

COMMUNICATION FROM BRAZIL

Construction and Related services

The following communication has been received from the delegation of Brazil with the request that it be circulated to the Members of the Council for Trade in Services.

1. Brazil submits this proposal for consideration by Members.¹ Its purpose is to promote the liberalisation of this important sector and to contribute to increasing the participation of developing countries in trade in services. Article IV of the General Agreement on Trade in Services (“Increasing Participation of Developing Countries”) states in paragraph 1:

“The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

(c) the liberalisation of market access in sectors and modes of supply of export interest to them.”

2. Also, the Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93), adopted on 28 March 2001, state, among other elements, that:

- the current negotiations “...shall be conducted ... as a means of promoting ... the development of developing countries” (paragraph 1);
- the current negotiations “... shall aim to increase the participation of developing countries in trade in services” (paragraph 2);
- “... due consideration should be given to the needs of small and medium-sized services suppliers, particularly those of developing countries” (paragraph 3); and
- “... special attention shall be given to sectors and modes of supply of export interest to developing countries” (paragraph 5).

¹ This proposal is not a legal text. It is submitted solely for the purpose of negotiation and does not prejudice the position of Brazil regarding the issues raised in it. Brazil reserves its right to modify or complement the contents of this proposal at a later stage.

I. INTRODUCTION

3. The construction industry constitutes one of the largest and most important sectors in any economy, having significantly benefited from the recent advances in technological innovation. It accounts for an important share of GDP and employment and plays a fundamental role in the development of infrastructure for all other sectors.

II. SCOPE

4. In the Services Sectoral Classification List (MTN.GNS/W/120), construction and related engineering services comprise the following activities:²

- 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)
- Other (CPC 511, 515, 518).

5. It cannot be denied that there is an evident 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 latter are placed separately in the W/120, under the grouping of professional services. In fact, construction firms often provide all of these services in an integrated manner as they are used throughout the development of an investment project, 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*).

6. Hence, given this interrelationship, trade in construction and related services hinges not only on mode 3 but is also highly dependent on supply under modes 1 and 4.

7. Some developing countries have attained competitive advantage in this sector and have started to export construction and related services. However, effective market access is often denied to them not only because numerous barriers persist in the construction sector itself and in the related services mentioned above but also because of the total absence of commitments in some of those professional services. Furthermore, subsidy practices that cause deviation of trade flows have resulted in the loss of competitiveness by developing country exporters.

III. ANALYSIS OF EXISTING COMMITMENTS

8. Among the 142 Members of the WTO, 62 have scheduled specific commitments in at least one of the subsectors of construction services. For the related professional services the figures are 51 for architectural services, 58 for engineering services, 33 for integrated engineering services, and 32 for urban planning and landscape architectural professional services. The majority of commitments in construction services are focused mainly on mode 3 (albeit with important limitations in many cases).

² These activities can be carried out either by general contractors who do the complete construction work for the owner of the project or on own account; or by subcontracting parts of the work to specialized contractors.

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.

IV. BARRIERS TO TRADE IN CONSTRUCTION AND RELATED SERVICES

9. The general foreign investment regime or the regime governing this sector crucially affects conditions of market access in many countries.

10. In mode 3, the main obstacles encountered include: restrictions on the level of percentage of foreign equity ownership; limitations on the type of legal entity required, (including joint ventures); limitations on ownership of land; economic needs tests; exclusive rights for construction, management and maintenance; discriminatory bidding; licensing and qualifications requirements and procedures and technical standards.

11. In mode 4, beside licensing and qualification requirements and procedures, barriers are also related to non-recognition of professional qualifications, residency and citizenship requirements. Most of these barriers also affect supply under modes 1 (particularly in the case of related professional services). In the case of recognition, there is widespread perception that the provisions of Article VII have not resulted in benefits for developing countries.

12. Subsidies also play a crucial role in restricting access to foreign markets by developing country firms. They also affect the conditions of competition of developing country firms to compete on projects within their own market. Direct government subsidy and other policies, which may indirectly subsidize industries include, *inter alia*, direct financial aid, subsidies to R&D costs, subsidies to 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. It must be stressed that developing countries do not have the means to match this arsenal of incentives.

V. PROPOSAL

13. Brazil proposes:

- (i) that WTO Members make specific commitments in the construction and related services sectors described in paragraphs 4 and 5 above;
- (ii) that WTO Members eliminate the restrictions to market access and national treatment in those sectors and sub-sectors. Brazil recognizes that some developing countries might need to impose limitations concerning requirements of joint ventures and local subcontracting in order to contribute to the development of local firms, particularly small and medium sized enterprises. Moreover, Article XIX:2 of the GATS states that “(...) there shall be appropriate flexibility for individual developing country Members for liberalizing fewer types of transactions and, when making access to their market available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV”.
- (iii) that the issue of trade distortive subsidies be addressed in the negotiations in the context of the development of horizontal disciplines on subsidies under Article XV of the GATS so as to ensure a level-playing field between developed and developing countries. It should be reminded that Article XV recognizes the need of flexibility for developing country Members in this area.

- (iv) that the issue of recognition be addressed in the negotiations so as to make the provisions of Article VII effective in terms of market access for developing country firms and professionals;
 - (v) that the issue of licensing and qualification requirements and procedures as well as technical standards be addressed in the negotiations in the context of the development of horizontal disciplines on domestic regulation under Article VI:4 of the GATS.
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