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May 6, 2004

FROM

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TO

Jon Lyons, Senior Analyst
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<http://ia.ita.doc.gov>

SUBJECT

India Software Development – Tax and Legal Issues

<http://itoutsourcingindia.com/outourcing/tax.asp>

Dear Jon Lyons:

The Programmers Guild has reviewed the *India Software Development – Taxes and Legal Issues* <http://itoutsourcingindia.com/outourcing/tax.asp> in the context of the *WTO Subsidies Agreement*

<http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:65:128315657:59#3> which defines a subsidy as "financial contribution" by a government which provides a benefit in the form of:

- a direct transfer of funds (e.g., a grant, loan, or infusion of equity);
- a potential transfer of funds or liabilities (e.g., a loan guarantee);

- **foregone government revenue (e.g., a tax credit);** or
- the purchase of goods, or the provision of goods or services (other than general infrastructure)

The specific subsidy of concern here is “foregone government revenue (e.g. a tax credit)” by the government of India that is given to companies and groups of companies within the software development industry.

The following refers to *India Software Development – Taxes and Legal Issues*
<http://itoutsourcingindia.com/outsourcing/tax.asp> .

General

What is the term of these tax holidays? When did the Tax Holiday start? When does the Tax Holiday end?

Section “Profits in lieu of salary or in addition to salary and perquisites”

Just above that table, there is a bullet list starting with “Salaries and Wages” and a bullet item “Profits in lieu of salary or in addition to salary and perquisites”. We request CLARIFICATION on whether offshore companies pay both of these taxes or not and if not, is that a violation?

Section “Tax Incentives Provided - 1”

Under the heading “Tax Incentives Provided”, does bullet # 1 imply REAL ESTATE TAXES? Does Bullet # 1 imply taxes other than Real Estate Taxes?

Section “Tax Incentives Provided - 3”

Also under the same heading, “Tax Incentives Provided”, bullet # 3 is vague. It is not clear whether “Telecom Services” implies / includes Software Development or not.

Section “Tax Incentives Provided - 4”

Also under the same heading, “tax Incentives Provided”, bullet # 4 is for “Other Industries”. Does that include Software Development?

Failure To Notify and Post per WTO Subsidies Agreement

India has not "Notified" nor "Posted" its trade subsidies. So why is this is not an unfair trade practice?

The Programmers Guild has reasonable cause to believe India’s Software Development program meets the requirements of notification to the WTO.

The Guild therefore requests that the Department of Commerce investigate, report and process its findings in accordance with WTO Dispute Settlement Understanding (process)

<http://www.tcc.mac.doc.gov/cgi-bin/doi.cgi?204:65:199143862:60> .

Just as farmers in Brazil are adversely affected by U.S. Government subsidies to the Cotton and agriculture industries by driving the price of Cotton down in the international markets, software developers in the United States are adversely affected by the government of India subsidizing software development and driving down the price of both new and **mature** software products in the international marketplace.

The Programmers' Guild also call upon the Department of Commerce to investigate the practice of off shoring **mature** software products which required many technical head count / years to develop inside the United States and then off shored solely for **tax avoidance** purposes associated with a 99.999 % of a product that was developed and manufactured in the United States. Many examples are available upon request.

The Programmers' Guild also observes the severity and urgency of this dispute in the context of the WTO Dispute Settlement Understanding (process) intervals...

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| 1. interval for formal consultation: | up to 60 Days. |
| 2. interval for expert panel selection: | up to 45 Days. |
| 3. interval for expert panel adjudication: | up to 6 months |
| 4. interval for opportunity to file an appeal: | up to 90 Days |
| 5. interval to comply: | up to 15 months |

Due to the rapid rate of job losses (and salary income taxes losses) to India, the Programmers' Guild urges the Department of Commerce to call upon Fast Track authority (HR-3005) of the President of the United States to rule on this case with equivalent trade sanctions (e.g., increased tariffs) against India while this dispute progresses through the WTO process.

Sincerely,

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