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**THINKING ALOUD ABOUT HOW BEST TO MAKE THE  
LDC SERVICES WAIVER OPERATIONAL**

by

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# THINKING ALOUD ABOUT HOW BEST TO MAKE THE LDC SERVICES WAIVER OPERATIONAL

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# Structure of Presentation

- ▣ Context
- ▣ Brief overview of services waiver
- ▣ Scope of the waiver
- ▣ Sectors of export interest to LDCs
- ▣ Modalities for operationalizing the waiver
- ▣ Challenges
- ▣ Priorities for further work

# Context

- ▣ The world's 49 LDCs account for a combined 0,62% share of world trade in commercial services. This suggests acute supply constraints
- ▣ When is a service preference actually preferential? Less than you'd think, as regulatory preferences imply the maintenance and implementation of parallel regulatory regimes or of chiefly *quantitative* constraints placed on established operators (with a strong Mode 3 bias)
- ▣ Commercial presence accounts for an estimated 60% of world services trade and a predominant share of scheduled commitments.
- ▣ Calls for an LDC services waiver coexist alongside acute modal imbalances: Mode 3 commitments are 50 times more prevalent than commitments on Mode 4 under GATS

# Context

## ▣ GATS Article IV

Special priority to be granted to DC members in:

- Strengthening their domestic capacity and its efficiency and competitiveness;
- Improvement of their access to distribution channels and information networks
- *Liberalisation of market access in sectors and modes of supply of export interest to DC members*

# Overview of the Waiver

- ▣ The Waiver: An LDC-Only Enabling Clause for Services

Before December 2011:

- MFN applied (GATS Art. II)
- No authorization for preferences for DCs/LDCs (no Enabling Clause or GSP for services)
- The GATS was not seen initially as requiring significant doses of special and differential treatment given its innate flexibilities
  - This reflects both the ideological context of the time and the limited influence played by DCs (and especially LDCs) in shaping the incipient body of rules governing services trade



# Overview of the Waiver

- ▣ Waiver now authorizes preferential treatment
- ▣ ...but does not oblige members to grant preferences
- ▣ Covers preferences only for LDC services and service providers
- ▣ Available to all LDCs, not only WTO members

# Scope of the Waiver

- ❑ Automatically covered: Market Access preferences “of the type referred to in GATS Art. XVI:2.a-f” [but note the lesser relevance of XVI:2:e (limitations on the form of entry) and f (foreign equity limitations) relating to Mode 3 exports]
- ❑ Authorisation from the Council on Trade in Services is required for other preferences.
- ❑ Other preferences could include:
  - Regulatory preferences
  - Preferential discrimination (Article XVII)
  - Other preferences (e.g. tax exemptions, via Additional Commitments under Article XVIII?)



# Key Sectors and Modes of Export Interest

## ▣ Sectors

- Tourism (but how much trade policy traction?)
- Education (but generally weak supply capacity)
- Health-related services (weak supply capacity and human resource problems linked to Mode 4 exports)
- Business services (typically un- or lesser regulated; Mode 4 hurdle)
- Professional services (more highly regulated; legitimate consumer protection imperatives + Mode 4 hurdle)
- Transport (road, maritime) [link to Mode 4; the extension of PTA preferences may be more relevant for road transport given neighbourhood externalities; link to Trade Facilitation]

# Key Sectors and Modes of Export Interest

## ▣ Modes

- Modes 1 and 4 essentially (transport and digital trade in Mode 1)
- Mode 2 is commercially less relevant to this conversation
- Mode 3 an unlikely source of export gain given limited capital exporting capacities; challenge is more to import additional FDI in services

# Key Sectors and Modes of Export Interest

- ▣ Skill levels
  - Semi-skilled and unskilled labour given typical factor endowments, but these are the most difficult to transact in a trade policy setting via Mode 4 commitments;
  - Need to explore non-trade means of securing labour export gains via managed mobility agreements and partnerships
  - Hence a likely continued modal imbalance under GATS between Modes 3 and 4

# Modalities - GATS VII

- ▣ Remove or reduce incidence of ENTs for LDC suppliers (road transport)
- ▣ Provide LDC-only quotas for LDC suppliers
- ▣ Allow greater flexibility for specific categories of natural persons from LDCs (entertainers, non-professional key personnel in construction)
- ▣ None are easy to implement in importing countries, with concerns over a selective lessening of regulatory standards being voiced



# Modalities – GATS XVI

- ▣ Provide access for enhanced LDC Mode 4 service suppliers de-linked from Mode 3 – greater access for independent professionals
- ▣ Allow improved temporary movement of graduate trainees from LDCs (à la Cariforum EPA) + need for enlarged educational opportunities via LDC scholarship aid in targeted sectors where human capital needs are most pressing
- ▣ Relax restrictions on type of legal form to be used as a means of entry (branches vs. subsidiaries, but LDCs in general export limited quantities of capital)

# Modalities – GATS VII

- ❑ Simplified recognition mechanisms (inspired by labour mobility agreements)
- ❑ Simplified licensing and registration procedures
- ❑ Reduced fees for licensing and registration of LDC service providers
- ❑ But again legitimate concerns over the consequences of selective “lowering” of regulatory standards when these pursue legitimate public policy objectives (protection of consumers, prudential norms)



# Modalities – GATS IV

- ▣ Increase duty-free allowances for tourists visiting LDCs to promote the handicrafts industry
- ▣ Treat LDC audio-visual content as domestic (but films made in LDCs often benefit from co-production arrangements; larger screen quotas/shelf space and enhanced distribution the key to export gains in AV markets)
- ▣ Provide insurance portability for patients accessing medical treatment in LDCs – but how big is this market in medical systems typically constrained by acute supply capacities? And how should concerns related to quality assurance be addressed?

# Challenges

- ▣ Are modalities really feasible and are they truly commercially meaningful?
- ▣ LDC requests need to be underpinned by concrete research and country case studies
- ▣ Other supply side issues (e.g. human capital; poor infrastructure, weaknesses in business environment, limited access to finance for service SMEs, weak data protection regimes)

# Priorities for further work

- ▣ Need for more capacity building and aid for trade targeted at nurturing a sustainable supply response and increasing the quality of services and human capital on offer in LDCs
- ▣ Need to build more institutions and programs in developed and advanced developing country markets geared towards promoting developing country services imports (e.g. Trade facilitation Office of Canada and other such institutions)

# Examples of trade support mechanisms which cover services exports

- ▣ Trade Facilitation Office of Canada  
<http://www.tfocanada.ca/home.php>

- ▣ Centre for the Promotion of Imports from Developing Countries (CBI) in the Netherlands  
<http://www.cbi.eu/>

..... the question arises as to how aware LDCs are of these mechanisms?

# Priorities for further work

- ▣ Need for IOs to develop and deploy toolkits for export competitiveness in services; enhanced trade and investment promotion activities, diagnostic tools on the optimality of domestic regulatory regimes
- ▣ Country specific assessments to determine sectors and modes of supply where genuine export competitiveness can be marshalled and supply bottlenecks are pervasive
- ▣



# Priorities for further work

- ▣ Consultations with ministries of labour in LDCs may provide useful indications of where there is pent-up service supply with skills matching needs in export markets
- ▣ Build smart partnerships between LDC service suppliers and those in developed and advanced developing countries and market such initiatives as an element of international corporate social responsibility (CSR)



# Priorities for further work

- Use MFN Exemption lists as a means of identifying restrictions which LDCs might face and where existing restrictions could be preferentially lessened
- Examine other preference granting schemes (such as those which allow labour mobility) to identify mechanisms which work and may be able to be tailored to a trade context
- Examine the regulatory regimes for some sectors of interest to LDCs to determine barriers and inform requests targeted at their progressive dismantling

# Thank you!

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