

Productivity Commission Review of Legislation Regulating the Architectural Profession

Submission by the Department of Foreign Affairs and Trade

World Trade Organisation and Architectural Services

Export of architectural services

The promotion of trade in professional services, which includes architectural services is a high priority for the Australian Government. With the maturing of Australia's services sector and the internationalisation of the Australian economy, professional services have become significant drivers of Australia's international competitiveness and one of the fastest growing services sectors. Architectural services have been growing steadily over the last five years. In 1997-98 exports of architectural services increased by 72 percent from 1996-97 to \$38 million.

2. There is considerable scope to increase exports of professional services given the small number of Australian firms currently engaged in export activity. For example, the Royal Australian Institute of Architecture regards only six Australian architectural practices as truly international. The Australian architectural profession has identified Indonesia, Malaysia, Singapore, Hong Kong and Thailand as their key markets in Asia. China, Vietnam and the Philippines have been identified as emerging growth markets¹.

Developments in the Architectural Sector

3. Many commentators have noted that the significance of electronic commerce for the architectural profession has increased substantially in the last few years. With advanced communication systems, blueprints and designs can be transmitted electronically, and consulting can be performed on-line. In this case, the establishment of a commercial presence (mode 3 in the GATS) may be less important now for some firms.

4. In a paper by the WTO Secretariat², it was observed that cross-border trade in architectural services tends to rise along with the complexity and specialisation of the service involved. High-skill services that go with the construction of complex installations and specialised plants, often in connection with direct foreign investment, typically enter into export contracts without similar local expertise. The paper concluded, however, that it was likely that the bulk of supply of architectural services would still take place through commercial presence or the presence of natural persons (temporary business entry). The trend for delivering professional services through

¹ Trade Outcomes and Objectives Statement, Department of Foreign Affairs and Trade, 1998.

² Architectural and Engineering Services, Background Note by the Secretariat, World Trade Organisation, S/C/W/44, 1 July 1998.

temporary business entry appears to be increasingly moving towards fly in-fly out arrangements, with more frequent and less prolonged visits.

Barriers to Trade in Architectural Services

5. Australia is a small player in a rapidly and increasing competitive global market. In other professional services fields, globalisation has led to mergers and to a re-definition of core business, accountancy services being one example. Many of the markets with the most promising professional services opportunities face significant barriers. Restrictive, complex and non-transparent regulatory regimes are considered to be particular problems in many regional countries. The following are examples of common barriers to trade in architectural services:

- non-recognition of qualifications (most regional countries);
- establishment controls (most regional countries);
- residency and/or nationality requirements (most regional countries apply residency requirements. Indonesia, Malaysia, the Philippines, China and Taiwan apply the very restrictive requirement for nationality);
- employee quotas (many regional countries);
- visa controls (Indonesia, Malaysia, the Philippines, China, New Zealand, Taiwan, Australia);
- requirements for work permits (Indonesia, Malaysia, China, Taiwan); and
- limitations on national treatment (many regional countries).

None of these barriers are unique to architecture. Other professions exporting services face the same impediments.

6. The Australian Government has adopted a number of strategies to address these barriers at the bilateral, regional and multilateral levels. The following section examines how barriers to trade in architectural services could be addressed multilaterally in the World Trade Organisation.

Multilateral Strategy: 2000 WTO Services Negotiations

7. The General Agreement on Trade in Services (GATS) was one of the agreements established at the end of the Uruguay Round. The GATS entered into force on 1 January 1995 and provides, for the first time, a multilateral framework of rules for trade in services and a timetable for the progressive liberalisation of international trade in services.

8. During the Uruguay Round, many GATS members undertook specific commitments for exporters and investors in architectural services. These commitments guarantee access to the country's market in listed sectors, and spell out any limitations on market access and national treatment. National treatment obliges a member to provide foreign services and services suppliers with no less favourable treatment than that for domestic services and services suppliers. Despite the progress made in the Uruguay Round, many gaps remain in members' commitments in architectural services.

9. GATS has a mandate for services negotiations to commence on 1 January 2000, and they will go ahead, despite the failure to launch a new round of trade negotiations at the WTO Ministerial Meeting in Seattle in December. These negotiations will provide an important opportunity to address barriers to trade and investment in architectural services.

Working Party on Domestic Regulation

10. There are also separate ongoing negotiations in the WTO in the Working Party on Domestic Regulation (WPDR). Members have an obligation under the GATS to ensure that domestic regulation is administered in a reasonable, objective and impartial manner so as not to undermine specific commitments. Domestic regulation disciplines, however, have yet to be developed in the GATS. Australia will be working to ensure that regulation is transparent and the least trade-restrictive necessary to achieve a policy objective. We have already provided an analysis of the WTO of how the necessity test might work in regard to domestic regulation.

11. Professional services have been identified as a priority for work on domestic regulation. In December 1998, WTO members formally concluded negotiations on accountancy disciplines in the Working Party on Professional Services (WPPS). The disciplines require members to ensure that domestic regulation of the accountancy profession is not prepared, adopted or applied with a view to or with the effect of creating unnecessary barriers to trade in accountancy services. Following the development of the accountancy disciplines, members agreed to roll over the work of the WPPS to the WPDR. We regard the disciplines on accountancy as a floor rather than a ceiling, and will be seeking to expand the undertakings in other professions.

12. Australia is an active member of the WPDR and strongly favours continuing the work on professional services in this forum. Members are continuing discussions on how future work on professional services should be structured in parallel with work on domestic regulation. A number of proposals have been put forward for developing disciplines for a range of professions (horizontal disciplines). Australia favours the developing of disciplines to those professions where there is a substantial volume of trade and where there is a demonstrated industry interest. Australia will be actively pursuing the development of disciplines for architecture, as well as legal, engineering and surveying services.

Australia's GATS obligations

13. Australia has made legally binding commitments for architectural services in its GATS schedules. Australia has listed no limitations on market access or national treatment in the architectural sector for all modes of supply. There are horizontal restrictions on temporary business entry (mode 4) and establishing a commercial presence (mode 3) which apply to all sectors in which Australia has made commitments. Foreign architects must also meet the requirements of the relevant state/territory legislation that regulates the architectural profession. Australia is obliged to ensure that any amendments of legislation regulating the architectural profession are consistent with our market access and national treatment commitments.

14. In the Productivity Commission's Issues Paper, the question was asked, "to what extent, if any, do inconsistencies impede Australian architects' ability to compete in the world market?". In the WTO 2000 services negotiations and in the current working groups that are established, Australia's objective is to address barriers to trade, which result from restrictive, complex and non-transparent regimes in key export markets. We can expect that countries will make requests on Australia to streamline and simplify our regulation of foreign architects. Those negotiating bids, along with ours, will be considered in a request-offer negotiation, with Australia's willingness to offer concessions determined by an assessment of the national interest at stake in each sector.