

COMMUNICATION FROM NEW ZEALAND

Negotiating Proposal for Consulting Service¹

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

I. INTRODUCTION

1. Consulting services is an area of substantial trade interest to New Zealand. The provision of these services to export markets occurs across a wide range of economic activity, and to private and public sector customers. For example, the members of New Zealand's consulting services industry body provide consulting services in relation to the following sectors; agriculture, broadcasting, communications, economic development, education and training, emergency and disaster relief, energy and power, environmental and conservation services, fisheries and marine resources, forestry, health, legal services, organisational support and development, resources exploration and exploitation, social development, tourism, transportation, urban planning and physical infrastructure, water supply and sanitation and gender issues in development. As consulting services intersect with almost every other services sector, this opens up the prospect of providers encountering a wide range of barriers.

2. Given the cross-cutting nature of consulting services, New Zealand thinks this sector would benefit from more focused discussion by WTO Members in the Special Negotiating Session. In particular, while mindful of the need to preserve the integrity of existing consulting related commitments, New Zealand suggests that Members consider whether it might be appropriate to develop a broad definition for consulting services that would allow for commitments to be made on the provision of the service in relation to any other sectors.

II. WHAT ARE CONSULTING SERVICES?

3. The best place to start in a discussion of consulting services² is to attempt to define them. This is not necessarily a straightforward exercise, given that "consulting" is a catch-all term covering a variety of services that may be provided across virtually all sectors. It may be helpful to consider

¹ New Zealand reserves the right to submit further and more detailed proposals on this sector at any time and would note that this proposal should be read together with New Zealand's initial objectives for the resumed services negotiations, as contained in S/CSS/W/90 of 26 June 2001.

² The Provisional Central Product Classification List (CPC) and Version 1.0 of the CPC (CPC Rev.1) use the terms "consulting", "consultancy", "consultative" and "consultation" interchangeably in relevant sector headings and definitions. For the purposes of this paper, New Zealand has used the term "consulting services" to encompass all such activities.

the following common elements New Zealand has observed through its involvement in trade in this sector:

- Cross-cutting application: while consulting appears to be a sector in itself, the service can be supplied in relation to virtually all other services sectors;
- While all modes of supply are important to the sector, Mode 1 and 4 provision appear to be common methods of delivery;
- Supply of consultancy services by small and medium-sized services suppliers (SMEs), for which Mode 3 provision may not be economically feasible, appears to be a significant feature of the sector;
- Consulting services contribute significantly to technology transfer between developed and developing countries, particularly where consultants are engaged to contribute their expertise to projects managed by developing country counterparts;
- Increasingly, consultants provide advice to government agencies on public policy issues, such as regulatory reform, and the transition of sectors traditionally provided by central government to a more commercial footing, for example, postal services.

III. RELEVANT SECTORAL CLASSIFICATIONS

4. Under the CPC's definition of Business Services, Management Consulting Services (865) are singled out and defined under the following headings:

- general management consulting;
- financial management consulting;
- marketing management consulting;
- human resources management consulting;
- production management consulting;
- public relations; and
- other management consulting services.

Services Related to Management Consulting (866) cover project management other than for construction; arbitration and conciliation and other management services not elsewhere classified.

5. While broadly couched, these services relate primarily to provision of advice on the management and operation of businesses. A question to consider, therefore, is whether commitments on these CPC items are intended to cover the full range of services that may be supplied by consultants. The existence of other definitions of consulting throughout various chapters of the CPC suggests this is not the case - for example, consultancy services related to installation of computer hardware (84100); system and software consulting services (84210); financial consulting services (81332), and related scientific and technical consulting (8675), to name a few.

6. CPC Rev. 1 achieves a more unified organisation of consulting services, by drawing together a substantial range of business, professional, consulting and other services included in the Provisional CPC under the sector Other Professional Scientific and Technical Services (83). While providing a more logical classification, this still does not appear to encompass the full range of consulting services currently being traded.

7. A further question is whether consulting services could be considered merely the Mode 1 and 4 provision of other services. It is certainly the case for many professional services, such as legal services, that the advisory aspects of the core service as defined in the CPC seem to be closely linked to Mode 1 and 4 provision of consulting services. Again, however, the existence of discrete CPC definitions of consulting services suggests that the term “consulting services” is intended to encompass something other than provision of the core service by any mode of delivery. An example is advisory and consultative engineering services (86721), which are separated out from the design and construction/installation supervisory aspects of engineering services. Similarly, security consultation services (87302) are classified independently from the investigative and protective services in the sector.

IV. BARRIERS

8. The following are examples of market access and national treatment barriers identified as relevant to this sector by New Zealand services providers:

- Restrictive visa requirements, limiting mode 4 delivery;
- Residency/nationality requirements for mode 4 delivery ;
- Restrictions on form of business entity; including compulsory incorporation and requirements to engage local consultants or partners to bid for contracts, in relation to Mode 3;
- Professional registration required for submission of documents, limiting Mode 1 delivery;

In relation to domestic regulation, onerous licensing requirements for the provision of consulting services have been identified as a significant impediment.

V. STRUCTURE OF COMMITMENTS

9. The dispersion of consulting classifications throughout the CPC and W/120 makes it difficult to assess whether there is a pattern of commitments on relevant CPC items. It is worth noting however that management consulting is the most committed subsector under Other Business Services, which may indicate that Members wish to ensure that foreign consultants are able to supply services to their markets.

VI. PROPOSAL

10. New Zealand’s particular concern in relation to current definitional coverage of consulting services is that these do not seem to cover the full range of consulting services now available in the world marketplace. This may limit Members’ ability to make meaningful commitments on the sector, and impact on market access.

11. Looking at the Provisional CPC and CPC Rev.1 it seems that, in addition to the discrete subsector of management consulting services, attempts were made on an *ad hoc* basis to allow for commitments on consulting services within sectors where these have traditionally been traded across borders. In certain other sectors, where New Zealand and no doubt other members have in recent

years developed a strong export interest, there is no specific provision for commitments on consulting services - for example broadcasting, postal services, education, environmental and tourism services. Lack of consistency in classification has the potential to undermine or discourage commitments in some sectors.

12. In considering how this situation might be rectified, New Zealand concluded that attempting an exhaustive definition of consulting services, or to list each every sector with which consulting services may intersect, would not be an efficient or transparent approach to improved commitments in the sector. Consultations with New Zealand exporters have confirmed that often their services cover a wide range of inter-related activities, and that their preference is for one broad, simple definition, rather than different consulting definitions scattered throughout the CPC, requiring that commitments be sought on each one to ensure that the scope of their interests is covered. An approach New Zealand proposes for Members' consideration, which would allow for comprehensive commitments on consulting services while preserving the existing W120 structure, would be to add a broad definition of consulting services to the definitions listed under Management Consulting Services (865). Commitments made under this item could apply to consulting services in relation to any other sector or sectors. If, for any reason, Members wished to schedule reservations or not make a commitment on particular aspects of consulting services they would of course retain the flexibility to do so.

13. This suggestion poses questions about the status of existing commitments scheduled under current consulting services definitions. While New Zealand considers that it would be ideal to have all consulting-related definitions together under a heading which confirmed consulting services as a sector in its own right, it is recognised that the integrity of existing commitments and the W/120 structure need to be preserved. Accordingly, the addition of a consulting services subsectoral definition to the Management Consulting heading appears to us to be a pragmatic solution enabling Members to supplement consulting services commitments already made under other CPC items, rather than seeking to replace these.

14. The following is New Zealand's suggested addition to CPC 865:

865[_]: Other Consulting Services

Consulting, organisational, advisory, guidance and operational assistance services, including in relation to one or more other services sectors.

15. New Zealand would welcome further discussion of consulting services in the Special Negotiating Session, and the views of other Members on how its classification proposal might be strengthened or improved.
