Appendix

Intersessional Working Group on an Equalization Measure:

Comments submitted by the Government of India

Dear Colleagues,

India thanks Australia for your leadership and hard work in conducting the intercessional work related to equalisation measures. We also thank Dr. Daniel for his continued contribution and engagement in this intercessional work. We appreciate the contribution of the other member states in this work.

We are grateful for sharing the latest Draft Briefing Note on the Equalization Measure, Subsidies, State Owned-Enterprises, State Contractors and the Enterprise. The document is very useful and comprehensive. In follow up of the online meeting of today, please allow us to submit following comments/concerns on the relevant points presently being discussed.

1. We believe, whatever mechanism for equalisation is being discussed may be implementable only when the nodules become tradable commodity leading to price discovery for nodules, a stage that seems quite some distance away. For the initial period when the operators may opt for seamless operations of nodules mining and downstream processing for production and sale of metals. So, some interim mechanism/arrangement may be needed in the initial period till the nodules are tradable, we feel this also needs to be addressed in this intercessional work.

2. The battery limit for mining needs to be defined clearly in the mining code. Will it be limited to transfer of nodules to transport vessel or will include transport to the first port of call or transport to the storage yard from where nodules will be lifted by the buyers. This is important for the purpose of bringing clarity in this mechanism particularly for calculation of profit, which at this point a gray area.

3. The two options being considered for equalisation addresses the subsidy relating to corporate tax on profits to make it a level playing field for all contractors. However, there may be other types of subsidies that may distort the level playing field. For instance, waiver of import tariffs for plant and machinery by the state may additionally distort the level playing field. Similarly, there could be some other forms of subsidies that may have similar effects. So, it is important to discuss how we will address these aspects.

4. There have been some discussions on the applicability of the measures for state related enterprises. It is proposed to consider the following 3 variants under this category;

- State owned enterprise (SOE)
- State controlled enterprise
- joint venture between a state enterprise and a private sector enterprise.

India agrees that in all such cases the equalisation measures may be liable.
However, we believe in all the above cases, the dividends paid by such entities must be creditable since this is a part of the payment that the entity makes to the state. This is in line with both the proposed measures where “payments/ all mining payments by related entities are creditable “.

5. Finally, an informal suggestion. Making the mechanism too cumbersome may not lead to the prime objective. There may be different ways in which contractors may get huge advantage where ISA may have no controls/ jurisdiction. For instance, a state may opt for not subsidising the contractor for mining but provides a large subsidy/ lower or no taxes on the metals produced by the same contractor. Therefore the seriousness of the mechanism for equalisation is lost in terms of overall operations. Therefore, a suggestion for development of a very simplified option fulfilling the mandate of equalisation.

The above comments/concerns of India are for consideration and discussion in the working group. Though the email is written to both of you, however may kindly circulate in the group, if you feel to do so. We will be more than happy to provide any further clarifications on our above comments/concerns, if required for further clarity.

Finally, we once again thank you both for your continued hard work in this regard.
Regards,
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Additionally, the Government of India provided the following comment:

Para 3 [*of Standard II, Additional Royalty in Option 1 the Hybrid Model*] mentioned that the Applicable Additional Royalty Rate shall be [8%,] however justification for fixing additional royalty rate at 8% does not have a sound basis at this point. India believes that it should be finalised only after a comprehensive financial analysis of the mining project alone based on actual experimental data and market analysis.