

**MULTILATERAL TRADE  
NEGOTIATIONS  
THE URUGUAY ROUND**

RESTRICTED

MTN.GNS/CON/3  
30 November 1990

Special Distribution

---

Group of Negotiations on Services

WORKING GROUP ON CONSTRUCTION AND ENGINEERING SERVICES

Note on the Meeting of 10-11 October 1990

1. The Chairman welcomed delegations to the third meeting of the working group on construction and engineering services (CES) and drew their attention to the proposed agenda circulated on 9 October 1990. Following an introduction by a representative of the secretariat of the draft multilateral framework, he asked the representatives of the European Communities and of Korea to introduce their submissions in documents MTN.GNS/CON/W/1 and MTN.GNS/CON/W/2.

2. In introducing MTN.GNS/CON/W/1, the representative of the European Communities said that in order for market access commitments in the CES area to be meaningful, there should be an understanding that access granted for activities in one area of the CES sector (e.g. construction) should also imply access for activities in another area of the sector (e.g. engineering). Along the same lines, the cross-border movement of machinery, plant, tools and the supplementary means for the completion of a particular work should also be permitted when such movement related to the provision of CES. Annotations in this respect would facilitate market access and could relate to temporary importation procedures. The reference in the proposal to domestic regulation concerned the linkage between the movement of essential personnel and social laws and regulations in this sector. The proposal also contained provisions on transparency and standards.

3. The representative of Korea said that MTN.GNS/CON/W/2 was based largely on a previous informal paper circulated by his delegation and constituted an attempt to address specificities of the CES sector which had not been adequately addressed in the draft framework text. He drew attention to the definition of CES contained in paragraph 2 of Article I of the communication and to Article II concerning the movement of capital. According to Article III on the movement of equipments and materials, parties should refund upon completion of specific projects tariffs levied on construction equipments and materials at the time of importation. He stressed that the movement of labour was foreseen under Article IV to include semi- and highly-skilled personnel. Article V provided for the application of m.f.n. and national treatment to government procurement in public construction projects. Government procurement in CES constituted an important specificity in the sector, the government being the greatest consumer of CES. Article VI placed emphasis on bidding procedures and standards for selection which exemplified the great difficulties involved in obtaining effective market access in the CES sector.

4. The representative of Brazil said that the CES sector might require, even if on an illustrative basis, some indication of the scope of activities to be covered by the framework and/or annotations. His delegation had great difficulties accepting annotations such as paragraph 2 of Article I of MTN.GNS/CON/W/2 which in effect modified the very structure of the framework. He also opposed any linkage being established between the movement of equipment and/or materials and the provision of a service. Services trade should remain separate from goods trade for the purposes of the framework agreement and its annexes. There was no overriding need for dealing with the issue of labour mobility through an annex on CES since this issue was horizontal in nature and should therefore be dealt with under the framework. He supported the proposal for an annotation on government procurement since without the application of m.f.n. and national treatment to CES no meaningful liberalization would occur in this sector. On the communication by the European Communities, MTN.GNS/CON/W/1, he noted that the issue of standards did not warrant any elaboration in an annex on CES since it also constituted a horizontal issue to be dealt with in the framework itself.

5. The representative of Mexico requested clarification from the EC and Korean delegations regarding the scope of CES activities to be covered by the framework and/or annex. He agreed with the representative of Brazil that the movement of equipment constituted goods trade and should remain outside the scope of the agreement. The issue of domestic regulation should be treated horizontally. Regarding MTN.GNS/CON/W/2, he agreed with the ample coverage proposed for the movement of labour and suggested that Article VI on market access be complemented by adding language regarding the access to distribution channels and information networks. He agreed that government procurement was of great significance to trade in this sector but would prefer to await the result of further deliberations on this horizontal issue in the GNS at large.

6. The representative of Yugoslavia supported the provision on scope and definition appearing in both MTN.GNS/CON/W/1 and MTN.GNS/CON/W/2. His delegation was in favour of the inclusion in an annex of an illustrative list of CES activities covered by the agreement. He said that the approach set out under market access in MTN.GNS/CON/W/1 might in effect curtail a country's ability to liberalize only a part of the CES sector. The movement of equipment would pose problems for countries which did not recognize temporary importation. He favoured an annotation on the facilitation of the movement of CES-related labour since one could not predict the outcome of the deliberations of the working group on labour mobility. In that context, the practice of sub-contracting from the most economically-advantageous source should also be recognized in an annex on CES. He agreed with the proposal that an annotation stipulating the application of m.f.n. and national treatment to government procurement was necessary for the CES sector.

7. The representative of Austria said that most of the issues addressed in the proposed annexes were of a horizontal nature. She agreed with others that the group should be clear as to the scope of activities covered

by the agreement (e.g. consultancy, engineering). The public function aspect of CES activities should not fall under the scope of the framework or its annexes. On MTN.GNS/CON/W/1, she agreed with others that the issue of labour mobility should be dealt with horizontally under the framework. On MTN.GNS/CON/W/2, she noted that government procurement constituted a horizontal issue which was the object of negotiations under the Code on Government Procurement.

8. The representative of Poland agreed that related engineering and consultancy activities should be covered by an annex on CES. He appreciated the attempt embodied in MTN.GNS/CON/W/2 to cover private practices. Both proposals gave credence to the argument that CES were often provided as a package involving the movement of capital, labour and equipment. He suggested that an annotation on labour mobility might be necessary in an annex on CES in order to ensure that the movement of essential personnel for the execution of specific projects be facilitated. Such an annotation might state that the movement of personnel should be limited to the duration of a project. The issue of government procurement, though important for this sector, was horizontal in nature as were the issues of transparency and standards identified in MTN.GNS/CON/W/1 and could therefore be adequately addressed through the framework.

9. The representative of India did not find it advisable to address coverage concerns through annotations on the scope of sectoral activities. His delegation favoured an approach which focused on CES per se and not on CES project exports. He agreed with others that the movement of labour constituted a services sector by itself and should be addressed in a horizontal fashion. The temporary movement of essential personnel should not be barred by immigration laws and regulations. Regarding market access, he did not see the need to address any specific sectoral concern through annexes in view of the fact that market access was negotiable under the framework. He also favoured a clear separation between services and goods trade under the framework and its annexes. He did not find any overriding reason warranting further elaboration in an annex on the issues of government procurement, transparency or standards.

10. The representative of the United States asked for clarification regarding the scope of activities covered under the proposed annex in MTN.GNS/CON/W/1. Her delegation did not favour an approach which in effect linked market access concessions in one area with another entirely distinct area of activities. She also was unclear as to the intent of proposed provisions on transparency and standards in MTN.GNS/CON/W/1. On MTN.GNS/CON/W/2, she failed to understand how the provision on labour mobility would be applied. Was the movement of labour supposed to be limited to that specified under project contracts? On market access, she asked for clarification on the scope of activities covered under public construction projects. She agreed that the issue of government procurement was of special relevance to trade in CES but stressed the horizontal nature of the issue and the fact that in order to treat it adequately detailed rules would need to be put in place.

11. The representative of Sweden, speaking on behalf of the Nordic countries, said that any treatment of the scope of CES activities in the annex would depend on the level of obligation which was to be implied through such an annex. He pointed to the fact that most, if not all, of the concerns relating to market access under both proposals could be addressed through provisions of the framework. The movement of equipment constituted a specificity which was not unique to the CES sector and might be best addressed under the framework. The group should not complicate the task ahead of the negotiating group on the Code on Government Procurement by having something in this area under an annex relating to CES. He agreed with others that transparency and standards did not warrant any elaboration in an annex/annotation.

12. The representative of Egypt shared many of the views expressed by the representatives of Brazil and India on scope, market access, domestic regulation, movement of equipment and standards. The representative of Morocco added that restrictions on the movement of personnel should be attenuated for developing countries in accordance with the provisions on the increasing participation of developing countries. The representative of Chile also agreed with these delegations on most issues but would favour an annotation regarding the facilitation of the movement of equipment along the lines of paragraph 3 of MTN.GNS/CON/W/1.

13. The representative of Canada shared the views expressed by the representative of Sweden regarding scope, movement of equipment, transparency and government procurement. His delegation was not convinced that an annex was necessary for the CES sector. This view was shared by the representatives of Japan, Switzerland, Australia and Malaysia.

14. In reacting to the interventions on her delegation's communication, MTN.GNS/CON/W/1, the representative of the European Communities said that the package nature of CES projects was addressed through the annex proposed by her delegation insofar as it dealt with the movement of equipment and labour. Her delegation favoured a broad definition including related consulting and engineering activities and could accept an illustrative approach in an annex on CES. She drew a distinction between the movement of equipment and the movement of material, the latter being regarded as goods trade by her delegation. She agreed that issues relating to the mobility of labour, transparency and standards might be adequately addressed under the framework. That applied also to government procurement, though nothing in the working group or in the GNS deliberations should prejudge the outcome of the negotiations on the Code on Government Procurement.

15. The representative of Korea could accept an illustrative approach in a CES annex to the issue of definition and scope. After listening to the interventions of other delegations, he could see that the movement of capital might not warrant any elaboration in an annex/annotation. However, he remained convinced that the movement of equipment and materials, the movement of labour, and government procurement constituted specificities warranting elaboration in an annex on CES.

16. After having had informal consultations with delegations, the Chairman said that though most members had recognized the existence of important specificities in the CES sector, views differed as to how to address such specificities - whether through elaborations in an annex or annotations, or through existing or reformulated framework provisions. Taking into account views expressed on the need for and contents of an annex on CES, he had put together a draft text of his report to the GNS which he now presented to the working group for its comments. He took note of comments made and said this report would be presented to the GNS on his own responsibility as Chairman of the working group.