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Expert Meeting on National Experiences with
Regulation and Liberalization: Examples in the
Construction Services Sector and Its Contribution
to the Development of Developing Countries
Geneva, 23-25 October 2000
Agenda item 3

**NATIONAL EXPERIENCES WITH REGULATION AND LIBERALIZATION:
EXAMPLES IN THE CONSTRUCTION SERVICES SECTOR
AND ITS CONTRIBUTION TO THE DEVELOPMENT
OF DEVELOPING COUNTRIES**

Outcome of the Expert Meeting

1. The Expert Meeting on National Experiences with Regulation and Liberalization: Examples in the Construction Services Sector and Its Contribution to the Development of Developing Countries was held in Geneva from 23 to 25 October 2000 upon the decision of member States taken at the consultations of the President of the Trade and Development Board on 31 March 2000 in accordance with paragraph 134 of UNCTAD X's Plan of Action as contained in document TD/386. The following is the outcome of the Expert Meeting. In accordance with the Trade and Development Board's decision taken at its twenty-fourth executive session, the outcome will be circulated by the secretariat to member States with a request for policy comments on the experts' recommendations. The responses of member States will be taken into account in the preparation of the secretariat documentation for the first session of the Commission on Trade in Goods and Services, and Commodities, to be held from 26 February to 2 March 2001.

2. Individual experts put forward their views on how Governments of developing countries could play an active role at national level and in multilateral negotiations in order to promote development of their construction services sector. The following text summarizes their suggestions. It is intended to reflect the richness and diversity of the views expressed.

A. Domestic policy instruments and strategies aimed at building domestic capacities in the construction services sector

3. The construction services sector in developing countries is a fundamental economic activity which permeates all sectors of the economy. It is an instrument for employment creation, a key infrastructure service and a tool for upgrading welfare. It consists of two subsectors: architectural and engineering design services and physical construction services. This sector has a major role to play in achieving social and economic development objectives in developing countries; local firms and professionals should be fully involved in this process.

4. The development of a strong domestic construction services sector should be supported by instruments of industrial policy, human resource development and macroeconomic policies, and by removing unnecessary bureaucratic obstacles internally. Adequate funding for research and development is an essential component of such policies. Countries should ensure that macroeconomic policies, particularly fiscal policies, avoid onerous internal taxation of construction firms and high tariffs on essential equipment. The right policy mix can be achieved only if dialogue is maintained between all stakeholders in the private and public sectors of the economy.

5. One element of policy is to stimulate the growth of domestic architectural, engineering, design and construction firms, as well as their technological capabilities, by improving their competitive position and ensuring their effective participation in construction linked to social programmes, e.g. housing, energy, industrial and infrastructure projects. Local companies need to follow a “learn by doing” approach. Once they have accumulated expertise and strengthened their competitiveness, these may be translated into export capacity. The development of the project management and design subsectors can provide a lead into foreign markets.

6. Another element is to seek to upgrade capacity through the establishment of local and regional professional associations and create a mechanism for the effective recognition of qualifications for professionals and firms, where they do not exist, based on progressive implementation of international standards. The policies and legislation to upgrade the capacity of the construction services sector should include provisions to encourage the transfer of technology to domestic firms through joint ventures and other forms of partnership with foreign firms, and various other forms of performance requirements, which are consistent with multilateral disciplines. Transnational firms from developed countries should be encouraged to enter into such partnerships.

7. Human resource development should be targeted at the training of highly skilled professionals, as well as other workers, in order to fulfil the requirements of the sector, with emphasis on the use of information technology. The private sector may contribute to training and upgrading of skills which are in short supply domestically and for which training is not provided in the established educational institutions. National and international measures are needed to discourage “brain drain”.

8. All countries should establish appropriate institutional and legal frameworks to effectively monitor and regulate the construction services sector. Such frameworks should provide for transparency and effective recourse against anti-competitive practices, as well as providing an effective arbitration mechanism for settling disputes. The construction services sector can be used to generate indirect benefits, such as addressing rural poverty and opportunities for women.

9. The export capacity of developing countries requires the support of export promotion policies. These could include export financing aimed at the specific needs of the construction services sector, for example the financing of pre-investment services, as well as active participation in international negotiations aimed at the reduction and elimination of barriers.

10. National Governments should take the lead in building the capacity of the architectural and engineering and construction services, and should seek technical assistance from the international financial institutions and other international organizations geared towards those objectives.

B. Action in international trade negotiations

11. In participating in multilateral trade negotiations, developing countries should identify areas of trade liberalization according to their economic and social development goals.

Negotiations should take into account the level of development of the developing countries, and special treatment should be accorded to the least developed countries in order to take account of the asymmetries due to the size of their markets, structural weaknesses of those markets and human capacities.

12. In the negotiations under the General Agreement on Trade in Services (GATS) countries should aim at effective implementation of Article IV of the GATS as it applies to the construction services sector. This article stresses that the increasing participation of developing countries in trade shall be facilitated through negotiating specific commitments which will: (i) strengthen the domestic capacity of their domestic service suppliers through access to technology on a commercial basis; (ii) improve their access to distribution channels and information networks; and (iii) liberalize market access in sectors and modes of supply of export interest to them. This provides the framework for developing countries to acquire knowledge and transfer of technology as a way to develop domestic capacities in the construction services sector. Any consideration of specific classifications or methodologies to be used as tools or aids for negotiations should ensure that the architecture of the GATS is not modified and should have as its objective the effective implementation of Article IV in the construction services sector.

13. The GATS negotiations should also address measures which impede the ability of developing country firms to compete in their own markets or those of other countries, including subsidies, tied aid, discriminatory qualification requirements and anti-competitive practices.

14. Developing country Governments should identify in a precise manner the need for new rules and the main trade barriers affecting their trade in the construction services sector, so as to seek their removal in the GATS negotiations, particularly those which impede the ability of their firms to penetrate developed countries' markets. These include restrictions on the temporary movement of personnel, discriminatory and non-transparent licensing and standards, non-recognition of professional qualifications, problems of access to networks for the supply of construction services, discriminatory government procurement practices against developing

countries' construction services providers, subsidies and discriminatory tax policies. In all cases developing countries should define how the disciplines applicable to these restrictions will preserve special and most favourable treatment.

15. It was suggested that an Annex on Construction Services could be prepared in order to overcome the slow progress in the various subsidiary bodies of the WTO Council for Trade in Services working on additional disciplines for trade in services. The annex could consider the various subsectors of construction services, and could cover specific provisions of relevance to construction that would ensure compliance with Articles IV and XIX of the GATS in the areas listed in paragraph 14 above.

16. To implement effectively development objectives in the construction services sector, developing countries should make use of performance requirements which are GATS-consistent. In that respect, they may use local content requirement related to services, as well as requirements of associations and joint ventures, so as to include local companies in the design and implementation of construction projects, and should ensure that any commitments or rules that they accept permit the policy flexibility needed.

17. Developing countries should bear in mind that Article XIX of the GATS enables developing countries to seek commitments in the construction services sector, without symmetrical opening of their own country markets, as they are permitted to open fewer sectors and may offer reciprocal commitments or concessions in other sectors. Under this article, the process of liberalization must take into account national policy objectives and the level of development of developing countries, while market opening should correspond to the development situation in each market.

18. Trade among developing countries should be promoted in the construction services sector, including trade in related equipment, materials and the movement of qualified personnel. Preferential treatment within the framework of subregional agreements among developing countries can provide opportunities for developing country construction services firms, including through harmonized legislation.

19. Progressive trade liberalization may be promoted in those subsectors that contribute most to the development and achievement of social objectives, as in the case of housing.

20. The minimum requirement for the qualification of architects and engineers adopted by the International Union of Architects and other international professional associations and bodies may serve to promote work in the WTO in the area of mutual recognition of qualifications.

21. Efforts should be made to achieve mutual recognition of diplomas and curricula, especially between developed countries on the one hand and developing countries on the other, insofar as this is a precondition for developing country professionals to provide their services abroad. These goals can be easier to achieve in the framework of regional groupings. Mutual recognition of qualifications should not be limited to professionals but also include skilled personnel.

C. Action by international financial agencies and donors

22. International funding agencies should take positive measures to actively promote the participation of developing country firms in the design and execution of construction projects. Therefore, they should not impose requirements that developing country firms are by and large unable to meet.

23. Multilateral financial institutions and donor countries should support domestic policies aimed at developing national capacities, including through associations of firms, and provide all the required incentives through specific programmes related to the transfer of technology.

24. Transparency in bidding regulations should be implemented for multilaterally financed projects. Procedures should be put in place to ensure that the preferences and other conditions contained in the guidelines of financial institutions favouring domestic suppliers are made public and are applied in the recipient countries.

25. Flexibility in the rules of the multilateral financial institutions allowing non-mandatory performance requirements should be implemented effectively, particularly the introduction of evaluation criteria in international tendering which would favour a commitment to transfer of technology and voluntary association agreements between foreign and domestic firms in developing countries aimed at promoting learning-by-doing processes.

26. Harmonization of rules for procurement in order to enhance transparency and fairness in bidding procedures should take into account multilateral trade rules and specifically the outcome of negotiations on government procurement mandated under Article XIII of the GATS. Such harmonized rules should not affect the definition of national policies aimed at the development of various sectors.

D. Recommendations to UNCTAD

27. This Expert Meeting has been the first of its kind at the international level to focus on the needs of developing countries in the construction services sector. Both public and private actors working in the area of construction services have felt for years a need to address issues specific to construction services in a comprehensive manner, but no international organization has done this so far. A number of new issues which have also arisen in the area of international trade have a direct or potential impact on the evolution of the construction services sector at the national level, but awareness of them has been non-existent or minimal in most of the developing countries and also in some developed countries.

28. UNCTAD should promote the continuation of dialogue and awareness building in collaboration with other international and regional organizations and bodies in the area of construction services. In particular, a model law for promoting the development of an efficient and competitive construction services sector might be needed. UNCTAD should work with the United Nations Commission on International Trade Law (UNCITRAL) to assess the feasibility of drafting such a law. UNCTAD should also endeavour to include legislation and regulations affecting trade in construction services in its Measures Affecting Service Trade (MAST) information database.

29. UNCTAD should continue playing a role in supporting the participation of the developing countries in the area of multilateral trade negotiations by better defining available options in those negotiations and identifying barriers to trade in the construction services sector and possible conditionalities in order to enhance internal regulations and their effectiveness in achieving national policy objectives.

30. UNCTAD should organize a follow-up meeting in the area of construction services so that countries would have a forum for addressing their problems, exchanging new ideas and assessing how successful they were in addressing problems identified in previous meetings at national, regional and multilateral levels.

31. UNCTAD should organize workshops and seminars at the regional and national levels for the purpose of promoting contacts among policy makers, the private sector and trade negotiators. These meetings should involve representatives from the construction services sector. Professional associations and bodies in developing countries should also become involved in the UNCTAD programmes aimed at capacity building in services.