

Construction and related engineering services

Session 3: Main issues in the GATS

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Topics

1. **Specificity of construction services: construction is not one sector**
2. **Sector description: in the GATS and in reality...**
3. **How are construction services supplied? Four modes of supply**
4. **Importance of government procurement**
5. **Topics for further reflection**

1. Specificity of construction services: construction is not one sector

1.1 Construction is not one sector: very diverse, with many cross-sectoral linkages



1.2 Local construction techniques, procedures, procurement and delivery methods are very diverse



1.3 A relatively local / national industry

- Construction enterprises of all sizes: from craftsmen and small, family-run enterprises to **regional and global players**.
- Yet, a large proportion of construction activity remains local, national and/or regional (especially contiguous frontier zones).
- Characterized by a **large number of small firms** (SMEs) generally specialising in certain fields or operating in relatively small geographic areas.
- Construction services may be carried out by **general contractors** who complete the entire work for the client, or by specialized **subcontractors** who undertake parts of it (in some cases, *mandatory* subcontracting).

1.4 International construction sector

- Consists primarily of larger firms and multinational contractors who compete among themselves, as well as with contractors that perform work only in the countries in which they are based.
- Multinational companies tend to specialize in certain types of construction work, often also as a result of domestic competitive advantages.
- Customers of international construction services are generally large private corporations and **governments**. They are usually sophisticated buyers, who participate in the planning and execution of the projects.

2. Sector description: in the GATS and in reality...

2. Sector description and GATS coverage

Construction: a very diverse, highly regulated sector

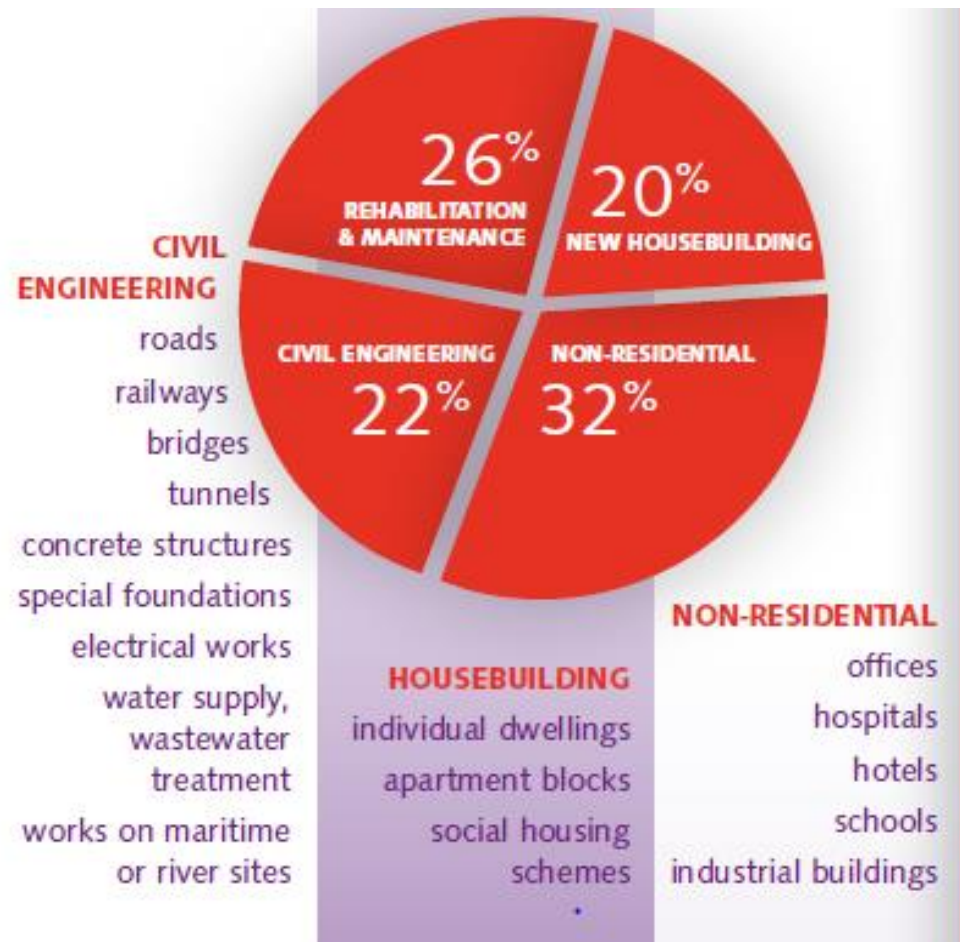
How to include it in the GATS and schedule commitments on it?!?



2. Sector description

Industry description of the sector (EIC, volume of turnover, 2011)

GATS description of the sector (MTN.GNS/W/120)



SERVICES SECTORAL CLASSIFICATION LIST

SECTORS AND SUB-SECTORS

CORRESPONDING CPC

3.	<u>CONSTRUCTION AND RELATED ENGINEERING SERVICES</u>	
A.	<u>General construction work for buildings</u>	512
B.	<u>General construction work for civil engineering</u>	513
C.	<u>Installation and assembly work</u>	514+516
D.	<u>Building completion and finishing work</u>	517
E.	<u>Other</u>	511+515+518

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (1)

3.A. General construction work for buildings (CPC Prov 512)

- Construction work (new work, additions, alterations and renovation work*) for **all types of buildings, residential or non-residential**, whether privately or publicly owned.

3.B. General construction work for civil engineering (CPC Prov 513)

- Construction work for **structures other than buildings**, such as highways and streets, railways and airfield runways, bridges and tunnels, waterways and harbours, dams, pipelines, communication and power lines, mining and manufacturing plants, and stadia and sports grounds.

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (2)

3.C. Installation and assembly work (CPC Prov 514 and 516)

- This item groups the **assembly and erection of prefabricated constructions** (CPC 514), and **installation work** (CPC 516) such as heating, ventilation and air conditioning, water plumbing, electrical work, insulation work, lift and escalator construction work, etc.

3.D. Building completion & finishing work (CPC Prov 517)

- This item covers **building completion and finishing work** such as glazing, plastering, painting, floor and wall tiling, carpentry, interior fitting and decoration, ornamentation fitting, etc.)

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (3)



3.E. Other (CPC Prov 511, 515 and 518) includes:

- **Pre-erection work** at construction sites (site investigation, demolition work, site preparation work for mining, etc.);
- **Special trade construction work** (foundation work, water well drilling, roofing, concrete work, steel bending and erection, and masonry work);
- **Renting services** related to equipment for construction or demolition of buildings or civil engineering works, **with operator**.

2. Sector description: Where are the “related engineering services”?

- In W/120, ambiguity exists regarding the respective coverage of "Engineering services" (CPC 8672) and "Construction and related engineering services":

8672	Engineering services	
86721	Advisory and consultative engineering services	7421
86722	Engineering design services for the construction of foundations and building structures	7421
86723	Engineering design services for mechanical and electrical installations for buildings	7421
86724	Engineering design services for the construction of civil engineering works	7421
86725	Engineering design services for industrial processes and production	7421
86726	Engineering design services <u>n.e.c.</u>	7421
86727	Other engineering services during the construction and installation phase	7421
86729	Other engineering services	7421

2. Sector description: Where are the “related engineering services”?

- In W/120, ambiguity also exists regarding the respective coverage of “Integrated engineering services” (CPC 8673) and “Construction and related engineering services”.

8673	Integrated engineering services	
86731	Integrated engineering services for transportation infrastructure turnkey projects	7421
86732	Integrated engineering and project management services for water supply and sanitation works turnkey projects	7421
86733	Integrated engineering services for the construction of manufacturing turnkey projects	7421
86739	Integrated engineering services for other turnkey projects	7421

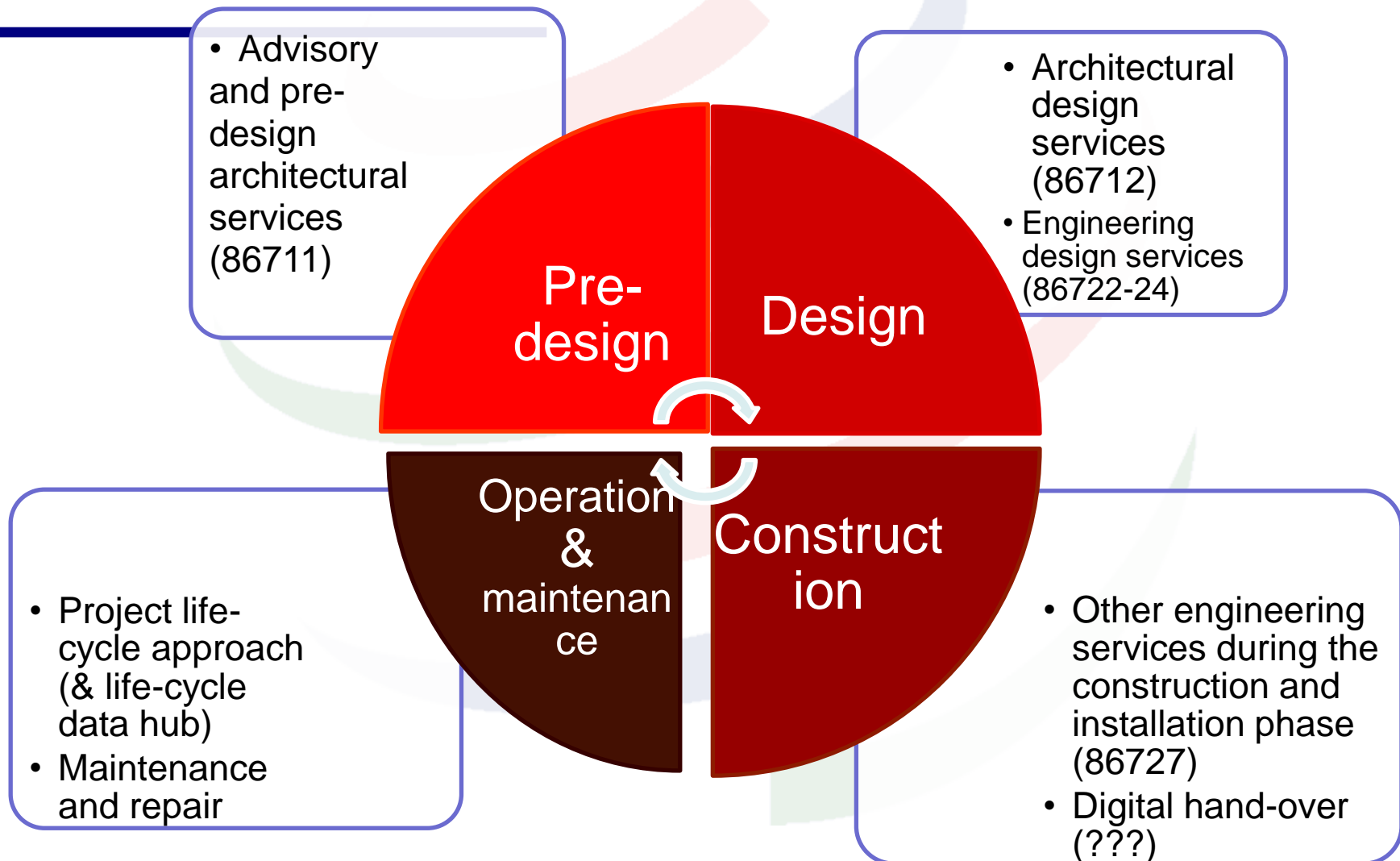
Problems with the W/120 sector description

- A number of services closely related to construction are classified elsewhere in W/120, under professional services: engineering and integrated engineering services, but also **architectural services**, urban planning and landscape architectural services:

8671	Architectural services	
86711	Advisory and pre-design architectural services	7421
86712	Architectural design services	7421
86713	Contract administration services	7421
86714	Combined architectural design and contract administration services	7421
86719	Other architectural services	7421

- W/120 and CPC provisional do not explicitly cover services provided by surveyors and topographical engineers.

From concept to completion and beyond: need for a cluster or checklist?



3. How are construction services supplied? Four modes of supply

3. GATS' four modes of supply



Mode	Presence of supplier	Form of Delivery	Examples
1. Cross border supply	No	From abroad into the territory of the Member	Telecommunications, mail, services incorporated in goods
2. Consumption abroad		Delivery outside the territory of the Member	Movement of consumer or property abroad (e.g. tourism, ship repair)
3. Commercial presence	Yes	Through local establishment of legal entities	Corporations, joint ventures, representative offices, etc.
4. Presence of natural persons		Through physical presence of natural persons	Consultants, doctors, lawyers, interpreters, etc. (including employees)



3. How are construction services supplied?



Mode 3



Mode 4



Mode 1: Pre-design and design phases; digital hand-over; 5D & visualization; life-cycle data hub

3. How are construction services supplied? **Mode 3**

- Construction sector globally subject to heavy domestic regulation.
- Need to deal with national, sub-federal and local regulations: land use/zoning; building permits; technical, qualifications and registration requirements; environmental, safety, health and hygiene laws; etc.
- Consequently, contractors engaging in international trade generally establish **some type of commercial presence** in the host country (subsidiary, branch, joint-venture, representative office, ...)

⇒ **GATS defines commercial presence as “any type of business or professional establishment “ (GATS XXVIII (d))**

3. How are construction services supplied? Mode 3

Figure 1: Types of Market Entry ('Entry Modes') in International Construction according to Chen

Number	Entry Modes
1	Strategic alliance <ul style="list-style-type: none"> [Vertical alliance [Horizontal alliance [Local partner [Home partner [International partner
2	Build-Operate-Transfer/equity project
3	Joint venture project <ul style="list-style-type: none"> [Integrated [Nonintegrated
4	Representative office
5	Licensing <ul style="list-style-type: none"> [Long term [Project based
6	Local agent <ul style="list-style-type: none"> [Long term [Project based
7	Joint venture company <ul style="list-style-type: none"> [Major [Equal [Minor [New establishment [Mergers & acquisitions
8	Sole venture company <ul style="list-style-type: none"> [New establishment [Mergers & acquisitions
9	Branch office/company
10	Sole venture project

3. How are construction services supplied? Mode 4

1. Natural persons who are service suppliers of a Member

- Independent professionals (self-employed mason, plumber, ...)



2. Natural persons of a Member who are employed by a service supplier of a Member in the territory of any other Member

- Intra-Corporate Transferees
- Contractual service suppliers
- Business visitors



Is he highly or low to medium-skilled?



<http://>



4. Importance of government procurement

5. Importance of government procurement (1)

- Government procurement = important driver of demand for construction services, estimated to generate up to 50% of it.
- Often a (foreign) service supplier's largest contract is with government entities. If he is excluded from these contracts, due to restrictions in the procurement process, this could affect his commercial viability.
- Procurement practices have a significant impact on international trade in construction services. Yet, the GATS explicitly **exempts** laws, regulations or requirements governing government procurement from the application of Articles II, XVI and XVII.

5. Importance of government procurement (2)

GATS Article XIII:1

“Articles II, XVI and XVII shall **not** apply to laws, regulations or requirements governing the procurement by governmental agencies of services **purchased for governmental purposes and not with a view to commercial resale** or with a view to use in the supply of services for commercial sale.”

- Private-Public-Partnerships (PPP)? Build-Operate-Transfer (BOT)? Concessions? Are they a form of government procurement or not?



5. Topics for further reflection

5. Topics for further reflection (1)

A. Sector description

- Commitments on “construction and related engineering services” in isolation, or need for a **cluster / checklist?**
- What about engineering and architectural services?
- How to account for project life-cycle approach?

B. Mode 3 is the most important mode.

- **Freedom of commercial presence** (including project-based, short term presence)? Or requirement to incorporate locally as a particular type of legal entity, to have a local partner? Economic needs test? Mandatory subcontracting?
- Investment restrictions? Nationality requirements?
- Public utilities: exclusive rights for the construction, maintenance and management of key infrastructures (such as harbours, highways, airports)?
- Government procurement and concession regimes?

5. Topics for further reflection (2)

C. Mode 4

- Range of skill levels needed ...
- ... but GATS schedules display marked bias towards persons linked to commercial presence (ICTs) and highly skilled (executives, managers, highly-educated specialists).
- Lower-skilled persons generally absent from commitments.

D. Mode 1

- Roughly half of the schedules consider mode 1 as technically unfeasible for physical construction (Unbound^{*}).
- What about pre-design and design phase, advisory services, digital handover, 5D and visualization?
- Offshoring design to lower-cost developing countries?

Thank you

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