

## **EIC Position**

on the

## **Future EU Trade Policy**

### **About EIC**

European International Contractors (EIC) has as its members construction industry trade associations from fifteen European countries and represents the interests of the European construction industry in all questions related to its international construction activities. In 2008, the European construction industry was active in all world regions and generated an international construction turnover of more than 70 billion € *outside* of Europe, primarily but not exclusively through the so-called “Mode 3” or a “commercial presence abroad” where the service is provided within a foreign market by a locally-established affiliate or subsidiary of a foreign-owned and -controlled company. Whilst the construction sector is one of the EU’s key industries in terms of both output and employment, the international presence of European contractors also contributes to employment at home in the parent companies. From the inception of the “GATS 2000” negotiations, EIC has collaborated closely with the Commission in identifying the most burdensome market access barriers for European international contractors and thus we are pleased about the opportunity to contribute our position to the discussion.

### **Multilateral trade negotiations**

***Question 3: In addition to continuing to push for a successful conclusion to the Doha Round, how can the EU best pursue overall EU trade policy objectives in the WTO?***

EIC is particularly sensitive to the detrimental effects of illicit subsidies from non-OECD competitors which allow them to offer what is considered as “abnormally low offers” in public tenders on a global scale. We note that, at least in the construction services sector, the definition of this highly unwelcome phenomenon remains vague and does not describe the multiplicity of forms they can assume. Therefore, following this consultation, a tripartite dialogue should be established between the European Union, the Member States and the European private sector to analyse the situation and to identify possible responses to the weaknesses described.

One answer might be to launch multilateral negotiations on this topic. At present, there are no multilateral disciplines for subsidies in the area of services comparable to the WTO Agreement on Subsidies and Countervailing Measures or the Agreement on Antidumping which apply only to trade in goods. Whilst Article XV of the GATS requires that “members recognise that, in certain circumstances, subsidies may have distortive effects on trade in services [and] shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects”, EIC is not aware that any such international agreement has been entered into since the beginning of the GATS negotiations, i.e. in the past ten years. The European construction industry is currently both on the international and the EU level suffering from an unfair competition with Chinese state-owned construction companies, as registered in the *State-owned Assets Supervision and Administration Commission of the State Council* of the PR China, and their subsidiaries. Thus, EIC requests the European Commission to urgently address the issue of state subsidies in international construction services.

## Services

***Question 8: Should the EU aim for more trade in services, and if so, how? Multilateral and bilateral negotiations have only partially succeeded in opening trade in services so far, so would a renewed focus on trade in services among key trading partners (plurilateral approach) offer a useful alternative avenue?***

In its 1998 guide titled “GATS 2000 – Opening markets for services” the Commission stated on page 46 [Construction services] that “effective market access for EU construction firms will depend on whether it is possible for them to compete for the public procurement of construction services abroad. The absence of multilateral rules for procurement is probably the most important non-tariff trade barrier affecting this sector”. Therefore, EIC has always requested the European Commission – and continues to do so – to demand from its trading partners the phased opening of domestic public procurement markets on the basis of the reciprocity principle in the framework of the Agreement on Government Procurement (GPA). As Article V of the GPA provides for a “Special and Differential Treatment for Developing Countries”, effectively allowing them to segregate their markets (at least partially), there seems to exist no economically viable argument for developing countries not to accede the plurilateral agreement. Having said so, to be acceptable any offer must, as in the European Union, comprise all levels of state authorities (central, sub-national and municipal).

In addition, EIC believes that the European Commission should revisit the issue of multilateral negotiations on the topic of “Transparency in Government Procurement”. WTO member countries decided at the 1996 Singapore Ministerial Conference to set up a Working Group on transparency in government procurement, a topic which was originally included on the Doha Development Agenda (DDA). The carefully-negotiated mandate was for negotiations to start after the 2003 Cancún Ministerial Conference “on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations”. However, there was no consensus, and the members agreed on 1 August 2004 to drop this important issue from the DDA. For the internationally active European construction industry it is of utmost importance that trading partners agree on minimum standards with respect to the

transparency of their national procurement laws and EIC thus asks the Commission to re-launch corresponding talks.

## Trade and Development

***Question 14: How can the EU best strengthen the issue of trade and development in its trade policy? Should the EU pursue a more differentiated approach in its trade relations to reflect the level of development of particular partners? How should the EU approach the issue of trade preferences in relation to the generally low level of EU Most Favoured Nation (MFN) tariffs, which will further be eroded following the possible conclusion of the Doha Round?***

On 15 October 2007, the EU Council adopted the “EU Aid for Trade” Strategy aimed at supporting developing countries integrate into world trade. The 2006 WTO Aid for Trade Task Force identified six Aid for Trade categories, one of them being Trade-Related Infrastructure. EIC welcomes a closer linkage between European Trade and Development policies and we would like to recall that the European construction industry has been in the framework of the ACP-EC Partnership Agreement (the “Cotonou Agreement”) a reliable partner in providing infrastructure assets to ACP countries which are an indispensable requirement for their regional integration and for global economic and trade co-operation. Given that the recent June 2010 revision of the Cotonou Agreement between the European Union and the ACP States introduces the criterion of “reciprocal access to external assistance” in the context of eligibility for EU Development Aid (cp. new Annex IV, Article 20, paragraph b, 1 bis), EIC seeks further information on how the principle of reciprocity will be evaluated. For instance, trade and development finance provided today by China ExIm Bank is tied to Chinese (and in some cases local) contractors but is not accessible for OECD companies, whilst, by contrast, development aid from OECD donors is open to Chinese contractors. Therefore, it has to be established that the “reciprocal access” must be effective and needs to take into account the more general trade environment connected with public procurement policy. EIC would expect that any respective decision is co-ordinated between DG Development on the one hand and DGs Trade and Internal Market on the other hand. In addition, the scope and content of bilateral trade agreements between the relevant eligible donor and the developing partner countries must be taken into consideration as well. EIC supports the Commission in seeking further public feedback before adopting a communication on the linkages between trade and development.

## Enforcement and dealing with unfair practices

***Question 16: How can the EU best safeguard its firms or interests against trading partners who do not play by the rules? Are the existing tools and priorities sufficient to address unfair competition from third countries?***

The European construction industry is currently suffering from an unfair competition, both inside and outside the European Union, with state-owned construction companies from the PR China which, on top of being financially supported by the Chinese government and the

China ExIm Bank, are exempt from observing OECD and EU rules and standards, which e.g. oblige European companies to respect international environmental, ethical, financial and social standards. These cumulative advantages enable Chinese state-owned contractors to enact a very aggressive bidding policy with abnormally low prices which cannot be matched by private sector companies or European banks. This has led the EIB President to express his concerns that Chinese banks apply lower ethical and environmental standards to their investments in Africa, and that they are effectively undermining good governance and undercutting competitors.

If such ruthless competition, to be observed in other world regions and especially in Sub Saharan Africa, would become the norm within the European Internal Market, it would have a very negative effect on European social and environmental standards and on the European construction sector altogether. A recent example in Poland, where two motorway lots financed by the European Union have been awarded to Chinese state-owned construction companies for an abnormally low tender price, reveals that there are loopholes inside of the European community law which need to be closed urgently. EIC asks the Commission to consider the following modifications:

- Participation to tenders financed with money from the European Structural Funds or the EIB should be restricted to bidders from the EU, the EEA and from GPA signatories;
- Bidders from third countries which are not subject to a national system of subsidy review and control similar to the European Union should be declared ineligible from the outset or be disqualified in the tender process;
- The European Commission should define more clearly what constitutes an “Abnormally low tender” in the sense EC Directive 2004/18 in order to provide more legal clarity to both Contracting Authorities and bidders.

In this context, EIC would like to express its firm opinion that the revised GPA “offer” recently submitted by the PR China is far from being commercially meaningful and acceptable because:

1. The threshold values for inviting foreign competition to China are still extremely high, in particular with respect to the construction sector. Based on the current exchange rate of the Special Drawing Rights (SDRs) the threshold value for inviting foreign competition for construction services would amount to appr. 85 million € (100 million SDRs) in years one and two after implementation and would fall gradually over the following three years to appr. 12.5 million € (15 million SDRs) where it would remain. Thus China offers a threshold three times higher than most other major GPA members, and in particular the European Union.
2. China intends to restrict access of foreign companies to tenders of the central level whereas access to the procurement of the provincial and municipal level as well as state-owned enterprises would be excluded.
3. China would like to exclude segment “CPC 513”, which relates to “General construction work for Civil Engineering”, as well as other segments that are important for international construction services, such as CPC 5123, 5127-5129, 5151 und 5152, from its offer. This reflects a narrow and protectionist attitude being contrary to the general principles of the WTO and is, therefore, completely unacceptable.

***Question 17: How can the EU best safeguard its firms or interests against major trading partners who maintain an asymmetric level of openness and resort to protectionist measures? Are the existing tools and priorities sufficient to address practices such as keeping EU suppliers out of government procurement markets, market access restrictions, restricted and insecure access to energy and raw materials?***

First of all, EIC would like to oppose any kind of “Buy national” provisions, as can be found on the central, and in some instances also on the sub-central level, of some of our major trading partners. In relation to China, the European construction industry explained in great detail at the July 2006 Conference titled “EU Trade and Investment with China: Changes, Challenges and Choices” that European and international market access to the Chinese construction market was obstructed in addition by means of a discriminatory qualification system that is still based on discriminatory minimum registered capital, turnover and staffing requirements. Our concerns have been recently confirmed by the European Chamber of Commerce in China and an independent study mandated by the Commission subsequent to the above-mentioned 2006 Conference has established that the market share of foreign contractors in China, which amounted to some 6% before China’s WTO accession, has fallen in the meantime to below 1%.

Given the fact that the Commission seems not to be in a position to either convince the Chinese government to abolish its discriminatory qualification system or to submit a reasonable offer in connection with a GPA accession, EIC proposes that the Commission applies the principle of reciprocal market access more strictly and temporarily suspends the possibility of Chinese contractors to bid for EU-financed projects in the European Union, a concession made unilaterally subsequent to the conclusion of the Uruguay Round of trade negotiations. The principle of reciprocity is well established in international trade law and the agreement establishing the World Trade Organization (WTO) refers in its preamble to “entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations”.

*27<sup>th</sup> July 2010*