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EFFECTS OF WTO REGULATIONS ON CONSTRUCTION & ENGINEERING SERVICES OF PAKISTAN

BY

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What is WTO:

The acronym WTO stands for World Trade Organization which deals with rules of trade among the nations/countries. It's an organization aimed at freer trade among the nations by progressive liberalizations of trade barriers. WTO itself does not enter into trading; rather it provides forum for negotiations among the states called Members to agree on rules for trading among themselves. To enforce the implementation of these rules, WTO has developed a very effective Dispute settlement mechanism. TO come into existence as an umbrella organization based in Geneva at the conclusion of Uruguay Round (1986-1994) and earlier such negotiations under the General Agreement on Tariffs and Trade (GATT). Whereas, the trade in goods is covered under GATT, the trade in Services is covered under General Agreement on Trade in Services (GATS). Construction and Related Engineering Services covered under WTO regime within services sector.

WTO Services Sector:

Services are intangible products and activities and often difficult to separate from goods with which they may be associated in varying degrees.

"Services are not separate entities over which ownership rights can be established. They cannot be traded separately from their production. Services are heterogeneous outputs produced to order and typically consist of changes in the condition of the consuming units realized by the activities of the producers at the demand of the customers. By the time their production is completed they must have been provided to the consumers." [1]

The twelve major categories (sectors) are setting out classification of services sector as under:

1. Business Services.
2. Communication Services.
3. Construction and Related Engineering Services.
4. Distribution Services.
5. Educational Services.
6. Environmental Services.
7. Financial Services.
8. Health Related and Social Services.
9. Tourism and Travel Related Services.
10. Recreational, Cultural and Sporting Services.
11. Transports Services.
12. Other Services not included elsewhere.

WTO Construction Sector:

The construction service sector consists of two sub-sectors of services: (a) architectural and engineering design and (b) construction and related engineering services, termed “physical construction services” in this paper. Physical construction services as defined in GATS involve the implementation of an investment, project, and include the following sub-sectors: (i) general construction work, for buildings: (ii) general construction work for civil engineering; (iii) installation and assembly work; (iv) building completion and finishing work; (v) other, which refers to pre-erection work at construction sites, special trade construction work including foundation work; water well drilling, roofing, masonry, and renting of equipment for construction or demolition of buildings or civil engineering works with operator. This work can be carried out either by general contractors who do the complete construction work for the owner of the project or on own account; or by subcontracting parts of works to specialized contractors.

Central Product Classification:

Unlike harmonized product classification under GATT, the services classifications and identification have been made under United Nations provisional Central Product Classification (CPC). Central Product Classifications for Architectural, Engineering Services and Construction Sector circulated by the WTO Secretariat are identified by distinct numerical code for sectors and sub-sectors up to five digits [2]

Globally, the construction and housing industry account for 10-12% of GDP and 7% of employment. The housing and construction industry has enormous forward and backward linkages and according to a modest estimate, 35-40 industries move in tandem with this sector. Therefore, the construction industry has the greatest employment generation potential. It can also create low-paid jobs of Chowkidars and ordinary construction workers to medium-paid jobs of Masons, Carpenters, Electricians, Painters, Plumber etc; and highly paid jobs for architects, engineers, designers, decorators, contractors etc. It is also for this reason that the government has identified this sector as one of the five major drivers of the growth as is reflected in the National Housing Policy-2001.

In last decades many of the construction giants of Pakistan especially in the public sector like National Power Construction Company (NPCC), Mechanized Construction of Pakistan (MCP), and National Construction Limited (NCL) etc have collapsed. Private sector too has been unable to grow effectively because of inadequate Govt. policy in that regard. At present the situation is such that Pakistani Constructors, although they are in large numbers, are unable to undertake any mega-projects in Pakistan – not because of lack of potential but lack of effective measures. Some of the constraints for such non capacity is the financial constraints, lack of state of art equipments/management, huge packaging of the projects beyond the reach of the domestic constructors and also dictate of the funding agencies in various forms to manipulate more access for foreign constructors. Although the Government of Pakistan is taking remedial measures as stated above to reactivate the construction sector not only for the infrastructural development of the country but also to generate employment and boost the production of lateral industries.

Potential of Pakistan's Construction Sector:

For construction sector to be successful it is essential to have qualified and experienced architect/engineers, technologist, cheap labor force, and required experiences. Of course state of the art methodology, equipment, standards etc. play a vital rote, however, these pre-requisite can be acquired, provided an organized construction sector exists with basic infrastructure. It is needless to say that continuation of such existence is dependent of availability of construction contracts to the domestic constructors on adequate and continuous basis. Statistics of the Pakistan Engineering Council indicate that Pakistan has over 90,000 Professional Engineers, 25,000 constructors; 75 operators and 1000 engineering consultants. This suggest that Pakistan has adequate qualified man-powers and sufficient number of registered/licensed constructors and consultants to undertake projects not only in Pakistan but are able also to export the construction services abroad. Being cheaper rate of Pakistani man-power, Pakistan can easily penetrate to overseas market provided level playing fields are given specially by the developed countries in practice to the Pakistani constructors sector, which are often denied on various pretexts of social restrictions, cultural issues etc.

It may be pointed out here that NESPAK (National Engineering Services Pakistan) has provided engineering services during last 34 years to thirty four (34) foreign countries. But all these countries are either of the Middle East or least-developed countries. No developed countries allowed this Pakistani leading consultancy company to get contract in the developed countries.

Over last two decades, Pakistani constructors and engineering consultants have undertaken very important projects particularly in Middle East and African countries and gained the international experiences.

Capability of Pakistan's Construction Sector:

The statistics described above suggest that Pakistan has adequate potential in the architectural/engineering services and physical construction services sub-sectors vis-à-vis technical manpower and a number of construction and engineering consultancy firms.
Pakistan's architectural and engineering firms and physical construction firms have undertaken many prestigious projects in Pakistan either independently or in a joined venture with foreign firms.

However Pakistani constructors lack financial capabilities, constructional equipments and state of the art construction methodology to undertake mega projects being executed in Pakistan. The fact is evident from the inability of any single Pakistani contractor to bid independently in Gazi Barotha Hydro-power project of the magnitude of over Rs.100 billion which was owned by an Italian firm, primarily due to their financial incapability to furnish even the bid bonds. This dilemma is primarily due to lack of serious initiative by the Government of Pakistan to assist the construction sector to build their capacity by providing financial privileges and other measures such as directing foreign contractors to work with a Pakistani contractor as a joint venture, encouraging consortium to undertake mega projects not only in Pakistan but also abroad.

Regulatory Regime in Pakistan:

Article VI of GATS allows Members to maintain their regulatory regime to maintain technical standards, administrative or licensing procedures for regulating services sectors where specific commitments have been made.

Parliament of Pakistan enacted the Pakistan Engineering Council Act in 1976 to regulate the engineering profession of Pakistan in respect of engineering education, construction and engineering consultants. Pakistan Engineering Council (PEC) under vested authority through the above enactment has prepared following regulatory Bye-laws to the regulate constructions and engineering sectors in Pakistan:

(i) Construction & Operation of Engineering Works Bye-laws, 1976 as amended (S.R.O 568(I)/87).

(ii) Conduct & Practice of Consulting Engineers Bye-laws, 1986 as amended (S.R.O 809(I)/86).

These Bye-laws provide regulatory framework for providing construction and engineering services to be undertaken in Pakistan whether by the domestic or Foreign Service providers. Some of the relevant provisions of the PEC regulatory regime are as follows:

Salient Provisions of PEC Regime:

1. Domestic as well as foreign engineers, constructors, operators, consultants to be licensed.
2. Foreign constructors/consultants cannot work in Pakistan without joint venture with a Pakistani Counterpart in the ratio of non-availability of expertise.
3. Foreign inputs of technology transfer are entitled without any J/V restrictions.
4. Award and execution of contracts to follow PEC framework documents for bidding, evaluation, construction and consultancy contracts.
5. Engineering works should be undertaken, managed and performed by the licensed engineers only.
6. Domestic preferences in bid evaluation is allowed for procuring locally manufactured products to all local and foreign bidders

Some of the specific provisions of PEC bye-laws relevant to architectural and engineering services and physical construction services are given here below:

Movement of Natural Persons:

Movement of Natural Persons is another key area where export of trade in services from the developing country to the developed country is prevented by not allowing the natural persons to move to the developed countries to provide the services. There are several Annexes to GATS adopted in Marrakesh during the closing Act of the Uruguay rounds. The Annex on Movement of Natural persons provides the following:

1. Applies to movement of natural persons in respect of supply of service.
2. Shall not apply for seeking employment permanent basis, residence or citizenship.
3. Members to negotiate in specific commitments for all categories of natural persons supplying services under the Agreement.
4. Members can regulate entry, stay, and movements of the natural persons to protect its integrity, borders, and territory not contrary to its specific commitments.

Negotiations on Movement of Natural Persons still remained un-resolved and developed countries are bent upon to various restrictions such as visa restrictions, qualification equivalence etc. Engineering and architectural services relies primarily on the presence of National Reasons specifically under mode-3&4.

Since the engineering degree of Pakistan is recognized in the universities of the western countries, as such, generally it is expected that Pakistani engineers would move freely to these countries to provide services, however, contrary to this; efforts are being made on behalf of the Engineers Mobility Forum (EMF) to register the "International Professional Engineer". Pakistan is to enter into serious dialogue that Pakistani Engineers degree shall be accepted on minimum international benchmark and minimum qualification for providing the engineering services. Higher profile such as Professional Engineer can be adjusted by the Pakistan Engineering Council to be in line with the Professional Engineering license of USA.

Opportunities offered by WTO to the Construction Sector:

Provisions of WTO provide both opportunities and challenges. Pakistan having a huge
Source of skilled and unskilled labor and also the professional engineers for
Export, can avail the opportunities to earn the foreign currencies by exporting the
Construction Services outside Pakistan. The World Construction Market is conservatively
Estimated at US $ 3.2 Trillion [3]. In Advanced developing Countries the share in
Constructing Sector is generally between 5-7%. However, the labor intensity of the
Sector is reflected in higher employment share of about 10% in some OECD Countries.
Besides Pakistani Construction Sector, Middle East and third world countries also have a
tremendous potential

As discussed above, the provisions in the WTO is committed to provide level playing
field for all the member countries. In its preamble, WTO committed to make certain
Concessions to the developing and least developed countries. All its 151 members have
Equal voting rights. Dispute Settlement mechanism of WTO provides for the best forum
for resolution of Constructional Disputes, if any, as compared to other International
Practices for such dispute resolution.

Threats and Challenges from WTO to the Pakistan Construction Sector:

Opportunities offered by WTO can be availed by Pakistan only with proper capacity building in all spheres of the relevant provisions of WTO vis-à-vis Construction Sector. Although Pakistan is one of the original signatory of WTO in 1948, it has failed to undertake necessary preparedness to meet the challenges of the WTO. The main challenge of the WTO is that for the Construction Services to be rendered by the Pakistani

Constructors whether in Pakistan or in Abroad it must have to be in competitive price with quality services. To meet these challenges, the elements of good governance, transparency, rule of law, political stability etc are the essential ingredients are to be ensured in Pakistan. Pakistan can not meet the challenges and threat from the foreign constructors in Pakistan unless the good governance is assured in letter and spirit. The implication of WTO on Pakistan's present construction sector is that: foreign constructors are likely to increase; local constructors will be subservient to work under the foreign contractors without having opportunity to transfer of technology as maybe obtained in working as joined venture partner, increase in unemployment, reduction of growth of domestic constructors and obstruction of self-reliance

Recommendations:

In order to get benefit from the WTO provisions, Pakistan is to adapt a two prong strategy. On one hand, it has to build the capacity to negotiate in WTO forum collectively by taking along all the Countries who can be strategic allies in this regard On the other hand, it has to assist the domestic construction sector to build its capacity not only to be able to undertake major constructional activities in Pakistan but also will be able to export services abroad in open competition. Some of the specific measures suggested are as under

1. Review for non-preparedness and take immediate remedial measures including establishment of transparency and rule of law in all tier of governance.

2. Pakistan to convert its comparative advantage in construction sector to competitive advantage by following the measures suggested by UNCATAD for developing countries as discussed above.

3. Ensure compliance of Pakistan Engineering Council's regulations for construction sector.
4. Award mega projects not as turnkey contracts to foreign contractors but package the project into several smaller or medium sized modules so that Pakistani constructors can participate in the bid and can undertake the project for which foreign expertise are not required. It would be the consultant's Job to ensure such packaging and make integrated supervision to complete a project.
5. Government should assist to create Construction Bank to facilitate Pakistani constructors financially.
6. Duty rates/taxes on import of construction machinery to be reduced to the minimum.
7. Government to negotiate in WTO for level playing field so that Construction Services can be exported. Under mode-4 the government should ensure that Pakistani Engineers and labors remain exportable without any hindrances.
8. Pakistan Engineering Council should initiate re-structuring of Professional Engineers category and enter into serious discussions with relevant international forums for Pakistani Engineer's qualification equivalence issue.
9. Leading Pakistani constructors and engineering consultants should be encouraged to acquire relevant ISO-9000 certification and use of international standards with special emphasis to environment.

10. Government of Pakistan may initiate public private partnership to create consortium to undertake mega projects in Pakistan, if necessary by hiring the foreign experts into that consortium towards capacity building.
11. Initiate advance studies in relevant institutions for project management and quality controls including use of State of the Art machinery, equipment in the construction sector.

References:

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1) Manual on statistics of International Trade in Services (ST/ESA/STAT/SER.M/86) Published in 2002 by UN, EC, IMF, OECD, UNCTAD and WTO.

2) Background Note No. S/C/W/38 dated June 8, 1998 by WTO Secretariat on Construction and Related Engineering Services.

3) Engineering News Record dated June 05, 2000.