

Construction and related engineering services

Session 4: Negotiations in the GATS – Issues and debates

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1. Leading exporters and importers of construction services

Leading exporters of construction services, 2011 and 2012

	Value		Share in 10 economies
	2011	2012	2011
Exporters			
European Union (27)	45,312	41,322	45.8
Extra-EU (27) exports	26,727	24,846	27.0
Korea, Republic of	15,478	21,905	15.7
China	14,724	12,246	14.9
Japan	10,955	11,552	11.1
Russian Federation	4,408	4,751	4.5
United States	3,084	...	3.1
Singapore	1,543	1,681	1.6
Turkey	1,245	1,343	1.3
Malaysia	1,103	1,311	1.1
Israel	1,004	1,332	1.0
Above 10	98,855	...	100.0
Africa	1,773	1,850	
SADC (Southern African Development Community)	257	277	

Source: WTO

Leading importers of construction services, 2011 and 2012

	Value		Share in 10 economies
	2011	2012	2011
Importers			
European Union (27)	30854	29985	45.0
Extra-EU (27) imports	11459	11300	16.7
Angola	7932	...	11.6
Japan	7702	7735	11.2
Russian Federation	5600	7424	8.2
Korea, Republic of	3795	5153	5.5
China	3728	3619	5.4
Saudi Arabia, Kingdom of	2578	2729	3.8
United States	2412	...	3.5
Algeria	1988	...	2.9
Kazakhstan	1900	2757	2.8
Above 10	68490	...	100.0
Africa			
SADC (Southern African Development Community)	
Angola	7932	...	
Mozambique	255	827	

Source: WTO

RANK 2013	RANK 2012	FIRM	2012 REVENUE \$ MIL.		INT'L CONTRACTS \$ MIL
			INT'L	TOTAL	
1	2	GRUPO ACS , Madrid, Spain†	42,772.0	50,654.6	43,658.8
2	1	HOCHTIEF AG , Essen, Germany†	34,563.3	36,452.7	37,673.0
3	5	BECHTEL , San Francisco, Calif., U.S.A.†	23,255.0	29,436.0	12,926.0
4	3	VINCI , Rueil-Malmaison, France†	18,419.5	50,338.7	18,854.3
5	7	FLUOR CORP. , Irving, Texas, U.S.A.†	17,209.6	22,352.8	20,600.0
6	4	STRABAG SE , Vienna, Austria†	16,062.0	18,557.0	15,271.0
7	8	BOUYGUES , Paris, France†	14,196.0	33,885.0	14,538.0
8	6	SAIPEM , San Donato Milanese, Italy†	13,770.7	14,039.1	NA
9	9	SKANSKA AB , Solna, Sweden†	13,291.6	17,217.0	14,006.3
10	10	CHINA COMMUNICATIONS CONSTRUCTION GROUP LTD. , Beijing, China†	11,187.2	47,327.3	20,310.8
11	11	TECHNIP , Paris, France†	10,347.0	10,547.0	14,802.0
12	13	CONSTRUTORA NORBERTO ODEBRECHT , Sao Paulo, SP, Brazil†	9,264.8	14,922.1	16,036.0
13	15	SAMSUNG ENGINEERING CO. LTD. , Seoul, S. Korea†	8,651.9	10,680.8	9,237.4
14	12	FCC, FOMENTO DE CONSTR. Y CONTRATAS SA , Madrid, Spain†	8,354.5	14,869.6	8,504.2
15	25	HYUNDAI ENGINEERING & CONSTRUCTION CO. LTD. , Seoul, S. Korea	7,814.0	12,535.1	15,725.3
16	14	BILFINGER SE , Mannheim, Germany	6,818.9	11,101.3	6,450.5
17	16	BALFOUR BEATTY PLC , London, U.K.†	6,047.7	13,277.0	5,388.3
18	20	PETROFAC LTD. , Jersey, Channel Islands, U.K.†	5,684.8	5,684.8	7,367.3
19	19	ROYAL BAM GROUP NV , Bunnik, The Netherlands†	5,557.0	9,785.0	5,911.0
20	23	SINOHYDRO GROUP LTD. , Beijing, China†	5,473.1	20,120.1	12,299.4

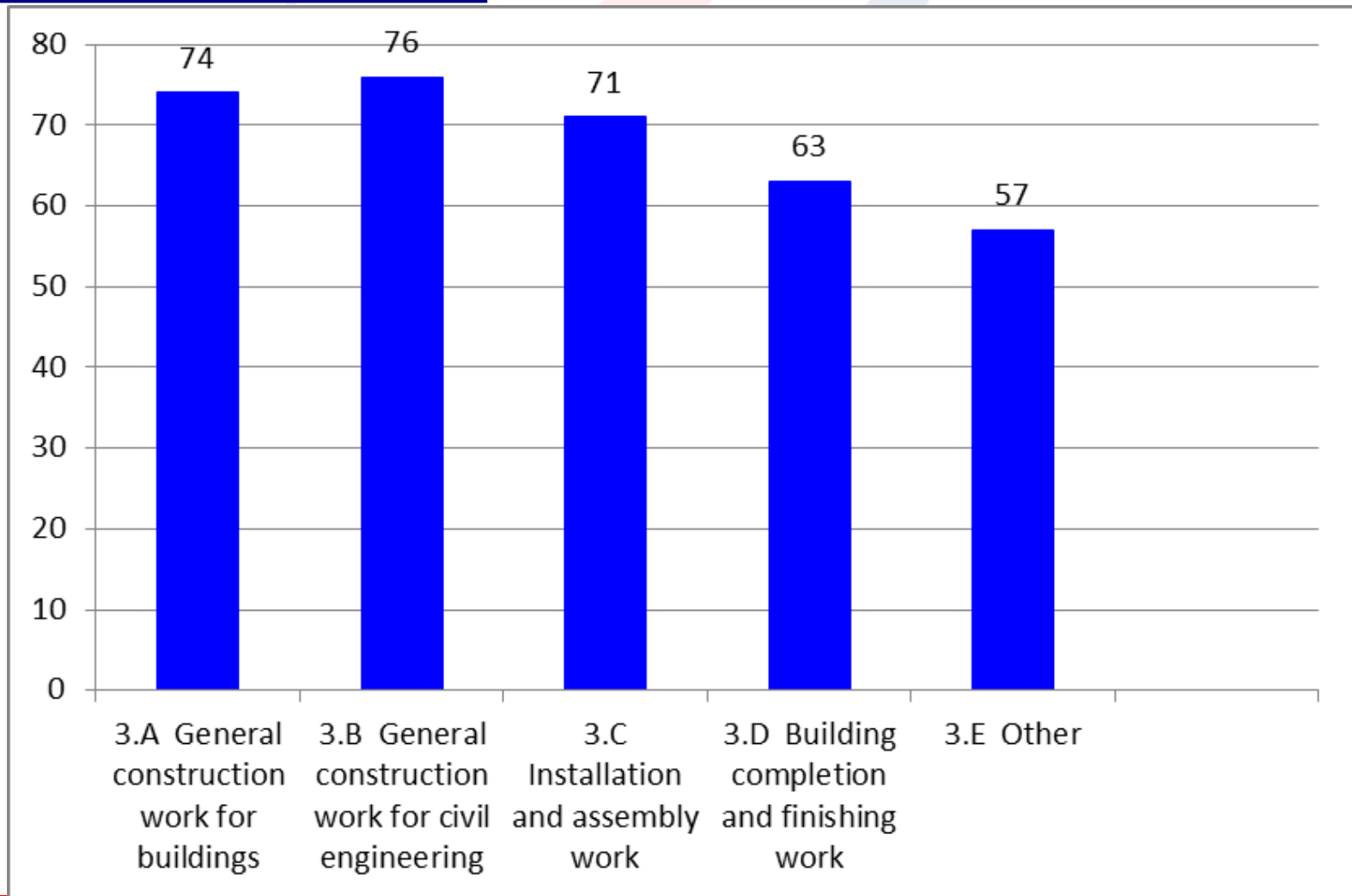
Source: Engineering News-Record (ENR.com)

RANK 2013	RANK 2012	FIRM	FIRM TYPE	2012 INT'L REVENUE	
				IN \$ MIL	% OF TOTAL REV.
1	3	WORLEYPARSONS LTD. , North Sydney, NSW, Australia†	EC	4,995.9	77
2	1	FLUOR CORP. , Irving, Texas, U.S.A.†	EC	3,757.8	83
3	2	FUGRO NV , Leidschendam, The Netherlands†	GE	3,579.0	95
4	4	AECOM TECHNOLOGY CORP. , Los Angeles, Calif., U.S.A.†	EA	3,549.8	49
5	6	ARCADIS NV , Amsterdam, The Netherlands†	E	2,869.0	88
6	7	AMEC PLC , London, U.K.†	E	2,670.3	55
7	5	JACOBS , Pasadena, Calif., U.S.A.	AEC	2,229.8	45
8	9	SNC-LAVALIN INC. , Montreal, Quebec, Canada†	EC	2,062.7	51
9	11	BECHTEL , San Francisco, Calif., U.S.A.†	EC	1,934.0	67
10	10	DAR AL-HANDASAH CONSULTANTS (SHAIR AND PARTNERS) , Cairo, Egypt †	EA	1,816.7	100
11	8	KBR , Houston, Texas, U.S.A.†	EC	1,464.0	79
12	12	CH2M HILL , Englewood, Colo., U.S.A.†	EAC	1,455.5	41
13	13	URS CORP. , San Francisco, Calif., U.S.A.†	EAC	1,364.7	24
14	20	TECHNIP , Paris, France†	EC	1,273.0	98
15	14	MOTT MACDONALD , Croydon, Surrey, U.K.†	E	1,270.8	71
16	**	WSP+GENIVAR , Montreal, Quebec, Canada†	E	1,258.3	64
17	19	HATCH GROUP , Mississauga, Ontario, Canada†	EC	1,250.5	61
18	15	TECNICAS REUNIDAS , Madrid, Spain†	EC	1,160.1	89
19	17	ARUP GROUP LTD. , London, U.K.†	E	1,088.5	73
20	18	AURECON , Singapore	E	1,063.8	100

Source: Engineering News-Record (ENR.com)

2. Overview of GATS commitments and MFN exemptions

Out of 159 Members, 97 (EU=28) have made commitments in at least one of the five CES sub-sectors (61 per cent)



MFN exemptions

- Only 2 Members have taken an MFN exemption **specific** to construction: Indonesia and Liechtenstein.
- Purpose: provide preferential treatment to certain suppliers.
- Horizontal MFN exemptions on movement of personnel, R&D subsidies or foreign investment may significantly affect construction sector.

MFN EXEMPTIONS : INDONESIA - 3 CONSTRUCTION AND RELATED ENGINEERING SERVICES

Sector / Sub-sector	Description of the measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Construction Services (government funded projects)	Measures relating to preferential shortlisting in international competitive bidding	Nationals of Brunei Darussalam, Malaysia, The Philippines, Singapore and Thailand have been granted special treatment	These measures shall be maintained as long as the treaties of Asean remain in force	The implementation of a preferential shortlisting scheme for Asean contractors enhances the advancement of civil works, industrial construction and the economic development of the Asean region

MFN EXEMPTIONS : LIECHTENSTEIN - 3 CONSTRUCTION AND RELATED ENGINEERING SERVICES

Sector / Sub-sector	Description of the measure indicating its inconsistency with Article II	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Construction and related Engineering	The right of commercial presence and the right of presence of natural persons is dependent on reciprocity for service providers from Liechtenstein	All countries	Indefinite	To ensure adequate market access to services providers from Liechtenstein

3. Market access and national treatment limitations: examples from GATS Schedules

Trade restrictions affecting the construction sector



Labour – Movement of natural persons

- Labour market tests, quotas, nationality/residency requirements, short term contracts not permitted; only highly-skilled “essential” personnel.
- Non-recognition of foreign qualifications, or overly burdensome/costly qualification requirements and procedures to achieve such recognition.



Movement of machinery and specialty equipment

- National technical specifications and standards not always in line with international ones.
- Import restrictions; no temporary importation procedures; goods imported on temporary basis not released from payment of import duties and taxes.



Capital

- Exclusive rights; limitations on type of commercial presence; foreign equity restrictions; restrictions on transfer of funds between projects or on profit repatriation.
- ENTs, local content requirements; compulsory subcontracting of a given amount of the contract value, high registration fees.

Structure of GATS schedules

Schedules specify the extent of liberalization a Member guarantees in listed sectors. They are based on a **positive-listing** approach :

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p style="text-align: center;">Art. XVI</p> <p style="text-align: center;">Prohibition to maintain six types of limitations</p> <p>1) 2) 3) 4)</p>	<p style="text-align: center;">Art. XVII</p> <p style="text-align: center;">Prohibition to discriminate between national and foreign services or service suppliers</p> <p>1) 2) 3) 4)</p>	<p style="text-align: center;">[optional]</p> <p style="text-align: center;">Art. XVIII</p> <p style="text-align: center;">Possibility of binding non-discriminatory measures not falling under Articles XVI or XVII</p>

Examples of measures restricting market access (MA), by mode (1/3)

Mode 3

- Limitations on foreign equity participation
- Measures requiring incorporation as a particular type of legal entity (e.g. JV) ⇒ hinder temporary, project-based presence
- Compulsory subcontract system (acts like a local content requirement)*
- Measures limiting access for foreign contractors to projects of a particular **size, value or type** (ex: CHINA) or to certain contract amounts (ex: KOREA)
- **Economic needs tests (ENTs):** e.g., only projects that cannot be handled by domestic contractors alone can be undertaken jointly with foreign suppliers (ex: CHINA)

* Sometimes applicable only in key infrastructural sectors

Examples of measures restricting market access (MA), by mode (2/3)



Mode 3

- Prior approval requirements by federal/local authorities (if discretionary ⇒ right to supply the service is uncertain)
- Exclusion of construction work related to mining (or other “sensitive” subsectors such as pipelines)
- **Public utilities** (power, water, sewer/waste) subject to concession regime or other forms of unspecified prior authorisation. Exclusive rights are granted for construction, maintenance and management of highways and the airport of Rome.
- [??? **Qualification rating systems** restricting the eligibility to bid to companies able to demonstrate given skills, financial and/or technical capacity and track record]
- [**Minimum capital outlay requirements***]

* **Minimum** requirements are normally **not** to be scheduled under MA.

Examples of measures restricting market access (MA), by mode (3/3)



Mode 4

- Restrictions on the entry and temporary stay of foreign natural persons: In the vast majority of Schedules, Mode 4 commitments are undertaken **horizontally**.
- **“Unbound except”**: Commitments apply only to those selected categories of natural persons that are explicitly mentioned under market access (most often executives, managers, specialists; ICTs, BVs, CSS, exceptionally IPs).

China (1/2)

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
<p>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES (CPC 511, 512, 513⁴, 514, 515, 516, 517, 518⁵)</p>	<p>(1) Unbound* (2) None (3) Only in the form of joint ventures, with foreign majority ownership permitted. Within three years after China's accession to the WTO, wholly foreign-owned enterprises will be permitted. Wholly foreign-owned enterprises can only undertake the following four types of construction projects.</p> <ol style="list-style-type: none"> 1. Construction projects wholly financed by foreign investment and/or grants. 2. Construction projects financed by loans of international financial institutions and awarded through international tendering according to the terms of loans. 3. Chinese-foreign jointly constructed projects with foreign investment equal to or more than 50 per cent; and Chinese-foreign jointly constructed projects with foreign investment less than 50 per cent but technically difficult to be implemented by Chinese construction enterprises alone. 	<p>(1) Unbound* (2) None (3) None except for the following:</p> <ol style="list-style-type: none"> (a) The existing registered capital requirements for joint venture construction enterprises are slightly different from those of the domestic enterprises. (b) Joint venture construction enterprises have the obligation to undertake foreign-invested construction projects. Within three years after China's accession to the WTO, none. 	

⁴ Including dredging services relating to infrastructure construction.

⁵ Coverage of CPC 518 is limited only to the rental and leasing services of construction and/or demolition machines with operator which are owned and used by foreign construction enterprises in their supply of services.

* Unbound due to lack of technical feasibility.

China (2/2)

Modes of supply: (1) Cross-border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitation on national treatment	Additional commitments
	<p>4. Chinese invested construction projects which are difficult to be implemented by Chinese construction enterprises alone can be jointly undertaken by Chinese and foreign construction enterprises with the approval of provincial government</p> <p>(4) Unbound except as indicated in <u>horizontal commitments</u>.</p>	<p>(4) Unbound except as indicated in <u>horizontal commitments</u>.</p>	

Republic of Korea (1/2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
3. CONSTRUCTION SERVICES			
A. <u>General Construction Work</u> (CPC 5111, 5112, 5113, 5115, 5116, 512, 5131, 5132, 5133, 5136*, 5137, 5139) ¹⁰	1) Unbound** except for CPC 5111 which is none. 2) None 3) Branches are not permitted. From January 1, 1996, branches will be <u>permitted</u> . New licenses are issued during a <u>specific period every year</u> . Limits on contract amount per <u>contract</u> are applied. A compulsory subcontract system is <u>applied</u> . 4) Unbound except as indicated in ALL SECTORS	1) Unbound** except for CPC 5111 which is <u>none</u> . 2) None 3) None 4) Unbound except as indicated in ALL SECTORS	

¹⁰ 5136: Excluding construction work of power plants under CPC 5136.

¹¹ 5136: Only construction work of power plants under CPC 5136

Republic of Korea (2/2)

Special Construction Work (CPC 5134, 5135, 5136*, 514, 515, 516, 517) ¹¹	<ul style="list-style-type: none"> 1) Unbound* 2) None 3) Only joint ventures with licensed local companies are permitted. 	<ul style="list-style-type: none"> 1) Unbound* 2) None 3) None 	
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Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
	<p>From January 1, 1996, 100% foreign ownership will be permitted. From January 1, 1998, branches will be permitted. New licenses are issued during a specific period every year. Limits on contract amount per contract are applied.</p> <p>4) Unbound except as indicated in ALL SECTORS</p>	<p>4) Unbound except as indicated in ALL SECTORS</p>	

¹⁰ 5136: Excluding construction work of power plants under CPC 5136.

¹¹ 5136: Only construction work of power plants under CPC 5136

Examples of measures restricting national treatment (NT), by mode



Mode 3

- Nationality or residency requirements for members of the board of directors (horizontal)
- Restrictions on ownership of land by **foreigners** (horizontal)
- **Discriminatory** subsidies and tax incentives – subsidies granted to local suppliers only (ex: Russia)
- **Foreign** construction firms subject to stricter certification or registration requirements
- Obligation to appoint a resident representative
- Technology transfer requirements for **foreign** suppliers only
- In case of cooperation with public-sector enterprises or government undertakings, preferences for access given to the **foreign** service suppliers offering the best terms for technology transfer, R&D programs, training of local staff, etc.

Examples of measures restricting national treatment (NT), by mode

Mode 3

- NT limitation requiring **foreign** construction companies to ensure that [X%] of their workforce are host country nationals of the host country (ex: TAJIKISTAN).

Tajikistan

(acceded March 2013)



WTO OMC

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
A. General construction works for buildings (CPC 512)	(1) None. (2) None. (3) None, except the following:	(1) None. (2) None. (3) No less than 80% of the labour force (i.e. workers other than executives, managers and specialists, as defined in the horizontal section of this schedule) in construction projects must consist of citizens of the Republic of Tajikistan.	
B. General construction works for civil engineering (CPC 513)	- commercial presence is allowed only in the form of a juridical person of the Republic of Tajikistan.		
C. Installation and assembly work (CPC 514+516)	- After 5 years of the date of the accession: None, except as indicated in the horizontal section.		
D. Building completion and finishing work (CPC 517)	(4) Unbound, except as indicated in the horizontal section.	(4) Unbound, except as indicated in the horizontal section.	
E. Other (CPC 511 ¹⁰ +515+518)			

¹⁰ For the purposes of transparency: this code includes CPC 5115 ("Site preparation work for mining").

Russian Federation

(acceded August 2012)

3. CONSTRUCTION AND RELATED ENGINEERING SERVICES			
A. General construction work for buildings (CPC 512)	(1) None. (2) None. (3) None.	(1) None. (2) None. (3) None, except the following:	
B. General construction work for civil engineering (CPC 513, including dredging)		- unbound with respect to subsidies and other forms of State support related to construction and civil engineering services for buildings and objects of national identity and/or buildings and objects of cultural heritage specified in official registries.	
C. Installation and assembly work (CPC 514, 516)			
D. Building completion and finishing work (CPC 517)			
E. Other (CPC 511 ²⁰ , 515, 518)	(4) Unbound except as indicated in Part I "Horizontal commitments".	(4) Unbound except as indicated in Part I "Horizontal commitments".	

²⁰ For the purposes of transparency: this code includes CPC 5115 ("Site preparation work for mining").

South Africa (1/2)

<p>3. CONSTRUCTION AND RELATED ENGINEERING SERVICES</p>		
<p>A. <u>General Construction Work for Buildings</u> (CPC 512)</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>
<p>B. <u>General Construction Work for Civil Engineering</u> (CPC 513)</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>
<p>C. <u>Installation and Assembly Work</u> (CPC 514 +) (CPC 516)</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>	<p>1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section</p>

South Africa (2/2)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Sub-sector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
D. <u>Building Completion and Finishing Work</u> (CPC 517)	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) Unbound* 2) None 3) None 4) Unbound except as indicated in the horizontal section	

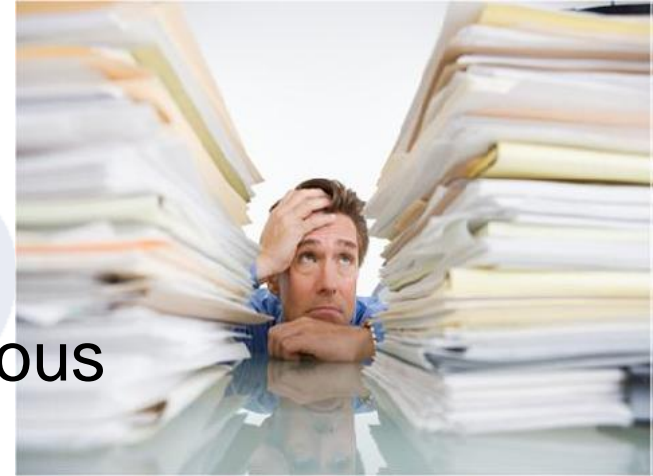
Malawi and Zambia

Modes of supply: 1) Cross-border 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
h) Services incidental to mining, exploration (883 + 5115)	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound except as indicated in the horizontal section	

4. Regulatory issues (domestic regulation)

Regulatory issues (1/2)



Construction sector affected by numerous domestic regulations at national/local/municipal level, including:

- Controls on land use, zoning, urban planning, building regulations, building permits;
- Health, safety and environmental regulations and impact assessments, indoor environmental quality, energy efficiency;
- Technical requirements on structures, building material, etc.;
- Registration of proprietors, contractors and workers, on-site inspections, regulation of fees and remunerations; etc.

Regulatory issues (2/2)



Especially for more complex projects, contractors have to comply with:

- ✓ **Pre-qualification standards:** qualification rating systems regarding financial and technical capacity and track record (often no consideration of references obtained abroad);
- ✓ Guarantee systems, capital and asset requirements, bank guarantees, insurance bonds;
- ✓ Bidding qualifications and procedures;
- ✓ Priority awards for contractors with pre-existing relationship

MA, NT or domestic regulation?



Foreign equity limitation



Environmental licence



Foreign companies have to make a deposit to obtain construction permit



Only locally-accredited engineers may authorize construction plans



Pre-qualification standards for eligibility to participate in bids

Domestic Regulation (Art.VI)



In sectors in which a specific commitment has been made: WTO OMC



VI:1 All measures of general application must be administered in a reasonable, objective and impartial manner

VI:3 Applications for supplying a service must be considered within a reasonable period of time

VI:6 Procedures must be established to verify the competence of professionals (professional services only)



5. Collective request, February 2006

5. Collective request (1/2)

- Following Hong-Kong Ministerial
- On behalf of Australia, Canada, Chinese Taipei, EU, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Singapore, Turkey and United States
- Most relevant sub-sectors for international trade: CPC 512 and 513. Link with other related services, notably engineering, architectural and integrated engineering services.
- Mode 2: full commitment on MA/NT (least contentious)

5. Collective request (2/2)

Mode 3:

- Eliminate foreign equity limitations (MA), restrictions on type of legal entity as well as JV and joint operation requirements (MA/NT).
- Eliminate **discriminatory** registration requirements and licensing procedures (NT).
- Abolish restrictions on types and allowed size of projects (measures limiting access to projects of a particular size or value) undertaken by foreign contractors (MA/NT)
- Eliminate burdensome asset requirements.



6. Possible negotiating issues

6. Possible negotiating issues (1/2)

A. General points

- ◆ Ensure that commitments encompass all stages of construction process
- ◆ Government procurement currently exempted from main GATS disciplines, namely MFN, MA and NT

B. Market access

- ⊕ Eliminate measures requiring local incorporation as a particular type of legal entity, foreign investment limitations and restricted access to local utilities
- ⊕ Principle of freedom of commercial presence
- ⊕ Facilitate movement of natural persons

C. National treatment

- ⊕ Eliminate discriminatory measures against foreign suppliers in mode 3

6. Possible negotiating issues (2/2)

C. Regulatory issues

- ⓐ Discretion and excessively long delays to obtain a licence.
- ⓐ Onerous guarantee systems through performance bonds.
- ⓐ Excessive (pre-) qualification requirements in bidding process.
- ⓐ Collusion among domestic contractors to keep foreign suppliers out (competition)
- ⓐ **Transparency** of domestic regulatory framework: obligation to make publicly available national, local and municipal laws and regulations affecting CES?
- ⓐ **Necessity test** for licensing procedures and requirements applying to construction firms and sub-contractors?
- ⓐ Need for disciplines on **trade-distortive subsidies**? Need for disciplines for State-owned enterprises, tied-aid, soft credits?

Thank you

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