

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES  
AND THEIR MEMBER STATES<sup>1/2</sup>**

GATS 2000: Construction and Related Engineering Services

The attached communication<sup>3</sup> has been received from the delegation of the European Communities and their Member States with the request that it be circulated to Members of the Council for Trade in Services.

**I. INTRODUCTION**

1. The construction industry is a key sector which provides the infrastructure for all other sectors of industry. The construction industry also constitutes one of the largest single sectors in the economy on its own. In most industrialised economies, the share of construction in total GDP is in the range of around 5 to 7 per cent. It has always been considered as an important industry for creating employment and sustaining growth given, in particular, its close link to public works. For developing countries, liberal market access commitments in this sector will attract foreign investors and will in turn result in the development of basic infrastructure, training of local workers and transfer of know-how. These play a fundamental role in the modernisation of developing countries.

2. EC's commitments are very liberal with commitments in all subsectors. Some Member States have maintained limited restrictions on some modes of supply.

3. A total of<sup>4</sup> WTO Members have made commitments on construction services. The most common sectors covered are general construction work for building and for civil engineering. Normally the commitments are on mode 3. This acknowledges the fact that the establishment of construction service suppliers near the site of construction projects is generally necessary. There are few MFN exemptions on construction services.

4. 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 markets. The absence of multilateral rules for procurement is probably the most important non-tariff barrier affecting this sector.

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<sup>1</sup> Hereinafter "The EC".

<sup>2</sup> The EC reserve their right to modify this proposal at any time. This proposal does not prejudice EC's position on other services sectors, nor any possible future offer on this or other sectors. This proposal has to be read together with the general approach of the EC to the services negotiations.

<sup>3</sup> This document should be read in conjunction with S/CSS/W/32.

<sup>4</sup> EC counted as one.

5. Our proposal aims at engaging WTO Members in negotiations to reduce unnecessary trade distortive barriers to the minimum necessary while preserving the quality of the service, public safety and the rule of law.

## **II. SCOPE OF THIS PROPOSAL<sup>5</sup>**

6. This proposal includes the following sub-sectors:

- General construction work for building (CPC 512)
- General construction work for civil engineering (CPC 513)
- Installation and assembly work (CPC 514, 516)
- Building completion and finishing work (CPC 517)
- Other (CPC 511, 515, 518)

7. For clarification purposes, it should be stated that :

- Architectural services and integrated engineering services which are closely related to the construction and related engineering services sector are covered under professional services proposals.
- Dredging services are also covered by the current proposal.

## **III. PROPOSAL**

8. The Council for Trade in Services in Special Session should initiate a debate, whether in the Council or in a subsidiary body established for the purpose, on broad aims for negotiations in the construction and related engineering services sector.

9. Despite being one of the most liberal sectors as a result of the Uruguay Round, substantial barriers still do exist. Schedules contain limitations on a variety of issues. For example, on the type of legal entity (local incorporation or prohibition to establish branches); participation of foreign capital; limitations on the contract amount accessible to foreign firms; economic needs tests; limitations on the value of transactions or assets; restrictions on the temporary movement of natural persons; limitations on the national treatment on licensing, standards and qualification of natural persons; requests for nationality and residency requirements, etc. This list is not exhaustive, and other restrictions are also maintained by WTO Members. The EC reserve their right to present, in due time, a formal proposal concerning horizontal commitments listed by WTO Members. At this stage, some horizontal commitments can already be underlined as particularly affecting the construction and related engineering services sector, including certain subsidy measures, limitations on the acquisition of land and limitations on equity holdings.

- (a) Mode 1: Most WTO members' current schedule of commitments state that commitments under mode 1 are generally technically unfeasible in this sector. However, with technological advances in telecommunications systems, Members should consider whether commitments can now be made in certain sub-sectors.

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<sup>5</sup> The coverage of this proposal is without prejudice to EC's final positions on classification issues and to EC's classification of their existing commitments. CPCs mentioned refer to Provisional CPC classification.

- (b) Mode 2: Members should consider the extent to which restrictions are justified under this mode.
- (c) Mode 3: In our view, we do not see justification for restrictions on forms of establishment (i.e. type of legal entity). Given that a local commercial presence is generally necessary to operate in this sector, we believe that there should be freedom of establishment i.e. restrictions which are currently maintained by Members on mode 3 should be eliminated.
- (d) Mode 4: The EC schedule includes, *inter alia*, temporary movement of intra-corporate transferees as well as contractual service suppliers (i.e. the service is supplied, on the basis of a contract, by an employee of a company not established in the Member's territory). The EC propose that, on this basis, further discussions are held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services.

10. The construction sector is subject to many different aspects of domestic regulation. They include 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, environmental regulations, etc. 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. Some technical standards and specifications may be applied only to foreign suppliers. Even if the same measures are applied to all suppliers, domestic or foreign, they may be found to be more onerous to foreign suppliers.

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