the submission and processing of an application for a licence, covering such matters as time-frames for the processing of a licence, and the number of documents and the amount of information required in the application for a licence".⁴ Bearing this in mind, do Members consider that visa procedures could be covered by this definition?
- (d) If not, do Members consider that they could be covered by any other item in Article VI:4, for example qualification procedures?
- (e) Are there any other GATS provisions that could cover visa procedures? Perhaps Articles III, VI:1, VI:5 or VI:6?
- (f) Certain Members may consider that some of these measures are not covered by Article VI:4, by Articles XVI and XVII, or indeed by other GATS provisions. If so, and bearing in mind that certain measures constitute restrictions on trade, would it not be useful to exchange views as to where it would be most appropriate to address them?
- (g) Lastly, we must ask ourselves whether it is possible to develop less burdensome but equally effective regulations in order to attain the objective that has been set.

⁴ Note by the Secretariat, document S/WPPS/W/9 of 11 September 1996.