

**Council for Trade in Services
Special Session**

CONSTRUCTION AND RELATED ENGINEERING SERVICES

Information Note by the Secretariat¹

I. INTRODUCTION

1. All countries recognize that construction and related engineering services are among those fundamental activities that provide necessary infrastructure for all other sectors of the economy. The construction industry also represents one of the largest sectors in both developed and developing economies, and is strategically important for the creation of employment and growth. In terms of trade perspectives, some developing countries have attained competitive advantage in this sector and have become exporters of construction and related services.

2. An analysis of commitments carried out by some Members reveals that roughly half of the schedules contain commitments on construction services.² The sectors most commonly covered are general construction work for building (CPC 512) and for civil engineering (CPC 513). Most of the commitments focus on mode 3, which is a clear recognition of the need to establish near the site of construction projects in order to supply the service. Mode 1, generally discarded as technically unfeasible for "physical construction", has few commitments for the related professional services. Mode 4 has the lowest number of commitments, even when the horizontal ones are factored in. There are few MFN exemptions on construction services.

II. CLASSIFICATION ISSUES

3. The negotiating proposals cover in general the following subsectors: general construction work for buildings (CPC 512); general construction work for civil engineering (CPC 513); installation and assembly work (CPC 514, 516); building completion and finishing work (CPC 517); and other (CPC 511, 515, 518).

4. Three classification issues have been discussed in the Committee on Specific Commitments: (a) the delineation between CPC 5111 (site investigation work) and CPC 86711 (advisory and pre-design architectural services); (b) how to classify dredging services (i.e., under construction or under maritime transport services); and (c) the eventual creation of a new category named "integrated construction services".

¹ This note has been prepared upon a request by Members at the meeting of the Special Session of the Council for Trade in Services held on 1 July 2005. Its aim is to assist delegations and capital-based officials in their assessment and consideration of sector- and mode-specific issues raised in the negotiations. It has been agreed that the scope of the note should exclude analysis of existing commitments and of offers submitted in current negotiations, nor should it contain additional information from external sources or from the Secretariat. The content should not be used in dispute settlement proceedings.

The document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² See the negotiating proposals by Japan, the EC, and Brazil. According to the European Communities some 69 Members (counting the EC15 as one) have made commitments; while according to Brazil the number of Members with commitments amounts to 62 (as of the date of these submissions, of course).

5. In summary, it can be said that (a) there is no common view on how to distinguish between the services classified under CPC numbers 5111 and 86711; (b) the creation of a category "integrated construction services" is not deemed necessary, since Members' focus has shifted towards covering the whole range of construction sub-sectors in order to ensure access to companies providing multi-staged construction projects³; and (c) there is agreement among delegations participating in the discussions that dredging services fall under CPC 513 (construction work for waterways, harbours, dams and other waterworks)⁴.

III. SCHEDULING ISSUES

6. The scope of construction and related engineering services consists of a wide range of activities that are mutually related⁵. Thus, the barriers identified should be addressed as a package. In the same vein, it has been proposed that future specific commitments should encompass all stages of the construction process ranging from "pre-erection work at construction sites" (CPC 511) to "building completion and finishing work" (CPC 517)⁶. This would ensure that service suppliers that are engaged in multi-stage construction projects obtain the range of commitments required so as to effectively carry out their work.

7. Other proposals have drawn attention to the interrelation between the supply of construction services and the supply of architectural (CPC 8671), engineering, (CPC 8672), integrated engineering (CPC 8673) and urban planning and landscape architectural services (CPC 8674), even though these services are placed separately in the Services Sectoral Classification List (MTN.GNSS/W/120), under the grouping of professional services⁷. In fact, construction firms often provide all of these services in an integrated manner, including the stages of pre-investment (e.g. feasibility studies), project execution (e.g. architectural and structural design), and project implementation (e.g. the physical construction per se). As explained by some Members, effective market access is often denied to suppliers from developing countries not only because numerous barriers persist in the construction sector itself and in the related services previously mentioned, but also because of the total absence of commitments in some of those professional services.

8. Potentially relevant issues:

- (a) Do Members agree that commitments be undertaken for all construction sub-sectors?
- (b) Do Members agree that commitments be also undertaken on other interrelated subsectors, such as those mentioned in paragraph 7?

IV. ISSUES RELATING TO ARTICLES XVI AND XVII

9. Despite being one of the most liberal sectors as a result of the Uruguay Round, substantial barriers still exist. The main barriers identified include the following:

- (a) restrictions limiting the type of legal entity;
- (b) requirement to have a local partner as a general condition for the supply of construction services;

³ See the negotiating proposal by New Zealand. A "multi-stage" construction project exists where a single contractor undertakes all stages of a construction project from site preparation to final commissioning, either with or without sub-contracting some parts of the work.

⁴ The details of the discussion can be found in the informal summaries by the chairperson of the Committee on Specific Commitments listed in Annex I.

⁵ See the negotiating proposal by Japan.

⁶ See the negotiating proposal by New Zealand.

⁷ See the negotiating proposals by Brazil, Cuba and the European Communities.

- (c) restrictions on the participation of foreign capital;
- (d) limitations on the contract amount accessible to foreign firms;
- (e) economic needs tests;
- (f) limitations on the value of transactions or assets;
- (g) restrictions on the temporary movement of natural persons;
- (h) discriminatory treatment of foreign companies with regard to licensing, standards and qualification of natural persons;
- (i) restrictions on remittance of earnings and transfer of funds between projects;
- (j) discriminatory treatment of foreign companies in taxation;
- (k) local content or local use requirements (e.g. requirements regarding local subcontracting, hiring of local workers, and local procurement of materials); and
- (l) requests for nationality and residency requirements for executives and other employees (e.g. professionally qualified project team members).

10. Some horizontal limitations, which are usually related to the general foreign investment regime, also affect access to markets. These horizontal limitations include, *inter alia*, certain subsidy measures, limitations on the acquisition of land, and limitations on equity holdings.

11. Given that a local commercial presence is generally necessary to operate in this sector, the elimination of restrictions on mode 3 is considered crucial⁸. As acknowledged by some proposals, the supply of certain construction-related activities on a cross-border basis has become possible in recent years due to technological advances in telecommunications systems, thus making it possible to expand commitments on mode 1⁹. Blueprints, plans and engineering designs may be transmitted electronically, and parts of site investigation work (CPC 5111) could be undertaken on a cross-border basis¹⁰.

12. Improved commitments on mode 4 for this sector is also essential, as restrictions are usually placed on the ability of firms which had established a presence or own a contract overseas to bring in skilled personnel from their home country to assist in the project¹¹. Those restrictions can take the form of quotas on the movement of natural persons, even at the intra-corporate level, or the lack of recognition of professional qualifications (see also under heading V on Regulatory Issues).

13. It has been suggested that in order to improve developing countries' competitiveness in this sector, some preference should be given to local firms (through, *inter alia*, (a) joint ventures, associations and partnerships with foreign firms; (c) use of performance requirement consistent with

⁸ See all negotiating proposals and the recent joint statement by Australia et. al.

⁹ See the negotiating proposal by the EC.

¹⁰ See statement by the EC at the meeting held on 9 and 12 July 2001 (paragraph 238 of the meeting report).

¹¹ This has been recognized not only in the negotiating proposals on construction and related engineering services, but also in some proposals on the liberalization of the movement of natural persons (see, for example, the communication from Colombia on the movement of natural persons, S/CSS/W/97, paragraph 6).

multilateral disciplines¹²), and access to these markets should be made conditional upon the transfer of technology and know-how¹³.

14. Potentially relevant issues:

- (a) What are the major remaining trade restrictions in construction and related engineering services?
- (b) In which sub-sectors could cross-border commitments be expanded?
- (c) Should sector-specific commitments on the movement of natural persons be considered as a complement to horizontal commitments? If so, for what categories of persons?

V. REGULATORY ISSUES (INCLUDING PROPOSALS RELATED TO ARTICLE XVIII)

15. The construction sector is subject to many different aspects of domestic regulation, including controls on land use, building regulations and technical requirements, building permits and inspection, registration of proprietors, contractors and professionals, regulation of fees and remuneration's, and environmental regulations. Such measures are applied not only at the national level, but also very frequently at the sub-federal or local government level. Standards may be fixed by the governments or by standard-setting bodies or private-sector associations. Even if the same measures are applied to all suppliers, either domestic or foreign, they may be found to be more onerous to foreign suppliers¹⁴. Other regulatory barriers (e.g. lack of recognition of qualifications of professionally qualified project team members, unduly onerous licensing requirements for construction firms and subcontractors, and unduly onerous visa procedures) can also hinder trade in the sector¹⁵.

16. No proposals have been made to include additional commitments in the construction sector in order to address these issues. Rather, Members' preference seems to be that the issues related to licensing, qualification and technical standards be dealt with within the multilateral disciplines on domestic regulation to be developed under Article VI:4 of the GATS¹⁶. It has also been proposed that Members take the necessary steps to ensure full implementation of GATS Article VII (Recognition), and endeavour to participate in, and extend the membership of, agreements which enable mutual recognition of engineering and other construction-related professional qualifications¹⁷.

¹² See the negotiating proposal by Kenya.

¹³ See the negotiating proposal by Cuba.

¹⁴ See the negotiating proposal by the EC.

¹⁵ See the negotiating proposals by Australia, Brazil, and Chile.

¹⁶ See the negotiating proposals by Australia and Brazil, as well as Members' interventions in discussions of proposals on this sector.

¹⁷ See the negotiating proposals by Australia and Brazil.

VI. OTHER RELEVANT ISSUES AND QUESTIONS RAISED IN NEGOTIATING PROPOSALS

17. According to a two Members¹⁸, subsidies in this sector may undermine the competitiveness of service suppliers from developing countries, by restricting their access to foreign markets and even affecting their conditions of competition within their own markets¹⁹. While one Member has proposed that trade distortive subsidies not be used in a way that undermines the competitiveness of developing country service suppliers, another one has proposed that this issue be addressed in the negotiations for the development of horizontal disciplines on subsidies under Article XV of the GATS.

18. Other two Members consider that effective market access for construction firms will depend to a large extent on whether it is possible for them to compete for the public procurement of construction projects on foreign markets²⁰. It has been proposed in that regard that negotiations address the prohibitions or limitations on the participation of foreign companies in bidding procedures and the imposition of discriminatory requirements on bids by foreign companies²¹. The absence of multilateral rules for procurement has been highlighted as probably the most important non-tariff barrier affecting this sector²².

19. Potentially relevant issues:

- (a) Is there a need to address issues relating to – subsidies and public procurement-related measures – in the case of construction services? If so, how could they be addressed in the current negotiations?

¹⁸ See the negotiating proposals by Brazil and Kenya.

¹⁹ See the negotiating proposal by Brazil. Policies identified by Brazil include, *inter alia*, direct financial aid; subsidies to R&D; subsidies to finance bid preparation costs; export credits for feasibility studies; export credits in the form of financing, insurance and guarantees; government guarantees for private bank loans; tax exemptions and public risk sharing (including the guarantee of a percentage of contractor profits); and subsidies related to tied aid.

²⁰ See the negotiating proposal by the EC.

²¹ See the negotiating proposal by Korea.

²² See the negotiating proposal by the EC.

ANNEX

List of Documents Used

Council for Trade in Services – Special Session

Negotiating proposals on construction and related engineering services

- Communication from the European Communities and their Member States – GATS 2000: Construction and Related Engineering Services (S/CSS/W/36 & Corr.1)
- Communication from Australia - Negotiating Proposal for Construction and Related Engineering Services (S/CSS/W/64)
- Communication from Korea – Negotiating Proposal for Construction Services (S/CSS/W/84)
- Communication from New Zealand – Negotiating Proposal for Construction and Related Engineering Services (S/CSS/W/91)
- Communication from Brazil – Construction and Related Engineering Services (S/CSS/W/113)
- Communication from Cuba - Negotiating Proposal for Construction and Related Engineering Services (S/CSS/W/145)
- Communication from Australia, Canada, Egypt, the European Communities, Guatemala, Japan, Korea, Mexico, Norway, New Zealand, Singapore, Switzerland, Turkey, Chinese Taipei, and the United States – Joint Statement on Liberalization of Construction and Related Engineering Services (Job(05)/130)

Negotiating proposals on various sectors, including financial services

- Communication from Japan – The negotiations on Trade in Services (S/CSS/W/42)
- Communication from Chile – The negotiations on Trade in Services (S/CSS/W/88)
- Communication from Kenya – Negotiating Proposal (S/CSS/W/109)

Meeting Reports

- Report of the meeting held on 14 to 17 May 2001 (S/CSS/M/9, paragraphs 210 to 230)
- Report of the meeting held on 9 to 12 July 2001 (S/CSS/M/10, paragraphs 227 to 241)
- Report of the meeting held on 3-6 December 2001 (S/CSS/M/13; paragraphs 218 to 224)

Committee on Specific Commitments

- Informal Discussion of Classification Issues on 19 July 2005 – Summary by the Chairman (12 September 2005)
 - Informal Discussion of Classification Issues on 21 June 2005 – Summary by the Chairman (11 July 2005)
 - Informal Discussion of Classification Issues: Construction and Related Engineering Services; Distribution Services; Education Services – Annotated Agenda by the Chairman designate (14 June 2005)
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