



Effective Market Access for Least Developed Countries' services exports

An Analysis of
the World Trade Organization Services Waiver
for Least Developed Countries





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This publication has been edited externally.

United Nations publication issued by the United Nations Conference on Trade and Development.

UNCTAD/DITC/TNCD/2019/1

Sales No.: E.20.II.D.4
ISBN: 978-92-1-112963-2
eISBN: 978-92-1-004595-7

ACKNOWLEDGEMENTS

This overview paper as well as the four pilot case studies for Cambodia, Nepal, Senegal and Zambia were prepared by the United Nations Conference on Trade and Development (UNCTAD) Secretariat, with co-financing from Sweden, for which UNCTAD is thankful.

The related work was supervised by Bruno Antunes and Marisa Henderson, Economic Affairs Officers of the Division on International Trade and Commodities (DITC) of UNCTAD. A draft of this pilot case study was provided by Ms. Hadil Hijazi, who worked jointly with Mr. Hannes Schloemann and with backstopping support from Ms. Cristina Rubiano Passos. Martine Julsaint-Kidane, Economic Affairs Officer of DITC, provided useful comments. The document was finalised by Bruno Antunes and Vincent Valentine, Economic Affairs Officers of the DITC of UNCTAD.

The views expressed in this paper are those of the authors and do not necessarily reflect the views of UNCTAD or the LDCs examined.

Marina Murina and Sophie Munda provided administrative support.

Laura Moresino-Borini designed the cover and the graphics, and Belén Camarasa performed the desktop publishing.

NOTE

All references to dollars (\$) are to United States of America dollars unless otherwise stated.

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ABBREVIATIONS AND ACRONYMS

BEA	United States Bureau of Economic Analysis
BOP	balance of payments
BOP	business process outsourcing
CPC	United Nations Central Product Classification
CSS	contractual service suppliers
CTS	Council for Trade in Services
DDA	Doha Development Agenda
DITC	Division on International Trade and Commodities
EBOPS	Extended Balance of Payments Services Classification
EEA	European Economic Area
EIF	enhanced integrated framework
ENT	economic needs test
FATS	Foreign Affiliates Trade in Services Statistics
FDI	foreign direct investment
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GPA	Government Procurement Agreement
GSP	Generalized System of Preferences
ICT	information and communication technology
IMF	International Monetary Fund
IT	information technology
ITC	International Trade Centre
LDC	least developed country
MFN	most-favoured nation
MoU	Memorandum of Understanding
MRA	mutual recognition agreement
MSITS	Manual on Statistics on International Trade in Services
NGO	non-governmental organization
PTA	preferential trade agreement
SME	small and medium-sized enterprise
SPR	services policy review
TPP	Trans-Pacific Partnership
UNCTAD	United Nations Conference on Trade and Development
WTO	World Trade Organization

PREFACE

This paper was prepared in the context of the United Nations Conference on Trade and Development's (UNCTAD) intensified work in support of least developed countries' (LDCs) participation in trade. It aims to contribute to the discussion on market access for services and services suppliers from LDCs. In particular, in the context of the World Trade Organization (WTO) services waiver decision adopted on 17 December 2011 (hereinafter "the waiver").

For many years UNCTAD has been emphasizing the importance of services and services trade for developing countries, and the need to strengthen and diversify services sectors. This includes a focus on services and services-supported exports. Over the past 30 years the share of services in the gross domestic product (GDP) of developed countries has grown from 61 to 75 per cent, while the share in developing countries has grown from 42 to 55 per cent. In LDCs, the share was and is still lower, but the growth trajectory is very clear: services are a key part of their economic future. Trade in services remains important as their exports have grown more than goods exports and more resiliently.

In addition to these direct effects, services provide inputs to all economic sectors. They are bundled with goods, for example when manufacturing firms also provide distribution services. They also create linkages in productive value chains, as in the case of telecommunication and information and communication technology (ICT) services which integrate, through digitization, production processes more than ever before. These indirect effects imply that there is value added of services included in output and exports of all economic sectors. While direct exports of services were 13 per cent of total exports in LDCs, services accounted for 39 per cent of total value added in their exports. This value added, the so called "Mode 5" of services trade, confirms that servicification trends also occur in international trade and place services as a key contributor to trade as it is for output.

The LDCs services waiver, which effectively operates as a new LDC-specific 'Enabling Clause for services', now allows developed-country WTO Members and developing WTO Members in a position to do so to provide preferential treatment to services and service suppliers originating in LDCs. Consequently, the waiver releases WTO Members from their legal obligation to provide non-discriminatory Most Favoured Nation (MFN) treatment to all trading partners when granting trade preferences to LDCs as per the General Agreement on Trade in Services (GATS) Article II.

After a slow start, WTO Members eventually took up the challenge in implementing the waiver. Since 2015 developed and several developing Members, in total 24 WTO Members (counting the European Union as one), have submitted notifications granting specific preferences to LDCs under the waiver. This was an important start, but more remains to be done.

Perhaps most importantly, the waiver has been a catalyst for a growing discussion and growing awareness among policy makers, service suppliers and other stakeholders both from LDCs and from current and potential importers of LDCs' services. But the task at hand for all those interested in LDCs and their services trade integration goes beyond the operationalization of the waiver. The waiver is just one tool among others, from autonomous liberalization to regional and bilateral agreements, that enables services liberalization in favour of LDCs.

The waiver itself neither requires WTO Members to grant preferences nor provides them with specific ideas or tools to devise smart mechanisms that facilitate LDCs' services exports into their markets. Thus, even if the range of preference-granting countries itself is noteworthy, the breadth, depth and real-life relevance of the preferences offered require and deserve attention, not least with a view to diversifying and sharpening the tools to provide effective pro-development access to services markets of export interest to LDCs.

UNCTAD has an important role to play in fostering, facilitating and enriching this discussion among all those who care about LDCs and their considerable potential in services. In 2016 UNCTAD commissioned a study on "LDCs Services Waiver—Operationalized?" The study carried out an in-depth assessment of the preferences offered in the context of the waiver and juxtaposed them with what LDCs had asked for through their Collective Request. This deliberation has now been further developed in the current overview paper enriched by findings from the

four pilot country studies, namely Cambodia, Nepal, Senegal and Zambia, that accompany this overview. The overview is intended to assist negotiators and policymakers in the WTO Members and LDCs in their efforts in identifying, designing and implementing smart mechanisms that could facilitate LDCs' services exports.

This exercise remains by its nature necessarily a limited one, a work in progress that should stimulate further, progressively broader and deeper engagement by LDCs' governments, LDCs' services importers and other stakeholders, on the obstacles encountered and the solutions to be sought. UNCTAD's hope and ambition is to encourage stakeholders to carry the discussion forward, and to support them in this endeavour.



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EXECUTIVE SUMMARY

The 2011 decision of the WTO Ministerial Conference to allow importing countries to grant preferential treatment to services and services suppliers from LDCs shone a spotlight on what was previously a niche topic at best: LDCs as services exporters, and LDCs' services exports as a potential for growth and economic integration with the rest of the world.

The LDCs services waiver, after a slow start, has since been a catalyst for a growing discussion and growing awareness among policy makers, service suppliers and other stakeholders both from and in LDCs and from and in many other countries that import services from LDCs, or may do so in the future. Twenty-four WTO Members have so far taken the next step and notified the lists of preferences they grant to LDCs' service providers and services under the waiver. A discussion process at the WTO has been made for now a permanent feature of the proceedings in the Council for Trade in Services (CTS). One element of that discussion has been attempts to evaluate the 'value' of the preferences offered.

While the waiver is a good start, LDCs' services trade integration requires a greater effort. The waiver is one tool among others, from autonomous liberalization to regional and bilateral agreements, to support and foster LDCs' vast untapped potential of development through services exports. Nevertheless, the waiver itself does very little. It is a legal tool that enables WTO Members to sidestep the otherwise applicable obligation to treat all services imports equally under the Most-Favoured Nation (MFN) clause¹ and grant instead preferential treatment to services and service exporters from LDCs. This is akin to the much older 'Enabling Clause' for goods, which covers GSP preferences, with the difference that the waiver only benefits LDCs, not all developing countries. It operates thus as an 'LDC-only 'Enabling Clause for services'.² As such the waiver only enables preferences, but neither requires WTO Members to grant them, nor provides them with specific ideas or tools to devise smart mechanisms that actually facilitate, and perhaps even support, LDCs' exports into their markets.

This paper stands in the context of efforts to assist all stakeholders in doing precisely that: Identifying, designing and implementing smart mechanisms to facilitate LDCs' services exports. It aims to make a contribution to the process stimulated by the LDCs

services waiver, but not exhaustively covered by that tool or the specific processes around it. The goal must be to come to an integrated, holistic debate and development process where needs are fully understood, and tools are used in the most constructive, creative and productive way.

Building on a study "LDCs Services Waiver—Operationalized?" commissioned by UNCTAD in 2016, the current analysis presents and reflects on the pilot review, undertaken in late 2017, of four LDCs' services trade and their interests under the waiver. By looking at the specific situations and challenges of service providers in these LDCs, the study takes the waiver process as a context and devise specific responses, whether incremental improvements or complete solutions, to these challenges.

A. OVERALL ASSESSMENT OF THE PREFERENCES OFFERED

The paper's initial findings are the result of an in-depth assessment of the preferences offered in the context of the waiver juxtaposed with what LDCs had asked for through their Collective Request, as well as with the preference granted in the WTO Member's Doha Development Agenda (DDA) offer and the Member's best preferential trade agreement (PTA). The preferences have been analysed by their type (market access, national treatment), service sector, mode of supply, degree of liberalization and members. At the time of writing, 24 WTO Members have notified preferences under the waiver to the WTO, including developed and developing country WTO Members.

Categorizing, counting and assessing the preferences contained in the 24 notifications so far is a complex task requiring multiple choices that can affect statistical outcomes and other findings. With that caveat in mind, certain careful observations on the over 2000 preferences can be made:

- Rising above the 2006–2008 DDA offers. Almost half of the preferences promised to LDCs now go beyond what was offered a decade ago to all WTO Members. In another 40 per cent of the cases the preferences correspond to the DDA offers. Only 12 per cent remain below that threshold. While that is encouraging in that it reflects a willingness of WTO Members to engage seriously in the challenge to design services preferences and make the waiver

work, most of the DDA offers already a decade ago reflected applied Most Favoured Nation (MFN) treatment rather than new, improved market access or national treatment.

- Getting close to the “best PTA” level. Preferences already offered under PTAs are politically and technically tested. Over two thirds of the preferences correspond to what the respective WTO Members have granted to third parties under recent PTAs. Almost one quarter of the notified preferences seem to provide even better treatment to LDCs’ services and service providers.
- More than demanded in the Collective Request? Yes, but... A simple count suggests that 46 per cent of the notified preferences go beyond what was specifically demanded in the Collective Request. That, however, is arguably misleading. Over one third of these ‘Collective Request plus’ preferences are in the, mostly meaningless, Mode 2, which the LDCs mostly left out of their request, presumably in order to steer the focus towards the more important other modes. Second, many of the preferences are arguably covered by the general list of services and activities of interest annexed to the Collective Request. Third, the fact that preferences are offered in sectors/modes not asked for may also, in part, reflect a choice by preference grantors to ‘boost’ their packages by adding more easily feasible but less relevant preferences.
- Most preferences cover market access. Only about 15 per cent cover national treatment, with few providing preferential regulatory treatment. This is arguably the biggest weakness of the notifications so far.
- Uneven sectoral distribution. By far, the most notified preferences are in business services. The second largest number concern transport services, also important are recreational, cultural and sporting services. Arguably disappointing is the small number of preferences in tourism, construction, health and education services, all with significant export potential for LDCs.
- Modes almost equally distributed, with Mode 4 being the strongest. Rather encouraging is the notifying WTO Members’ response to LDCs’ strong emphasis on Mode 4. One third of the preferences concern Mode 4. This effect is, however, to some extent linked to the counting method applied, where improved horizontal commitments are counted per

each sub-sector to which they apply. This leads to a multiplication effect, but arguably appropriately so, as improved horizontal commitments in Mode 4, for example, a new category such as contractual service suppliers (CSS) and/or independent professionals do indeed apply their effect in all sectors covered.

- Degrees of liberalization: a mixed picture. Almost half of all notified preferences are full commitments (‘none’). Still, almost one third of which are in Mode 2 and are often partial commitments. However, these may in fact be the most interesting ones, as they reflect efforts to carefully craft access opportunities in cases where barriers exist, but their prevalence also suggests that there is room for improvements in the future.
- Some WTO Members offer big packages, some small. While some of these variations may result from scheduling techniques and/or the counting method applied here, large discrepancies remain in any case. However, it should be noted that numbers do not necessarily imply quality. Selected, targeted and carefully designed preferences offered by WTO Members with existing links to LDCs’ markets may well offer more meaningful access to markets than large sets of commitments in less relevant sectors, less relevant modes, and/or less relevant geographical contexts.

Unlike normal services trade agreements, the LDCs services waiver is about actual preferences and actual improvements for LDCs’ services trade. It remains unclear how many such actual preferences (*vis-à-vis* the previous practice) are contained or reflected in the notifications. Finding out would require a comparison with applied regimes, something rather ambitious to do. Local academics and Non-Governmental Organizations (NGOs), in particular, would ideally fill this gap, bringing clarity to what remains to date an obscure situation.

That said, some “best practices” and preliminary lessons could be drawn from the 24 notifications of preferences. First, it is to be recognized certain WTO Members have undertaken a comprehensive and systematic approach to the preferences offered, by considering the complete range of services sectors instead of taking a selective approach per services sub-sectors and modes of supply. This approach creates more open-ended opportunities making recognizable contributions to the development of LDCs’ services trade. Second, WTO Members are encouraged to use

a user-friendly design to facilitate the identification of preferences offered *vis-à-vis* WTO Member's General Agreement on Trade in Services (GATS) Schedule. Third, the initiative of some WTO Members to cluster modes where possible is desirable, being that services are often provided in several modes within the same business relationship.

In terms of substance, two considerations should be made. First, some WTO Members have made a recognizable effort to facilitate *bona fide* services trade in Mode 4 and some have even explored creative possibilities, such as quotas. As mentioned, Mode 4 is highly relevant to the LDC group and more efforts of this type are required. Second, few WTO Members have explored regulatory preferences that correspond to the needs and desires expressed by LDCs. WTO Members are, thus, encourage to grant detailed attention to these issues.

Some preliminary lessons for future notifications include the following: confronting WTO Members with very specific requests has proven to be the right approach, LDCs should keep this up, as there is still room for improvement. Second, the use of GATS Schedule format may have a distractive effect, leading users to discuss commitments rather than applied measures, and allows WTO Members to largely abstain from granting regulatory preferences. Using a much user-friendly design would be advisable. Third, much of the discourse on the waiver gravitates towards a consideration of 'commitments' instead of actually applied preferences. More awareness raising is required in this context.

Moreover, a forward-looking approach could be further pursued by LDCs. While the requests so far have chiefly focused on areas of current export interest to LDCs, it is also important to seek for preferences in sectors that will contribute to longer-term development goals, including by contributing to diversification and upgrading. Data on services value-added in all sectors, which is still scarce in LDCs, could be informative to evaluate what are the services sectors that are contributing more to overall productive capacity, productivity and competitiveness. This would highlight that services are not an alternative to agriculture or industrial development, but instead they should be a key element of strengthening agriculture and of industrialization strategies.

B. LESSONS FROM THE FOUR COUNTRY PAPERS ON LEAST DEVELOPED COUNTRIES SERVICES EXPORTS AND THEIR INTERESTS UNDER THE WAIVER

Taking a bottom-up approach, the paper further looks at the waiver notifications from the perspective of four services-exporting LDCs: Cambodia, Nepal, Senegal and Zambia. The study looks in particular at LDC-specific current and emerging interests in terms of services exports and hence in the related removal or modification of barriers encountered in their export markets, using the flexibility granted by the LDCs services waiver. These interests are then juxtaposed with the preferences on offer, both directly (does any preference granted respond to the needs or desires identified?) and indirectly (are there other positive elements in the notified preferences?) with a view to identifying both remaining gaps and useful achievements.

The four countries examined all are successful services exporters. All four have active, sometimes fast-developing services industries across multiple sectors. In all four countries the discourse on services, and services exports, among service providers, the governments and donors have intensified in recent years.

A closer look reveals many export stories that may surprise, for example: animation studies in Cambodia and Nepal supplying services to Europe and the United States of America including Disney; a Nepalese information technology (IT) service supplier providing specialized software services for self-driving vehicles worldwide; Senegalese veterinarians providing advisory services in Mode 4 to breeders across West Africa and in some European countries; Zambian insurances covering several African countries through commercial presences (Mode 3) or Cambodian banks opening dozens of branches in regional markets.

Cross-cutting issues

The four pilot reviews reveal a great number of governmental challenges encountered by these and other service providers in export markets that could potentially be addressed through preferences under the LDCs services waiver. These challenges vary in each exporting LDCs, sub-sector and export

market; so does the possible facilitating responses by preference-granting countries. While a look at the details of each case is therefore unavoidable, some challenges appear across several sectors and export markets.

Following the detailed examinations by country and sector, the set of papers looks at three of these cross-cutting challenges again through the prism of selected real examples and follows them through the Collective Request and WTO Members' response so far, as reflected in the notifications, to gather ideas for further possible steps that would open up real market access for LDCs' services exports.

- Visas and work permits are the minimum prerequisites for the supply of services in Mode 4, but also to some extent, in Modes 1, 2 and 3. The Collective Request duly emphasizes visa/work permits, however, just a few WTO Members responded to that request, and even those did so very selectively. Thus, creative responses to the issue may include the refund to LDCs' service providers of visa fees in case of refusal, explain the cause of refusal, expedite visa/permit procedures for LDCs' providers, carefully craft visa categories.
- Fees, charges and taxes are another major impediment to LDCs' services exports. A seemingly small cost can stop providers from reaching the crucial first rung of the ladder, particularly in small and medium-sized enterprises (SMEs). The Collective Request reflects the issue in multiple ways, but so far only one or two WTO Members have addressed the issue. Thus, some creative responses may exempt LDCs' service providers from (some) fees, charges or taxes.
- Categories of CSS and independent professionals are of significant relevance to LDCs' service providers, who often will not have enough capacity to establish and operate a local base in the host country (*i.e.*, provide services in Mode 3) and thus do not benefit from market access. The Collective Request emphasizes the need for better market access for CSS and independent professionals. Around a dozen WTO Members offer new or improved horizontal commitments, or promises to provide preferences, on CSS and independent professionals. Further steps in this direction should include sector-specific approaches.

C. LOOKING AT COUNTRIES, LOOKING AT SECTORS: BARRIERS ENCOUNTERED, POSSIBLE PREFERENCES, ACTUAL PREFERENCES

The four country case studies, in varying composition, touch on eight groups of sub-sectors, namely: (1) professional services (legal, medical and health, accountancy and architecture); (2) IT and IT-related services; (3) creative economy; (4) tourism; (5) education; (6) insurance; (7) banking and (8) construction services. Looking at the actual barriers encountered by service providers from the four countries, possible/imaginable preferences and actual preferences granted, a mixed picture emerges.

1. Professional services (and related health services)

The case studies on Senegal and Zambia each consider a selection of professional services. In the context of Senegal, these are services provided by hospitals, doctors, nurses and veterinarians. In the case of Zambia, they include, accounting/auditing, architectural services, engineering services and services related to mining. The Cambodia analysis touches on legal services. The cross-cutting issues just mentioned physical market access, feature prominently in the context of professional services.

a. Legal services

Cambodian stakeholders consulted export legal services in Mode 2 to foreign investors in Cambodia and in Mode 3 to Myanmar. While no restrictions were reported on exports in Mode 2, stakeholders reported that their exports of legal services encounter incorporation and local partnering requirements. Possible preferences responding to these challenges could include to relax incorporation requirements for LDCs' providers of legal services, and to relax or waive local partnering requirements for LDCs' providers of legal services. Four WTO Members offer preferences in legal services, however, none of them address the specific preferences suggested. Some rather reflect some of the challenges encountered.

b. Accounting/auditing

Zambian accountants generally find their neighbouring target markets relatively open and their qualifications

recognized in several markets in the region except in South Africa, one of the of the most important markets. National treatment and market access limitations intervene in the context of the recognition of qualifications, in the form of quantitative restrictions and with respect to work permits. Possible preferences could include to grant these service providers facilitated residency status; to fast track and facilitate the recognition of qualifications obtained in LDCs, as well as work permits; or to create an LDC quota for LDCs' providers of auditing services, among other preferences. Most of the suggested preferences are not addressed through the notifications.

c. Hospitals, doctors, nurses, veterinarians

In relation to health and medical services provided by hospitals, doctors, nurses and veterinarians, challenges encountered include insurance portability (affecting services in Mode 2), recognition of qualifications and, perhaps somewhat surprisingly, nationality requirements for veterinarians. Possible responses would include to provide automatic or facilitated portability of medical insurance to cover medical and health services in or from LDCs; to systematically facilitate the recognition of LDCs' professional qualifications; and to waive nationality requirements for LDCs' veterinary practitioners. For Zambian nurses, who encounter high adaptation requirements, for example in the United Kingdom of Great Britain and Northern Ireland, *inter alia* the extension of facilitated access as the one granted to European Economic Area (EEA) nurses would be very useful. None of the specific preferences suggested are addressed in the notifications. There are, however, some gradual openings of interest for doctors, nurses and veterinarians. Notable, however, is also what is not offered, for example the remaining limitations on telemedicine.

2. Information technology and information technology-enabled services

These are considered in Cambodia, Nepal and Senegal. Issues encountered in export markets, besides visas and work permits, include local staffing and incorporation requirements (Mode 3), equity caps and localization requirements. Possible preferences could include to exempt LDCs' operators from maximum equity caps, from local hiring requirements

(Modes 3, 4). Issues encountered also include local preferences in public procurement processes and access subsidies and tax breaks. Possible preferences could include exemptions for LDCs' IT/business process outsourcing (BPO) suppliers from local partnering requirements, and/or access to government procurement. None of the preference notifications specifically address the mentioned barriers and challenges in the export markets of interest to the LDCs examined.

a. Creative economy: Entertainment services and audiovisual services

Creative industries including *entertainment and audiovisual services* are key for many LDCs including Cambodia, Nepal and Senegal. Barriers encountered, besides visas and work permits, include withholding taxes, social security contributions, weak Intellectual Property protection in export markets, mandatory film distribution through local distributors, screen/air quotas, coproduction requirements and local partnering and hiring requirements. Possible preferences responding to these issues could include to waive or reduce withholding taxes and social security contributions for performing artists; to allow for the direct distribution of audiovisual content by LDCs' service suppliers and sellers; to reduce local content requirements, among others. The response to these needs in notifications is limited. Only two WTO Members, the United States, and Taiwan, Province of China, offer preferences in the audiovisual sector at all.

3. Tourism

Tourism is a main export sector for many LDCs including Cambodia and Nepal. In addition to visa restrictions addressed, other regulatory and market access challenges encountered include those associated with the promotion of the tourism offer from LDCs. Possible preferences to address this include direct support to LDCs and their tourism operators with respect to marketing and information; unilateral extension of the benefits found in tourism Memorandum of Understanding (MoU) to LDCs' tourism service suppliers; extending national treatment so the tourism boards market LDCs' tourism services too. Other barriers include travel warnings and restriction on the type of services offered. Possible preferences include the regular review of travel warnings for LDCs and granting national treatment/or removing restriction for LDCs' travel agencies. Fourteen WTO

Members offered preferences in “Tourism services”. Some of these are interesting *vis-a-vis* the challenges underscored by LDCs’ exporters, at least in principle and to some extent.

4. Education services

Education services are considered in the context of Senegal and Zambia. Senegalese stakeholders overall do not complain about market access or national treatment challenges, but on domestic issues. Zambian providers do report on recognition issues, including regarding professional education. Notified preferences do not respond to these issues. Only four WTO Members address education services at all, but none ventures into regulatory aspects such as recognition and accreditation. No WTO Member has responded to the suggestion reflected in the LDCs’ Collective Request to grant scholarship portability allowing students to study in LDCs

5. Insurance and re-insurance services

These are considered in the context of Zambia. Issues encountered by re-insurers and direct insurers include quotas and withholding taxes on re-insurance premiums, local partner requirements, restrictions on Mode 2 consumption, limitations on the employment of foreign managers and specialists, the domestication of certain insurances, and other local insurance requirements. Possible preferences could include to provide national or preferential treatment for LDCs’ providers of re-insurance services for purposes of receiving mandatory reinsurance premiums. For direct insurers from LDCs’ requirements relating to local partnering, the form of legal entity, or the participation of foreign capital could be relaxed; restrictions on consumption abroad of certain insurance could be relaxed; domestication requirements could be waived; among other preferences. Notified preferences scarcely respond to these specific needs/opportunities. Relevant African regional markets for Zambia are not covered by waiver notifications.

6. Banking services

These are considered in the context of Cambodia. Challenges encountered are classical market access restrictions relating to incorporation in foreign markets, limitations on the type of services provided, restrictions on currency of loans, on interest rate and on the

amount of loan offered to customers. Notwithstanding of the rationale for prudential regulations in the banking sector, WTO Members could relax incorporation related limitations, as well as limitations on the type of service provided. WTO Members could also extend national treatment to LDCs’ banking institutions in regard to the currency of loans and interest rates. None of the specific preferences suggested are addressed in the notifications made under the waiver. There are, however, some gradual openings of interest for banking service providers that addressed some of their challenges, particularly on market access in Modes 1 and 3 (e.g. foreign equity participation and commercial presence requirements).

7. Construction services

Construction services are considered in the context of Zambia. Classic barriers encountered by exporters are often those pertinent to Modes of supply 3 and 4 more generally. In projects procured by governments, services exporters also encounter national treatment restrictions (requirements of nationality, residency, local content or the employment of local staff). Stakeholders further underscored market access, regulatory and other challenges in the form of legal entity and foreign capital participation. Possible preferences may include to remove or relax market access limitations for LDCs’ providers of construction services especially those related to legal entity and foreign capital participation, and to grant national or preferential treatment to LDCs’ providers of construction services under government procurement tenders. Nine WTO Members address offers in this sector. There are few notified preferences that provide inspiration for measures that address the mentioned concerns.

D. CONCLUSIONS AND RECOMMENDATIONS

While the response to the LDC’s Collective Request represents an initial achievement, there is much room for further developments in the context of the LDCs services waiver. The preference notifications submitted clearly mark a step forward, but they often fail to address the specific matters that occupy LDCs’ service suppliers’ minds. Thus, preferences should not only be focused on preferential market access of the quantitative sort, but also target the removal or reduction of the myriad small and sometimes bigger obstacles and challenges on the way.

WTO Members should pay detailed attention to the issues encountered by LDCs' service providers. General, abstract perspectives of the kind cultivated by services negotiators used to dealing with schedules will not work. A key precondition for success is generosity that responds to potentials for development. WTO Members and their representatives need to avoid defensive reflexes. They should be creative. Specific problems would often need specific responses to be solved. That may require leaving an institutional, sometimes political comfort zone, but often demands much less flexibility and political capital than one might think.

The paper concludes by suggesting a comprehensive, structured and permanent support system for trade preferences in services drawing inspiration from the experience of the Generalized System of Trade

Preferences proposed by UNCTAD in the mid-60s. Such a system would not only focus on reviewing the implementation of the waiver but also on addressing supply side constraints and information and analysis deficits while providing a constructive forum for dialogue among government representatives, intergovernmental organizations, private sector and relevant stakeholders. To this end, the new system could undertake the following four main functions (1) data collection, (2) research, analysis and information dissemination, (3) capacity building and (4) technical assistance, where UNCTAD's services policy reviews (SPRs) could provide key benchmarks of significance and viability to feed preferential treatment initiatives and a forum for dialogue, exchange of experiences and continuous monitoring, peer review and mutual inspiration.



**SERVICES,
LEAST DEVELOPMENT
COUNTRIES' EXPORTS, AND
THEIR SERVICES WAIVER AS
ONE OF MANY TOOLS**

The 2011 WTO Ministerial decision on “Preferential treatment to Services and Services Suppliers of Least-Developed Countries” (WT/L/847) allowed importing countries to grant preferential treatment to services and services suppliers from LDCs. It marked what was previously a niche topic at best: LDCs as services exporters as such, and the potential of LDCs’ services exports to contribute to growth and economic development.

The LDCs services waiver has since been a catalyst for a growing discussion and increasing awareness among policy makers, service suppliers and other stakeholders both in LDCs and in countries that import services from LDCs.³ Twenty-four of these WTO Members have so far notified the lists of preferences they grant to LDCs’ service providers under the waiver. A discussion process at the WTO has been made a permanent feature of the proceedings in the CTS. One element of that discussion was an attempt to evaluate the ‘value’ of the preferences offered.

Arguably, the waiver by itself cannot do much. It is merely a legal tool that enables WTO Members to derogate from Most-Favoured Nation (MFN) clause and grant a preferential treatment to services and service exporters from LDCs. This is akin to the much older ‘Enabling Clause’ for goods, which covers Generalized System of Preferences, with the difference that the waiver only benefits LDCs, not all developing countries. Importantly, the waiver only *enables* preferences, but *does not require* WTO Members to grant them. Furthermore, the waiver does not provide for any specific tools on how to devise preferences in a way that they could practically help LDCs to facilitate their exports into preferences granting countries.

This paper aims at assisting stakeholders including WTO Members, LDCs’ negotiators, international organizations and policymakers in identifying, designing and implementing mechanisms that could facilitate LDCs’ services exports. The WTO’s LDCs services waiver is obviously only one tool in the toolbox. Other tools may serve the same purpose.

For instance, regional services integration may also provide a basis for specific facilitating measures, as such integration arrangements may involve regulatory coordination, cooperation or convergence.

Building on a study “LDCs Services Waiver–Operationalized?” that was commissioned by UNCTAD in 2016, the current analysis presents and reflects on the pilot review, undertaken in late 2017, of four LDCs’ services trade and their interests under the waiver. Namely, the study reviews two Asian (Cambodia and Nepal) and two African (Senegal and Zambia) countries. By looking at a selection of their services and service providers, and the issues they encounter in their export markets, the study aims at providing a start into the next phase of the ongoing discussion process. Thus, taking the waiver process as a context, it is now needed to look at the specific situations of service providers on an LDC-specific basis, consider specific issues encountered in export markets, and devise specific responses, whether incremental improvements or complete solutions, to these challenges.

This design process needs engagement from all stakeholders, recognizing all concerns, including defensive needs, to achieve optimal results.

The current study draws conclusions and presents recommendations for the way forward. These recommendations, include the suggestion to continue, enhance and to some extent institutionalize the process of monitoring, cross-fertilization and joint creative design of solutions, with the waiver providing important, but not exclusive, context.

The paper consists of five parts. It starts by providing a brief introduction, followed by an assessment of preferences offers notified by WTO Members. It then presents the main findings of four pilot country case studies on LDCs’ services exports and their interests under the waiver. The paper follows to address issues that generally affect all services sectors in the four LDCs examined. Conclusions and recommendations are drawn in the Part V.



**AN UPDATED ASSESSMENT
OF PREFERENCES OFFERS
NOTIFIED BY WORLD TRADE
ORGANIZATION MEMBERS:
WHERE DO WE STAND?**

At the time of writing 24 WTO Members have notified preferences under the waiver to the WTO. The notifications were submitted by both developed and developing countries, namely: Australia; Brazil; Canada; Chile; China; European Union; Iceland; India; Japan; Liechtenstein; Mexico; New Zealand; Norway; Panama; Republic of Korea; Singapore; South Africa; Switzerland; Thailand; Turkey; United States; Uruguay; Hong Kong, China; and Taiwan Province of China.

Assessing the content, reach and value of the notified preferences which WTO Members propose, is a challenging exercise due to the complexity and diversity of services, services schedules and services regulation. Therefore, it is necessary to start with an overview of the notifications before proceeding to country specific case studies.

This Part presents a summary of an updated version of a study “LDCs Services Waiver—Operationalized?” commissioned by UNCTAD in 2016. A matrix, devised for this exercise, systematizes over two thousand “preferences” and hence allows for certain statistical observations that can help in the assessment.

A. MAIN FINDINGS: WHO, WHAT AND HOW MUCH?

1. A word of caution

Services regulation is complex and infinitely varied, and so are commitments under services trade agreements. The LDCs services waiver notifications are no exception. With 150+ sub-sectors under the already broad categorization of the standard W/120 “Services Sector Classification List” most used in the WTO and trade agreements, multiplied by four modes of supply, the starting point of over 600 potential options is already impressive, and that is before any of the said complexity of regulation, market access or other, is introduced.

Categorizing, counting and assessing the preferences contained in the notifications is a complex task requiring multiple choices that can affect statistical outcomes. Some preferences could have been categorized in another manner while some counts could have been constructed differently. The following summary of findings and conclusions, thus, must be read with that caveat in mind.

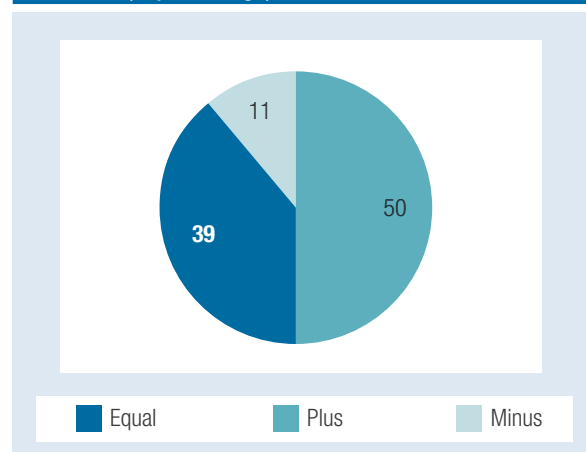
2. Analysing the offer: How much is on the table?

a. Rising above the Doha Development Agenda offers

A first finding is rather encouraging: While the LDCs had encouraged WTO Members to consider at least their DDA offers as a place where possibilities of preferential treatment could be found our analysis shows that in many cases WTO Members managed to rise above that level.

Almost half of the preferences promised to LDCs now go beyond what was offered a decade ago to all WTO Members. In another 39 per cent of the cases the preferences correspond to the DDA offers. Only 11 per cent remain below that threshold (Figure 1).

Figure 1. Notifications of preferences in comparison with Doha Development Agenda offers (in percentage)



Source: UNCTAD.

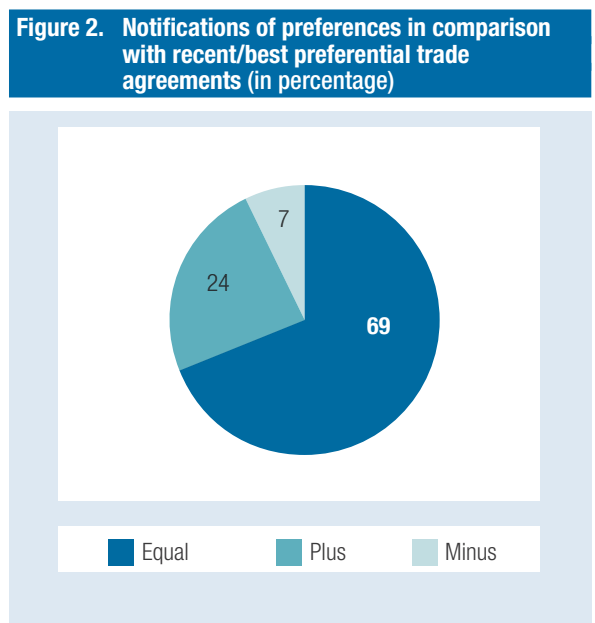
While that is indeed encouraging in the sense that it reflects a willingness of WTO Members to engage seriously in the challenge to design services preferences and make the waiver work (something that could not necessarily be expected given the history) it needs to be taken with a pinch of salt. Already when they were presented a decade or more ago most of the DDA offers reflected applied MFN treatment rather than new, improved market access or national treatment. As services regulation tends to move towards more rather than less liberalization, it is fair to assume that at least half of the preferences (those that are either equal or less than the DDA offers) reflect currently applied MFN treatment or less. In other words: no actual preferences for LDCs' services and providers.

b. Getting close to the “best preferential trade agreement” level

Arguably more encouraging is the comparison of notified preferences for LDCs with recent or best preferential trade agreements (PTAs) concluded by the respective WTO Members.

The idea that existing preferential treatment offered to third countries through PTAs could also be unilaterally extended to LDCs under the waiver had and has an obvious appeal. Those preferences are already tested, technically and politically, and they have been granted to what usually are services exporters that are significantly more powerful than LDCs, in terms of their services export potential. This means that extending them to LDCs will likely have no or very limited impact on the competitive environment in the market. It is therefore unsurprising that WTO Members agreed to enshrine the “best PTA” idea, in the form of a general encouragement, in the Operationalization Decision of 2013.⁴

Many of the notifying WTO Members have taken up the challenge. Over two thirds of their promised preferences correspond to what they had granted to third parties under recent PTAs. Remarkably, however, 25 per cent of notified preferences rise above that level (Figure 2). In other words, provide better treatment to LDCs’ services and service providers than granted to third parties under PTAs.



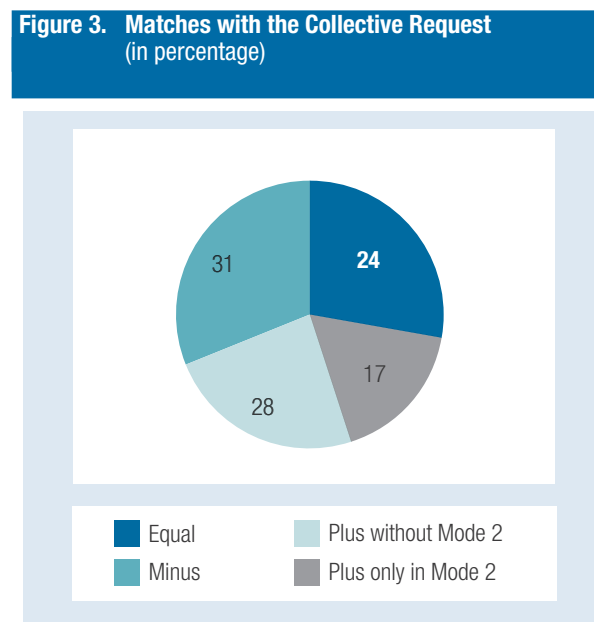
Source: UNCTAD.

This finding needs to be taken, again, with a grain of salt. First, the sheer quantity of PTAs required the research team to make a choice with which PTA a WTO Member’s proposed preferences would be compared. In some cases, this may mean that a better PTA preference for a specific sector/mode corresponding to the proposed LDCs’ preference was in fact agreed in another PTA, which would have moved the count from ‘plus’ to ‘equal’. Second, improvements in the horizontal section in a given PTA (e.g. better access for CSS) may translate into multiple preferences when counted by sectors, especially in Mode 4.

c. More than demanded in the Collective Request? Yes, but...

Perhaps most surprising is that at least some of the preferences offered seem to go beyond what the LDCs requested in their July 2014 Collective Request. Our count shows that around 46 per cent of the preferences notified exceed what was specifically asked for (Figure 3). However, again a good dose of salt must be added. As indicated, the comparison with the Collective Request is not a straightforward exercise, as a result of the slightly convoluted design of the document, with various overlapping lists and specifications.

First, 17 per cent of the 46 per cent ‘Collective Request plus’ preferences are in Mode 2. Not only is Mode 2 in all but few sectors the easiest mode to commit, as no restrictions apply anyway, and there is



Source: UNCTAD.

little interest in introducing them. Many of these would be counted as 'Collective Request plus' for a purely technical reason: a key part of the Collective Request consists of a list of sectors and sub-sectors for which the LDCs specifically request openings in Modes 1, 3 and 4, leaving out Mode 2, presumably precisely in order to focus WTO Members' attention on those modes that matter more. So, where WTO Members included Mode 2 commitments alongside preferences in other modes, these would be counted as 'plus.'

Second, the count at present ignores the rather vague and general '[n]on-exhaustive list of services and services professions of interest to LDCs in the Annex to the Collective Request. Many of the preferences counted as 'Collective Request plus' would be in those sectors listed in the Annex.

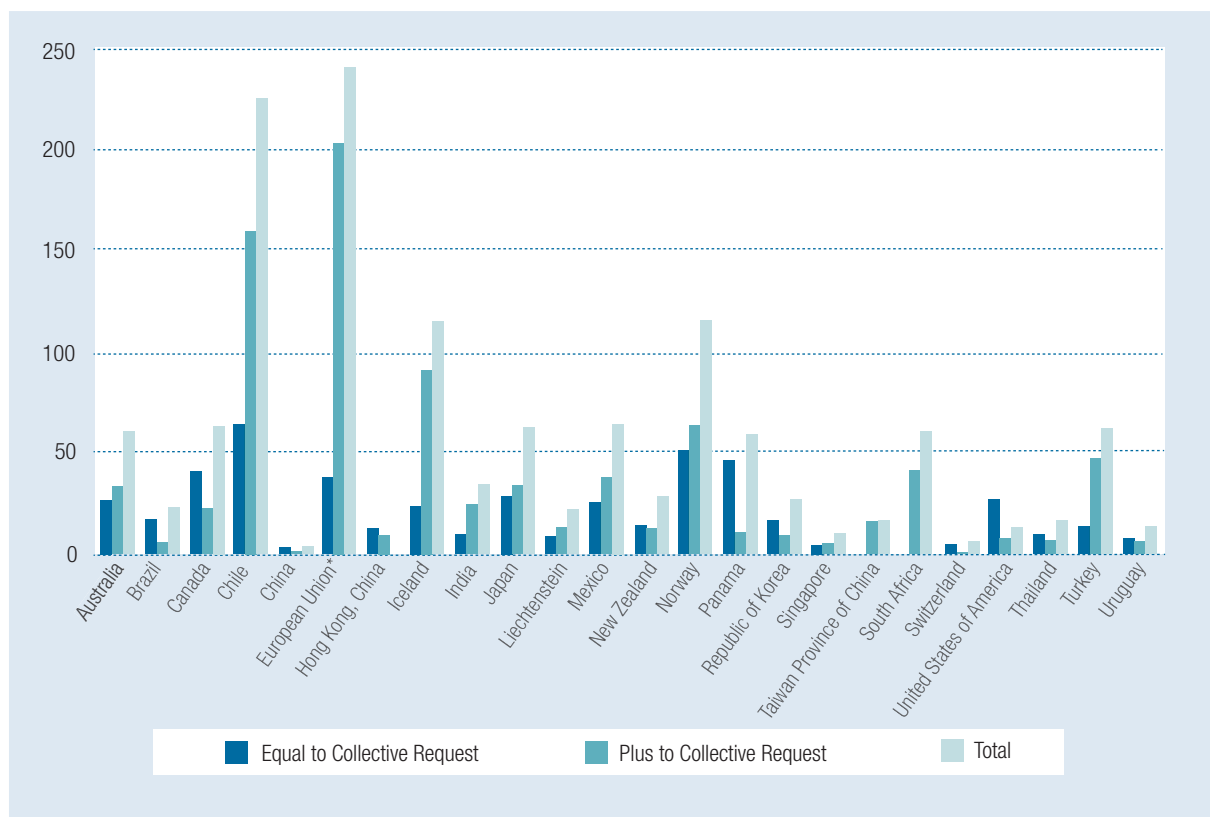
A third observation goes back to the first: when comparing to a LDCs' Collective Request for preferences under the waiver, the analysis of granted offers may seem positive at first sight (Figure 4). It is often observed that the preferences are offered

in sectors/modes of services supply that were not originally asked for. However, it may, arguably, in part reflect a choice by preference grantors to 'boost' their packages by adding more easily feasible but less relevant preferences. In some cases, this may effectively serve to mask limited responsiveness to the actual needs of LDCs. So, what appears as 'plus' may in fact be 'minus', and what appears to be 'minus' may often be an attempt to walk at least some of the way to respond to the Collective Request.

3. Types of preferences

Most preferences offered are in the classical area of market access as defined by GATS Article XVI. However, 15 per cent of the preferences counted concern aspects other than market access. Almost all of these come in the form of national treatment offers. However, very few of them provide preferential regulatory treatment specifically to LDCs' services or their suppliers, as compared to treatment of nationals from preference granting countries.

Figure 4. Number of preferences equal or beyond the Collective Request, by World Trade Organization Members⁵



Source: UNCTAD.

* European Union + Belgium, France, Germany, Italy, Netherlands, Spain and United Kingdom of Great Britain and Northern Ireland.

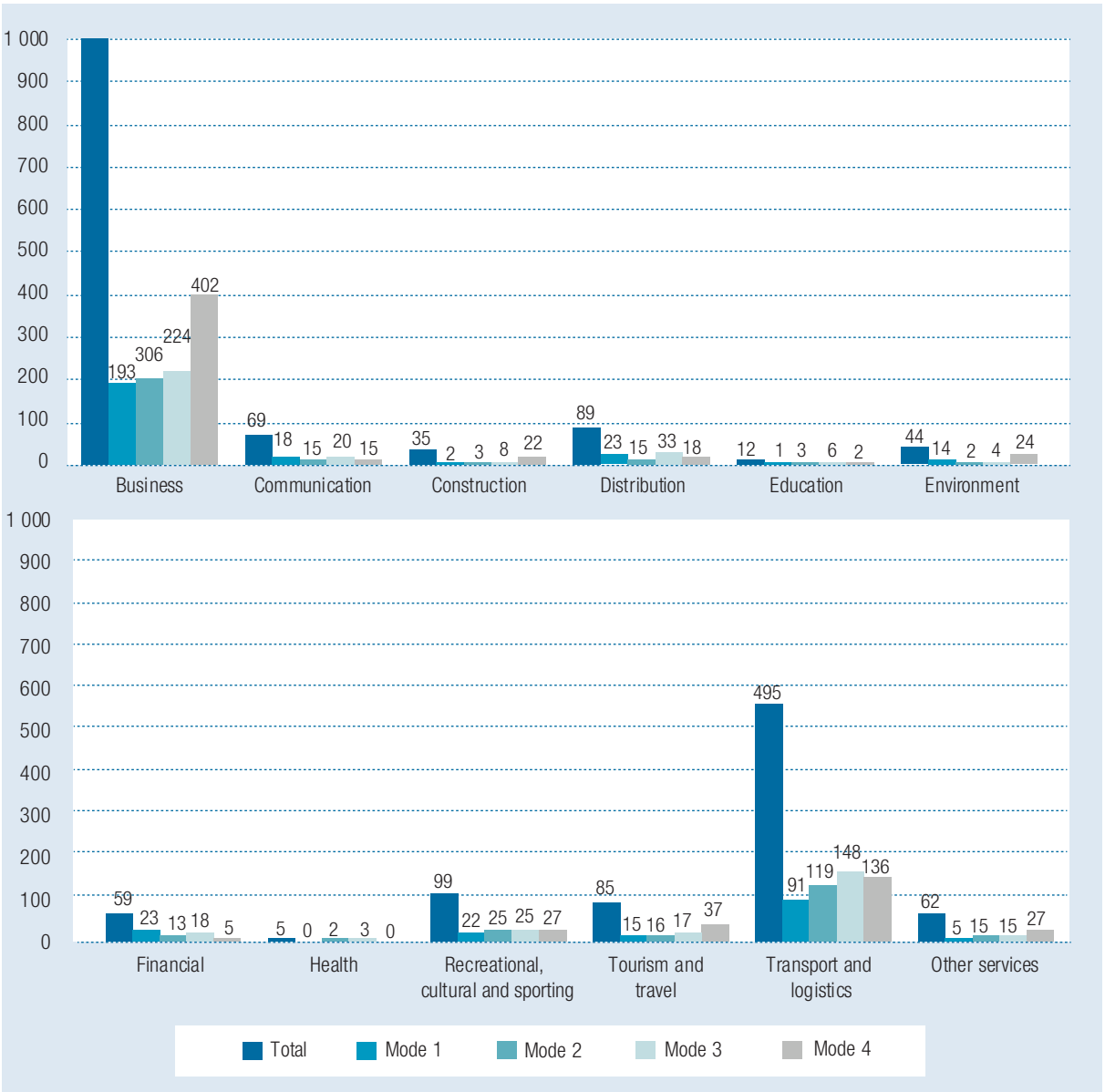
4. Preferences by sector

The distribution of notified preferences among services sectors is rather uneven. By far the largest number is found in business services (Figure 5). While some of that effect is due to the sector’s size and diversity, this is also one of the sectors where some of the most interesting sub-sectors for LDCs are, sub-sectors in which LDCs’ providers may enjoy a comparative advantage. These include professional services e.g. accounting, engineering and nursing (professions where many LDCs have highly trained professionals

often with internationally recognized qualifications to offer); computer and related services (which covers most IT and some IT-enabled services); and the myriad ‘Other’ business services, from consulting to packaging to building cleaning services. The LDC’s Collective Request itself contains many references to this sector.

The second largest sector is transport services (Figure 5). Again, this seems both logical and to be welcomed as responsive to LDCs needs and demands, as in particular cross-border transport

Figure 5. Preferences by sectors



Source: UNCTAD.

operations are not only highly relevant in their role as providers of crucial infrastructure for trade in goods, but also as a very significant value-adding activity, and highly tradable service with limited prerequisites in terms of qualifications, in its own right.

Still somewhat encouraging are the preferences offered in recreational, cultural and sporting services, which include services such as music and dance performances. However, given the wide discrepancy between potential and actual exports more would have been welcome. Many LDCs' performers and their groups (*i.e.*, bands, orchestras, dance companies) simply will not be able to provide their services as a result of visa and work permit requirements and procedures, leaving a large potential of *bona fide* exports virtually stranded.

A small number of preferences offered in tourism. While it is true that the main mode of supply (Mode 2) encounters relatively few hard obstacles to start with, there are significant export potentials related to Mode 4 (*e.g.* tour guides, but also business visitors such as agency operators visiting clients or attending tourism fairs) and Mode 3 (restaurants, hotels, travel agencies) that will not find their desired additional space among the set of preferences offered.

The offer in construction services is also rather limited. Here LDCs' operators often have a comparative advantage, to which the preferences on offer only respond partly. Most crucial here is liberal and effective access for CSS, something most WTO Members find

difficult to offer, and if they do usually make unusable for construction companies as they routinely require academic qualifications, with few exceptions.

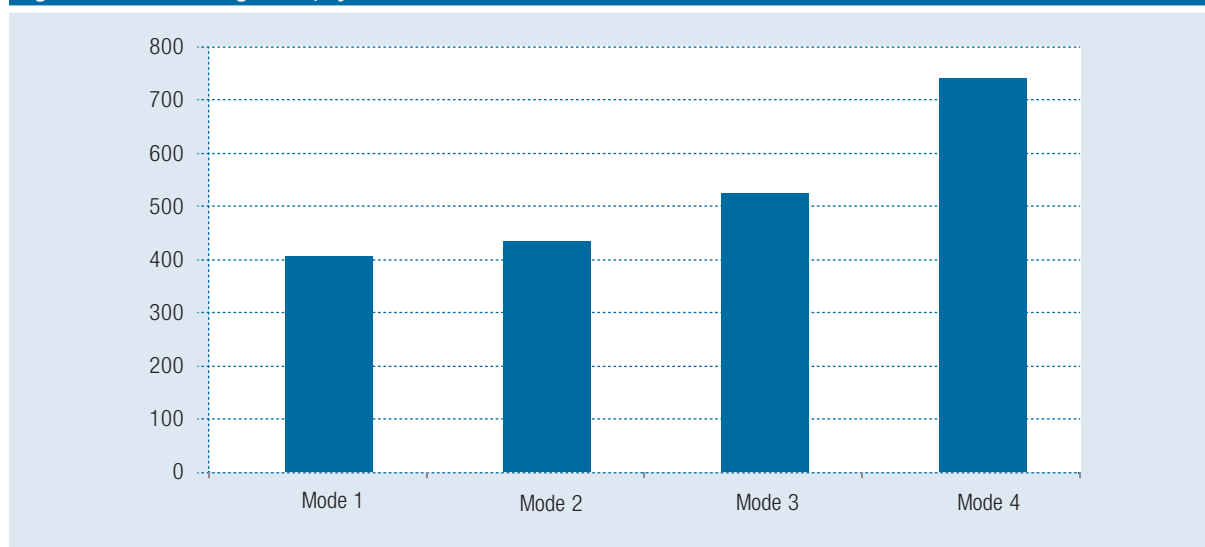
Almost entirely absent are health and education services. While these do not figure prominently in the Collective Request, they do represent export potential, including but not limited to Mode 2, that currently often meets barriers, including in Mode 2, where publicly financed or controlled financing schemes for students and patients alike play a major role.

5. Preferences by mode

Rather encouraging is the notifying WTO Members' response to the LDCs expected strong emphasis on Mode 4. One third of the preferences concern Mode 4 (Figure 6). This effect is to some extent linked to the counting method applied, where improved horizontal commitments are counted per each sub-sector to which they apply. This leads to a significant multiplication effect, but arguably appropriately so, as improved horizontal commitments in Mode 4. For example, a new category such as CSS and/or independent professionals do indeed apply their effect in all sectors covered.

Leaving Mode 4 aside it is worth noting that preferences in Modes 1, 2 and 3 are almost evenly distributed, with Mode 3 attracting marginally more attention than the others. This appears to reflect both the practice of WTO Members to often approach these three modes as a package and the fact that Mode 3 offers more

Figure 6. Preferences granted, by Mode



Source: UNCTAD.

restrictions to be removed. Further, there is again a multiplication effect as some improvements in Mode 3 happen through horizontal commitments.

a. How far does it go? Degrees of liberalisation

When assessing how much liberalization is achieved by a commitment (or its implementation, it is important to note that even full market access can be effectively nullified through regulatory barriers. Conversely, partial market access with limited or no national treatment can sometimes still provide meaningful business opportunities. Limitations also come in myriad shapes and forms, from geographic scope to maximum shareholdings and quotas, each with a distinct effect hardly comparable to others.

The overall picture: Full vs. partial commitments, and the Mode 2 factor

At first glance almost half of all notified preferences are ‘full’ commitments, here defined as those where the entry in the notifications, usually presented in GATS schedule format, reads ‘none’ (*i.e.*, no limitations on market access or national treatment). The other half is ‘partial’ commitments, defined here as all that are not ‘full.’

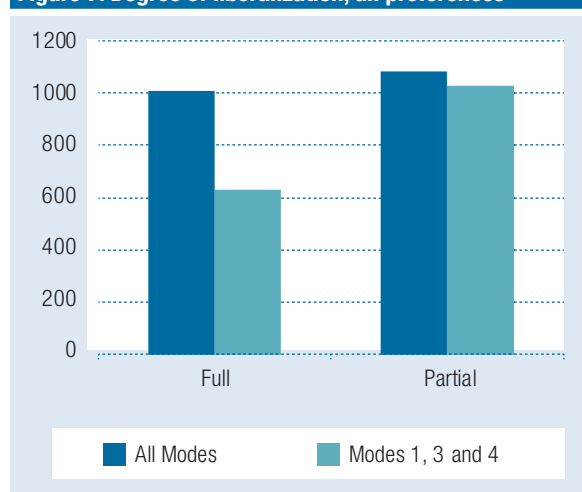
The picture changes, however, when considering the impact of Mode 2 commitments, which are in most cases of limited relevance. Most of these are full commitments (‘none’), not surprisingly, as Mode 2 in many if not most sectors rarely attracts any limitations in the first place. For some countries, full liberalization

in Mode 2 forms a substantial part of their overall full liberalization commitments. For instance, India’s Mode 2 commitments account for 64 per cent of its full liberalization offers. For the European Union and some of its Member States the ratio is 52 per cent. The most pronounced case is Thailand, which offers full commitments exclusively in Mode 2 (100 per cent), not in Modes 1, 3 and 4.

Without Mode 2 the number of full commitments drops to less than two thirds, or around 600, while the partial commitments remain virtually unaffected (Figure 7). In other words, in Modes 1, 3 and 4 the share of full *vis-à-vis* partial commitments is only around 30 per cent; this means that in around 70 per cent of the cases commitments to grant better access to LDCs’ services and service providers remain qualified by limitations. As indicated that does not mean that they do not hold value. In fact, often they will precisely because they are carefully crafted by a WTO Member making an effort to design meaningful preferences in an otherwise protected sector. However, the numbers can be read to indicate that there may often be space for improvement, mapping tasks for the future.

That said, in turn, it must be kept in mind that virtually all Mode 4 commitments remain in one way or another qualified, almost by definition, and are counted here as ‘partial’ commitments. Because Mode 4 commitments amount to one third (700+ out of 2,100+) of all preferences accounted for in the analysis, the picture for the remaining ‘classical’ focuses, namely Modes 1 and 3, looks again different: The ratio of full vs. partial commitments is 2:1.

Figure 7. Degree of liberalization, all preferences



Source: UNCTAD.

‘Full’ or ‘partial’ liberalization? A word of explanation

‘Full liberalization’ preferences (here defined as sector commitments where no limitations are listed) cover different cases. A WTO Member may fully liberalize a sub-sector where no commitments had previously been undertaken under the GATS (*e.g.* Japan, “Services Incidental to Agriculture, Hunting and Forestry”); or a WTO Member may extend a partial commitment in a sub-sector that was already included in its GATS Schedule to a full commitment. For example, Mexico now offers LDCs’ providers unqualified Mode 3 access to “Accounting, auditing and book-keeping services,” while its GATS schedule commitment applicable to others allows for foreign investment in this sector to be limited to 49 per cent of the registered capital.

'Partial liberalization' covers in particular three cases:

- 1) A commitment with a partial degree of liberalization in a sub-sector that a WTO Member did not previously list in its GATS Schedule.
- 2) A preference in a sub-sector where a commitment with partial liberalization was previously undertaken in the GATS Schedule, but where the scope of this commitment was amplified by the notification, though still keeping its partial degree of liberalization. An example would be Switzerland's preference in Mode 3 for "Insurance and insurance-related services", where LDCs' investors are now offered reduced conditions to establish a business *vis-à-vis* the GATS Schedule.
- 3) A preference commitment that is identical to an (equally partial) commitment in the GATS schedule, but now applies to a broader sub-sectoral scope than in the GATS schedule. An example would be Australia's preference in "Storage and warehouse services" which extends the scope of the sub-sector beyond that in the GATS schedule, and now includes even more services than in the W/120 classification.

b. Degree of liberalisation by sector and mode

Of some additional interest is the distribution of full *versus* partial commitments within sectors.

However, the analysis here shows no clear pattern (Figure 8 and Figure 9). While there are variations, the general ratio of roughly equal numbers seems to apply to most sectors, with significant variations mostly where there are few commitments anyway.

The most significant factor appears to have been Mode 4 preferences, which as discussed are virtually always partial commitments.

Where Mode 4 plays a significant role, thus, the share of partial commitments tends to be higher. This seems to be the case, for example, in business services, which includes professional services.

6. Preferences by World Trade Organization Members

A closer look at the number of preferences offered by the 24 WTO Members that have submitted notifications

presents a heterogeneous picture. The total numbers vary dramatically, and while some of these variations may result from scheduling techniques and/or the counting method applied here, large discrepancies remain.

Chile, European Union, Iceland and Norway lead the table, with Australia, Canada, India, Japan, Mexico, Switzerland and United States forming a second group. Very few preferences were offered by China and Singapore (Figure 10).

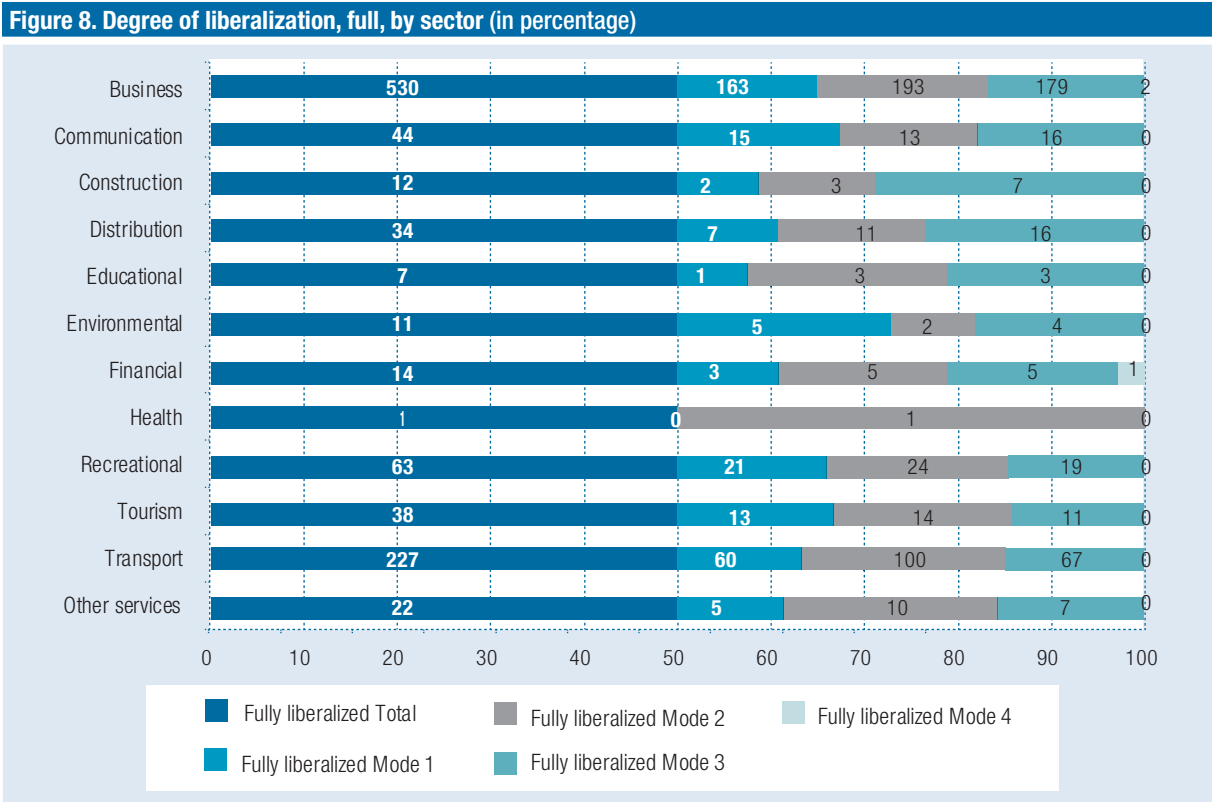
As indicated, these numbers have to be understood as implying significant limitations. The first and most obvious one is that numbers do not necessarily imply quality. Selected, targeted and carefully designed preferences offered by WTO Members with existing geographical or other links to LDCs' markets may well offer more meaningful access to markets than large sets of commitments in less relevant sectors, less relevant modes, and/or less relevant geographical contexts.

B. BEST PRACTICES AND LESSONS LEARNED

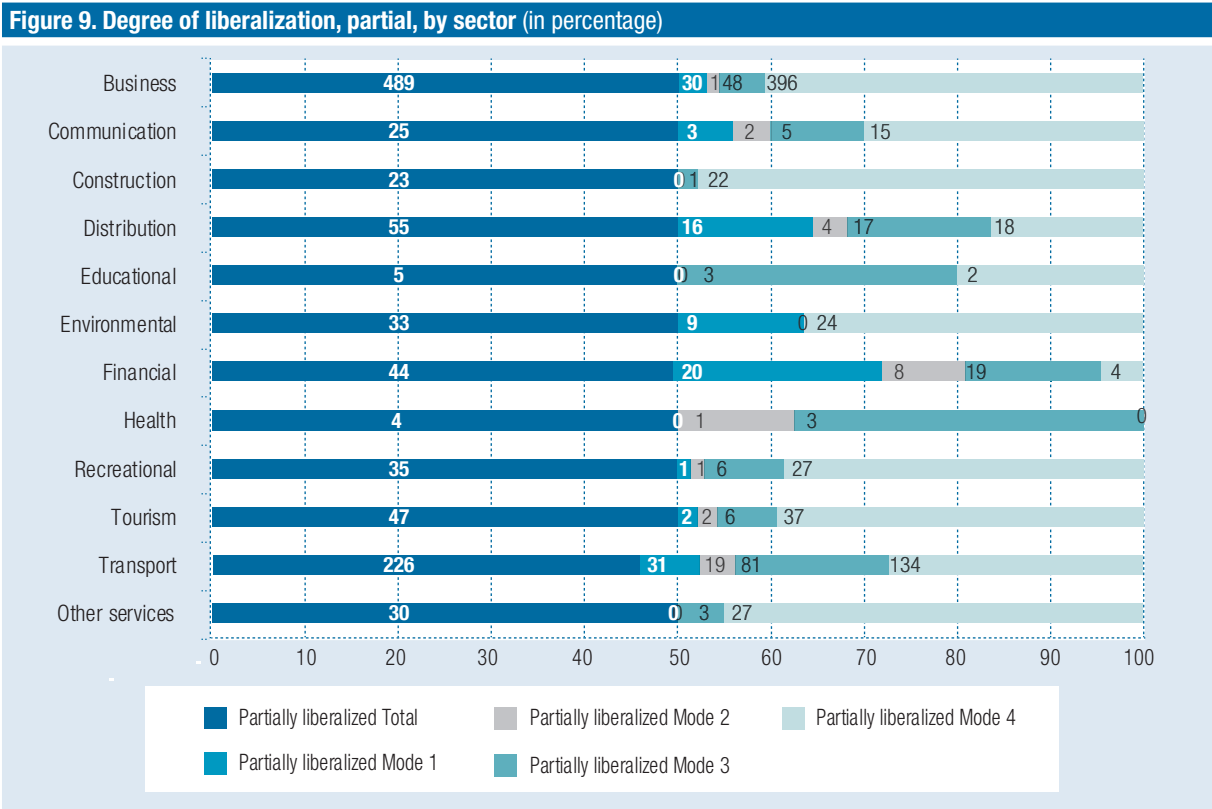
What are the best practices and lessons learned that can be distilled from the 24 notifications submitted so far? Some observations can indeed be made. However, this should be done while keeping the main caveat in mind: comparing offers is only part of a deal. The real effects can be only assessed when the offers are applied in practice (*i.e.*, utilized).

The LDCs services waiver should be about actual preferences (real-life deviations from MFN treatment) and about actual improvements for LDCs' services trade. It remains unclear how many such actual preferences *vis-à-vis* the previous practice are contained or reflected in the notifications, finding out would require a comparison with applied regimes.

There is a significant progress with regard to data on applied regimes. While the WTO's and the World Bank's joint *I-TIP Services* database⁶ began integrating applied regime data some time ago, it appears that recently new and much richer data has become available and is now being integrated into the database. It is hoped that this will in the future allow for at least some analysis of waiver and other preferences against applied regimes.

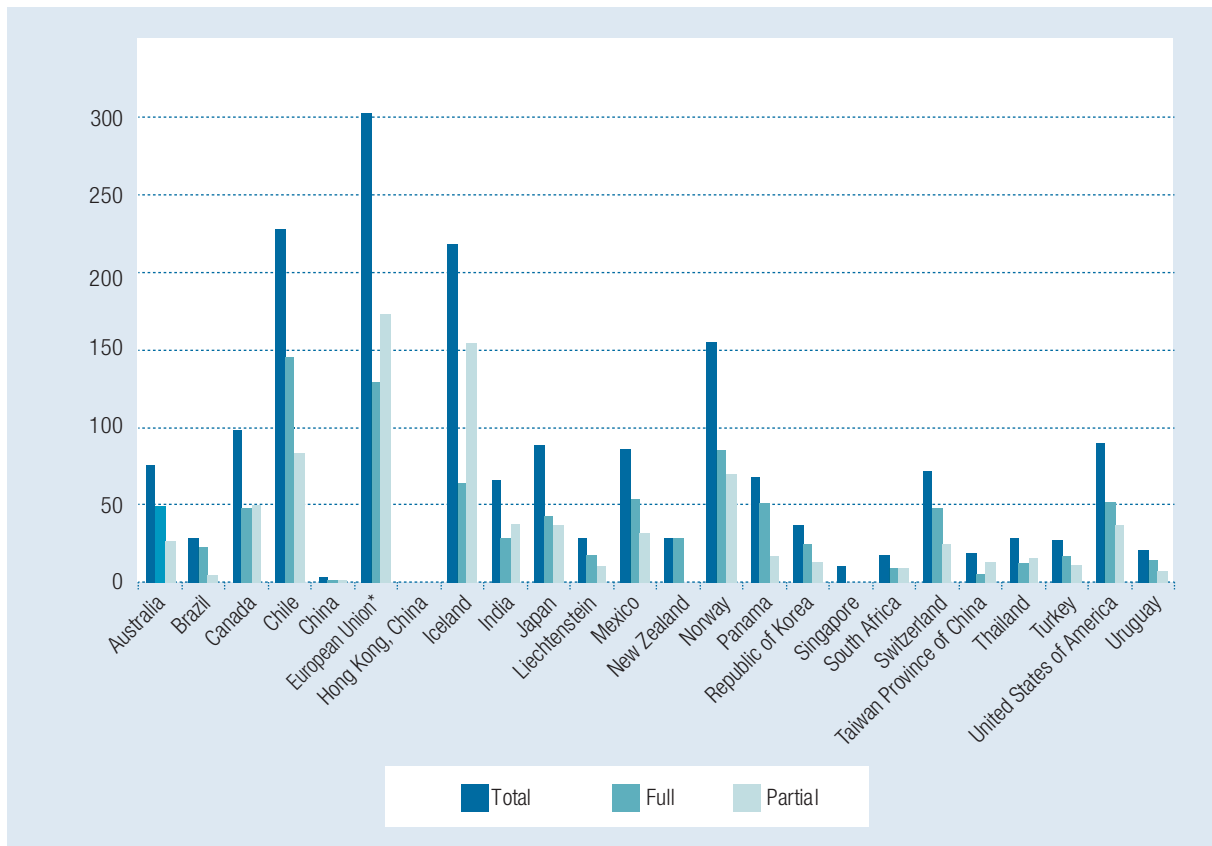


Source: UNCTAD.



Source: UNCTAD.

Figure 10. Preferences by World Trade Organization Member, without Mode 2⁷



Source: UNCTAD.

* European Union + Belgium, France, Germany, Italy, Netherlands, Spain and United Kingdom of Great Britain and Northern Ireland.

What we can do at this point, however, is to distil, based on the analyses presented, some of the “best practices” observed in existing notifications and identify preliminary lessons for future notifications.

- **Clear identification of preferences vis-à-vis GATS MFN commitments** (ideally vis-à-vis applied MFN treatment). Brazil’s notification, for example, clearly juxtaposes each preference offer with the status quo under the GATS schedule. The approach taken by Norway, Iceland and Switzerland to re-issue a complete schedule with integrated LDCs’ preferences is very user-friendly, as long as one does not look specifically for preferences. Ideal would be a hybrid: a full schedule with LDCs’ preferences highlighted. Iceland’s notification does that to a large extent.
- **Clustering modes where possible.** Services are often provided in several modes within the same business relationship. For LDCs’ service providers

separating modes is often particularly difficult. It is therefore desirable for WTO Members to provide to the greatest extent possible market access across all/most modes of supply. A best practice example among others would be Chile, which is offering as a standard approach in most of its many committed sectors full commitments in Modes 1-3 combined with a substantial (additional) opening for CSS in Mode 4. This combination will usually allow for sustainable and substantial business relationships between suppliers and clients.

- **Using the flexibility of unilateral action.** The waiver offers the possibility of unilateral preferences but does not commit WTO Members to maintaining them indefinitely or indeed at all if and when found to be undesirable. In contrast to multilateral WTO or even bilateral FTA negotiations it therefore seems often unnecessary to exercise heightened caution in sectors and modes where the potential impact of LDCs’ services would in any case be marginal

for the importing country, but potentially interesting for LDCs' services exporters. Brazil's practice, for example, to keep Mode 1 and 2 systematically 'unbound'⁸ would appear to reflect such caution.

- **Taking Mode 4 seriously.** Among the most interesting potentials for LDCs' services exports are improvements for exports through Contractual Service Suppliers (CSS) and Independent Professionals, often effective trailblazers for and components of primarily Mode 1-based business models, alongside Service Sellers and Business Visitors. While many WTO Members struggle with the challenge of integrating trade and immigration tools and mechanisms for this purpose, some have made a recognizable effort to make steps forward to facilitate *bona fide* services trade.⁹ Chile's pragmatic and generous CSS commitment, for example, stands out in this respect.
- **Tackling regulatory issues.** Services are regulation intensive sectors, particularly compared to goods. Therefore, exploring regulatory preferences including through the ease of qualification requirements and procedures, licensing requirements and procedures, and technical standards is desirable for ensuring sustainable outcomes offered by the waiver.
- **Format influences content.** It is observed that many WTO Members often discuss commitments rather than applied measures. This risks reducing the waiver's operation to very little. The aim of the waiver is to enable WTO Members to grant preferences that go beyond applied MFN regime.

Lessons learned include:

- **The squeaky wheel gets the grease.** LDCs have been proven right in their approach to confront WTO Members with very specific requests, room for improvement in the form and content of the request notwithstanding. The notifications on offer show that WTO Members have indeed responded to the challenge, some more enthusiastically than others, and some more creatively than others. But the overall lesson is clear: asking works, and there's

much room for improvement in how LDCs' services and service providers are received.

- **Format influences content.** Arguably a bit of a trap has been the fact that WTO Members (including LDCs themselves) seem to gravitate towards using the tools and mechanics they know rather than those that fit the task. The use of the GATS (or other) schedule format has had two unwelcome effects. First, many WTO Members, their delegates and observers, including expert commentators, often find themselves discussing commitments rather than applied measures. While this works comfortably in trade negotiations, it risks reducing the waiver's operation to very little. That function is to enable WTO Members to grant *actually applied MFN-violating preferences*. A promise to apply treatment that is actually granted to all on an MFN basis means something in FTAs, but nothing under the waiver; such treatment does not require any deviation from MFN, hence does not need the waiver, and should not count as its operationalization (even if intelligent and /or overdue MFN liberalization stimulated by reflections on preferences are welcome as long as they actually respond to LDCs' services exporters challenges). Second, the schedule format has allowed, if not enticed, WTO Members to largely abstain from granting regulatory preferences, despite a number of specific (and realistic) requests in the Collective Request. This is unfortunate and should be avoided in future, not necessarily by abandoning the format, but by challenging its completeness.
- **Applied MFN vs. actual preferences – many misunderstandings still intact.** As just indicated, much of the discourse (including admittedly within this paper) gravitates towards a consideration of 'commitments' instead of actually applied preferences. In many cases this is because the discourse never left the comfort of the known context. More awareness raising is required. Active usage of the notified preferences and systematic feedback can make a significant contribution over time.



**LESSONS FROM THE
FOUR COUNTRY PAPERS ON
LEAST DEVELOPED COUNTRIES
SERVICES EXPORTS AND
THEIR INTERESTS UNDER
THE WAIVER**

A. INTRODUCTION

The effective value of the preferences for LDCs' services exports is under discussion. LDCs and other WTO Members are engaged in an ongoing dialogue at the WTO's Council for Trade in Services. A small number of studies have looked at some of the issues, including the mentioned study commissioned by UNCTAD in 2016, whose main findings were already reflected, which took a detailed look at the notifications and juxtaposed them with what LDCs had asked for through their Collective Request.

The 2016 study also recommends that a more systematic and detailed monitoring exercise be conducted, ideally regularly, considering the perspectives of services exporters. This present series of four connected studies serves as a pilot for that exercise.

This Part presents a summary of four case studies aimed at reviewing the implementation of the LDCs services waiver, or rather: The underlying idea of improving effective market access for LDCs' services. The case studies look at four LDCs namely Cambodia, Nepal, Senegal and Zambia, their services exports, the relevance of the notified preferences for these exports, and possible gaps and opportunities for further development of mechanisms for improved effective market access and its utilization by LDCs' services exporters. Focusing on sector(s) of particular export interest to the LDCs in question, the case studies assess, where appropriate on an anecdotal basis, whether and to what extent the preferences granted respond to the market access, regulatory and other barriers experienced by services exporters from the LDCs in question in the export market(s) of interest to the LDCs. By doing so, the analysis aims at identifying existing gaps and proposing options for further improvements.

B. APPROACH

Taking a bottom-up approach, the following chapters look at the waiver notifications from the perspective of specific services-exporting LDCs.

The studies look, in particular, at LDC-specific current and emerging interests in terms of services exports and hence in the related removal or modification of barriers encountered in their export markets, using the flexibility granted by the LDCs services waiver. These interests are then juxtaposed with the preferences on offer, both directly (does any preference granted respond to the needs or desires identified?) and indirectly (are there other positive elements in the notified preferences?) with a view to identifying both remaining gaps and useful achievements.

A word of caution is needed: This exercise remains by its nature necessarily a limited one, a work in progress that should stimulate further, progressively broader and deeper engagement by LDCs' governments, stakeholders and friends on the subject of services exports, the obstacles encountered and the solutions to be sought. Its bottom-up approach looking for the real-life example of barriers to services trade must rely on anecdotal evidence provided primarily by those who know: The services providers affected. Identifying those stories is a challenging exercise, but it remains without alternative: It is those stories that identify the obstacles to be removed, as usable data on export interests and obstacles encountered are hardly available, often in the form of anecdotes (Box 1).

Therefore, the following pilot analyses rely on desk research and brief and compact in-country consultations held with services exporters, services regulators, representatives of relevant government agencies and representatives of services related business associations.¹⁰ This exercise thus aims to bring together what is available to allow an instructive picture to emerge.

The purpose of this Part is to generate insights into pertinent challenges to LDCs' services exports in their export markets, and potential measures that could as preferences under the LDCs services waiver contribute to addressing those challenges. This Part is thus not a "study" on the services sector in Cambodia, Nepal, Senegal or Zambia; rather, it is a collection of useful anecdotal evidence that serves to understand the bigger picture in order to pave the way for a more meaningful operationalization of the LDCs services waiver.

Box 1: Services data – a caveat

When considering services trade data, it is important to note that current statistics in many countries, including also LDCs, rarely capture with any accuracy what is actually happening. This reflects both the secondary attention accorded to services trade and the objective difficulties in collecting and collating the relevant information. These difficulties include:

- First, unlike in trade in goods usually no physical commodity crosses the border, and hence can be observed, counted and measured. Balance of payments (BOP) statistics provide some help, but the collection of traditional BOP statistics primarily relies on measuring cross-border transfers of money, and hence does not “see” the actual transaction of the service that is being paid for. Even if the service provider can be identified as the recipient of the payment, it is often not clear which service was provided (as the provider may provide different services), nor in which mode of supply. Modes 1, 2 and 4 will usually trigger international money transfers as provider and recipient are based in different jurisdictions, so bank or cash transfers across borders will happen and can thus be reflected in the BOP. However, central banks or statistics agencies have little means to tell which mode actually applied – did the lawyer travel to the client, the client to the lawyer, or just the legal memo through the internet before the client made the bank transfer to the lawyer?
- The picture is further complicated for purposes of accounting the value of services provided by natural persons (Mode 4) who stay for a period that is longer than a year in the export market. Those are usually treated as residents of the host country while under the GATS they are still considered as Mode 4 services providers beyond this period – for example as intra corporate transferees staying for 2-3 years. Remuneration for services provided by (resident) natural persons often appear only as net of costs in the form of remittances in the BOP statistics, effectively underreporting the value of services.
- Second, sectoral classifications traditionally used in BOPs are largely out of synch with categories usually used in trade policy, making it difficult for policy makers to use BOP data for many sectors, even if such data are available, as they will often be too aggregated. Much work has been done to advance convergence, but until today services trade statistics remain mostly unusable for trade policy making and trade negotiations.
- Third, Mode 3 is almost entirely under the BOP radar screen as it triggers local, not international payments (from a local service consumer to a foreign invested, but locally established provider). The needed Foreign Affiliates Trade in Services Statistics (FATS), both inbound and outbound, are difficult and tedious to establish, and most developing countries do not even try. As a result, Mode 3 services provision goes largely unmeasured, except to the extent that it appears as part of FDI statistics.

All these (and some more) issues have long been recognised, and a group of international agencies including among others the IMF, EUROSTAT, the WTO and UNCTAD, has made significant efforts to compile recommendations and international best practices,¹¹ but actual practice lags far behind.

The issue of services trade statistics, notably, is not exclusive to developing countries. Traces of the magnitude of the challenge are found almost as much in developed country resources and discourse. For example, a report by the United States Congressional Research Service on members of the Trans-Pacific Partnership (TPP) looked at United States services trade with only eight of the eleven (non-United States) TPP parties because the United States Bureau of Economic Analysis (BEA) lacked individual data for trade with the others.¹²

This weakness of data has the understandable but odd consequence that more often than not the unavailability of data translates directly into a lack of awareness among those who otherwise tend to rely on data, such as administrative agencies, politicians and negotiators.

This effect is exacerbated in trade in services as many stakeholders (including businesses themselves) have only a shallow grip on the concepts and mechanics of trade in services. Finally, the sheer sectoral spread in services adds to the resulting confusion.

The result is a political and economic discourse that is sometimes perilously removed from reality. However, the fact that something is difficult to measure of course does not mean that it is not there. These observations and any exchange with service providers and their clients will make it clear that trade in services is a major reality, and an even bigger potentiality, for any economy. It is therefore incumbent on policy makers and other stakeholders to make every effort to ensure that the absence or paucity of data does not lead to misinterpretations. This requires an enhanced qualitative, as opposed to just quantitative, discourse, and arguably an even closer engagement with stakeholders than elsewhere.

C. CROSS-CUTTING ISSUES: A WORD UP-FRONT

Before presenting the main findings of the pilot review it is useful to briefly discuss up-front a handful of cross-cutting issues that appear repeatedly across the range of countries and sectors. These are physical market access (visa, work permits, etc.); taxes and charges; and Mode 4 categories:

- **Physical market access:** Issues relating to visa and work permits, from procedures to fees to documentation requirements to siting of consular locations. While these are of high, sometimes decisive importance for LDCs' service providers they find only very scant attention in the waiver notifications, even though this matter and its importance were strongly underscored in the LDCs' Collective Request.
- The same applies to **taxes and charges**. While LDCs have made it clear that costs matter, only one or two WTO Members have taken the message to heart. This is problematic, not least because myriad possibilities to send the message (that costs should not deter *bona fide* services business development) exist, many of them easy to implement.
- It looks much better when it comes to **Mode 4 categories**. Here about a dozen WTO Members have heeded the LDCs' call to open themselves to CSS and independent professionals, and there arguably is serious engagement. That said, ideally all WTO Members would explore the possibility of a measured openness when it comes to these two non-Mode 3 forms of Mode 4 trade, crucial to typical LDCs' success sectors such as cultural, audiovisual and IT services.

These cross-cutting issues are addressed in the country analyses and revisited in more detail under Part IV.

D. PUBLIC PROCUREMENT

Governmental contracts often represent a significant part of the market. LDCs' service providers often have no or limited access to procurement projects by (1) foreign governments for their local consumption or (2) donors, international agencies, etc. Better effective access would translate into significant benefits, especially in certain sectors such as IT and construction.

Procurement has not attracted any attention in the context of the LDCs services waiver for the simple

technical reason that the waiver is not required to justify the extension of preferences for procurement contracts because the GATS MFN obligation does not cover them. But this does not mean that WTO Members should not use this avenue to facilitate effective market access for LDCs' services. On the contrary, WTO Members could grant improved access to procurement projects, e.g. by generally allowing them to tender, possibly on a national treatment basis; by relaxing local content requirements; by counting LDCs' inputs as local inputs; and/or other solutions.

E. LOOKING AT COUNTRIES, LOOKING AT SECTORS: BARRIERS ENCOUNTERED, POSSIBLE PREFERENCES, ACTUAL PREFERENCES

The four country case studies, in varying composition, touch on eight groups of sub-sectors, namely: (1) professional services (legal, medical and health, accountancy and architecture); (2) IT and IT-related services; (3) creative economy; (4) tourism; (5) education; (6) insurance; (7) banking and (8) construction services. Looking at the actual barriers encountered by service providers from the four countries, possible/imaginable preferences and actual preferences granted, a mixed picture emerges.

The following provides a summary along sectoral lines. The details of the respective country context, however, often matter greatly. These are presented in separate country-specific papers.¹³

1. Professional services (and related health services)

a. Definition

Under the WTO Services Sectoral Classification List, referred to as the 'W/120'¹⁴ "professional services", are listed as a sub-sector of "business services". The category of 'professional services', divided into ten sub-sectors, encompasses the classical professions (lawyers, doctors, etc.) and other services offered by professionals with specialized higher education. Often these are organized in professional membership groups such as the bar associations or national medical associations which, in many cases, are endowed with self-regulatory functions and powers.

This Part focuses on a selection of a sample sub-sectors including legal services, accounting and auditing services, architectural services, integrated engineering services, services related to mining, veterinary services and services provided by doctors, midwives and nurses.

b. Barrier encountered and possible preferences

The cases studies on Senegal and Zambia each consider a selection of professional services. In the context of Senegal, these are health and medical services provided by hospitals, doctors, nurses and veterinarians. In the case of Zambia, they include, in addition accounting/auditing, architectural services, engineering services and services related to mining. The Cambodia analysis touches on legal services. The cross-cutting issues just mentioned, in particular physical market access, feature prominently in the context of professional services.

Legal services

Cambodian stakeholders consulted export legal services in Mode 2 to foreign investors in Cambodia and in Mode 3 to Myanmar. While no restrictions were reported on exports in Mode 2, stakeholders reported that their exports of legal services encounter incorporation and local partnering requirements.

Possible preferences responding to these challenges could include to relax incorporation requirements for LDCs' providers of legal services, and to relax or waive local partnering requirements for LDCs' providers of legal services.

Four WTO Members offer preferences in legal services, however, none of them address the specific preferences suggested. Some rather reflect some of the challenges encountered. In the United States, for instance, certain states partially opened Mode 3 for foreign legal consulting services, subject to an in-state office requirement, while in other states, it is subject to the association with an in-state law office. Similarly, the European Union's notification reflects remaining restrictions, namely that several member states maintain local partnership requirements, some with a significant "minimum" of local participation. Other European Union members keep their reservations on nationality requirements for the supply of legal services in Mode 3.

Accounting/auditing

Zambian accountants generally find their neighbouring target markets relatively open, their qualifications recognized. Zambia's flagship training institution for accountancy (and now many other fields), Zambia Centre for Accounting Studies (ZCAS), has a long history of not only training Zambian but also many foreign students, who obtain Association of Chartered Certified Accountants (ACCA) certified qualifications that are widely recognized. However, relevant exceptions apply, not least in one of the most important markets in the region: South Africa.

National treatment and market access limitations intervene in the context of the recognition of qualifications, in the form of quantitative restrictions and with respect to work permits.

Possible preferences could include to grant LDCs' providers of auditing services facilitated residency status, or to waive the residency requirement for LDCs' providers of auditing services; to fast track and facilitate the recognition of qualifications obtained in LDCs; to encourage professional bodies to negotiate the terms of mutual recognition agreements with their counterparts in LDCs; to eliminate or reduce market access restrictions (quantitative restrictions) for LDCs' providers of auditing services; to create an LDC quota for LDCs' providers of auditing services; to provide preferences for LDCs' providers of auditing services in filling the auditors' quota; to facilitate access to work permits for LDCs' service providers; to fast track the procedures for obtaining work permits for LDCs' service providers establishing commercial presence (Mode 3); or to reduce work permit fees for LDCs' service providers.

Most of the suggested preferences are not addressed through the notifications. The primary target markets for accounting and auditing services for Zambia are so far not covered by any preference notifications. South Africa's preference notification contains no preferences relating to professional services, nor any improvements over its horizontal GATS commitments on Mode 4. Some inspiration for the future for this sector however can arguably be drawn from other WTO Members' notifications. Several provinces of Canada have gradually relaxed their requirements for Mode 1. Instead of residency or even nationality requirements for auditing services they now (only) require (also) a commercial presence (*i.e.*, a Mode 3 investment). While that remains

burdensome, it is easier to overcome, and often makes business sense anyway, so it does pave the way for viable business models involving an important Mode 1 component for accountancy/auditing firms. Switzerland opens Mode 1 and Mode 4 to foreign service providers, except that “at least one auditor of a “joint-stock company” or a “stock company with unlimited partners” must have his domicile, his principal office or a registered branch in Switzerland.” In the European Union, Belgium waives the otherwise applicable economic needs test (ENT) for accounting and bookkeeping services in Mode 4 “for CSS when the annual wage is above the amount defined by the relevant laws and regulations.” This model could be used by others who maintain ENTs for fear of salary dumping. While this would take away the cost advantage of LDCs’ providers, it arguably still provides an opening, a foot in the door.

Hospitals, doctors, nurses, veterinarians

In relation to *health and medical services provided by hospitals, doctors, nurses and veterinarians*, challenges encountered include insurance portability (affecting services in Mode 2), recognition of qualifications and, perhaps somewhat surprisingly, nationality requirements for veterinarians, which persist in many countries, including in France and several neighbouring West African markets. This is of relevance to Senegal.

Possible responses would include to provide automatic or facilitated portability of medical insurance to cover medical and health services in or from LDCs; to systematically facilitate the recognition of LDCs’ professional qualifications, unilaterally and/or through the advancement of mutual recognition agreements (MRAs); and to waive nationality requirements for LDCs’ veterinary practitioners. For Zambian nurses, who encounter high adaptation requirements for example in the United Kingdom, *inter alia* the extension of facilitated access such as the one available for EEA nurses would be very useful.

None of the specific preferences suggested are addressed in the notifications. There are, however, some gradual openings of interest for doctors, nurses and veterinarians, including in the European Union. What is not offered, for example remaining limitations on telemedicine, is also notable.

2. Information technology and information technology-enabled services

a. Definition

The provision of IT and IT-enabled services, including, for purposes of this discussion, BPO services has experienced a rapid growth over the past decade with increasing technological possibilities and businesses’ willingness to outsource their back-office, client relation and other business-related operations. The market is highly diverse and dynamic. For BPO services, the classification for GATS purposes depends on the type of service supplied. Moreover, the supply of services in multiple modes may be relevant for the provision of these services. As a rapidly evolving market, the current classifications of IT and IT-enabled services under both the WTO’s W/120 Services Sectoral Classification List and under the United Nations Central Production Classification (CPC) list appears insufficient to capture with precision all elements of the relevant market. For purposes of this study, however, such precision is not essential, and a certain liberty is hence taken when discussing services in this group.

Under W/120 most IT services are captured in the category of “computer and related services” which includes the following five sub-sectors: “Consultancy services related to the installation of computer hardware”, “software implementation services”, “data processing services”, “database services” and “other computer and related services”.

Business process outsourcing services, on the other hand, are a somewhat cross-cutting group of services, often defined as including, in particular, the following three sub-sectors: customer interaction services, such as sales support, back-office operations, such as data entry and handling, and independent professional or business services provided through electronic means such as accounting or taxation services. BPO services partly transcend classifications, which complicates any discussion of statistics.

For purposes of this study, the ensuing discussion concerns the following types of services: computer and related services as defined in the WTO classification list, with a particular emphasis on cloud computing, data processing and database management services and IT enabled business services such as medical transcription service.

b. Barriers encountered, possible preferences, actual preferences

Cambodia ranks third among LDCs in the ICT development index attracting capital and talent to invest in the sector. Nepal is home to fast growing and innovative IT industry offering sophisticated services including in the area of artificial intelligence to international clients. The sector is also growing in Senegal which positioned itself as the leading sub-Saharan French-speaking country in the IT and IT enabled services sector.

Issues encountered in export markets include local staffing and incorporation requirements (Mode 3), equity caps and localization requirements. This is apart from physical market access issues relating to visas and work permits (and related procedures, fees, etc.) affecting Mode 4. Possible preferences include to exempt LDCs' operators from maximum equity caps, from local hiring requirements or and/or from the requirement to include a certain number of locals in management bodies/on the board (Modes 3 and 4).

Issues encountered also include, prominently, local preferences in public procurement processes and access subsidies and tax breaks. Possible preferences could include exemptions for LDCs' IT/BPO suppliers from local partnering requirements, and/or access to otherwise closed government procurement, e.g. through preferential national treatment. These preferences, it bears repeating, do not require waiver coverage as government procurement is not covered by the GATS' MFN obligation in the first place.

None of the preference notifications specifically address the mentioned specific barriers and challenges in problematic markets. However, the notifications received from nine WTO Members still overall represent a significantly increased bundle of market access opportunities for IT service providers, at least on paper, as several WTO Members offer comprehensive market access coverage for all or most sub-sectors, and all or most modes of supply, in 'Computer and Related Services' (CPC 84), often on the basis of a 'best PTA' approach. While it is not sure how much of this represents actual, let alone preferential market opening in the respective markets, it represents an encouraging signal in the right direction for LDCs' providers of IT and IT related services, including in Cambodia, Nepal and Senegal.

3. Creative economy: Entertainment services and audiovisual services

a. Definition

"Creative industries" is an emerging concept without a single definition. It involves a group of activities that "are intensive in creative skills and can generate income through trade and intellectual property rights".¹⁵ Thus, it comprises a range of services from arts performance (music, dance and theatre) film production, broadcasting, digital animation, video games to architectural and advertising services.

In the WTO's Services Sectoral Classification List W/120 creative services are found in various sectors and sub-sectors. Music performers' services, for example, are grouped under "Entertainment services" as a sub-category to "Recreational, cultural and sporting services", while film-related services are mostly found under "Audiovisual services", a sub-sector to "Communication services". Audiovisual services are further subdivided into "Motion picture and video tape production and distribution services", "Motion picture projection services", "Radio and television services", "Radio and television transmission services", "Sound recording" and "Other".

b. Barriers encountered, possible preferences, actual preferences

Creative industries including *entertainment and audiovisual services* are key for many LDCs including Cambodia, Nepal and Senegal. Entertainment services have major spill-over effects on other services sectors like tourism services. The audiovisual sector is a forward-looking sector with significant potential to create jobs among the youth is fast developing in Cambodia, Nepal and Senegal.

Barriers encountered include, apart from multiple issues relating to physical access and Mode 4, withholding taxes, social security contributions (for performers and others in Mode 4) and weak Intellectual Property protection in export markets. Barriers encountered by exporters of audiovisual services include mandatory film distribution through local distributors, screen/air quotas and coproduction requirements and local partnering and hiring requirements.

Possible preferences responding to these issues could include to waive or reduce withholding taxes and social security contributions for performing artists

and other visiting cultural professionals; to allow for the direct distribution of audiovisual content by LDCs' service suppliers and sellers in derogation from otherwise applicable mandatory distribution through designated local channels; to reduce local content requirements to allow for greater shares of inputs from LDCs; or to unilaterally extend the benefits of coproduction agreements (with third parties) to LDCs' services and service suppliers.

The response to these needs in notifications is limited. Only two WTO Members (*i.e.*, Taiwan, Province of China, and the United States offer preferences in the audiovisual sector at all, with the United States leading the way in the form of full commitments). Were these commitments undertaken by target markets like France, Ireland and other European film producing markets, LDCs like Cambodia, Nepal and Senegal would benefit greatly from these preferences. No WTO Member however addresses the issue of local content and coproduction agreements, nor of withholding taxes or social charges.

Eight WTO Members offer preferences in "Entertainment services", the main sector for cultural performers. Some of these are potentially interesting for Senegalese performers. Republic of Korea, Mexico, India, Chile and Iceland, for example, explicitly extend their horizontal commitments on Mode 4 to this sub-sector. Chile and Taiwan, Province of China, offer, at the same time, flexible access for CSS without onerous qualification requirements. While Senegal's traditionally preferred markets are thus not covered, progress in principle must be acknowledged.

4. Tourism

a. Definition

The WTO Services Sectoral Classification List defines "Tourism and travel related services" as the services provided by hotels and restaurants, including catering, travel agencies and tour operators, and tourist guides. "Hotel and restaurant services" are further defined to include "Hotel and other lodging services" (hotel lodging services, motel lodging services, holiday camp services, youth hostel, etc.), "Food serving services (restaurant services, self-serving facilities, catering services and others)" and "Beverage serving services for consumption on the premises (with entertainment, without entertainment)".

It is important to keep in mind that in the context of balance of payments statistics and other statistical exercises, such as tourism satellite accounts, partly different categorizations and clusters are used to capture what happens when people travel. For example, under the Extended Balance of Payments Services Classification 2010 the category 'travel' includes all expenditures made by business and leisure travellers, including on goods and services other than the above which they consume during their travel; it also includes the expenditures of seasonal workers. That means that while the statistical values for 'travel' certainly relate closely to the actual economic value of tourism (once seasonal workers are excluded), they cover much more than the service captured under 'Tourism' in W/120.¹⁶

b. Barriers encountered, possible preferences, actual preferences

Tourism is a main export sector for many LDCs including Cambodia and Nepal. In addition to visa restrictions addressed, other regulatory and market access challenges encountered include those associated with the promotion of the tourism offer from LDCs. Possible preferences to address this include direct support to LDCs and their tourism operators with respect to marketing and information; unilateral extension of the benefits found in tourism MoUs to LDCs' tourism service suppliers; extending national treatment so the tourism boards market LDCs' tourism services too.

Other barriers include travel warnings and restriction on the type of services offered. Possible preferences include the regular review of travel warnings for LDCs and granting national treatment/or removing restriction for LDCs' travel agencies.

Fourteen WTO Members offered preferences in "Tourism services". Some of these are interesting *vis-a-vis* the challenges underscored by LDCs' exporters, at least in principle and to some extent. Canada, Iceland and Brazil, in particular, explicitly open their markets to services provided by travel agencies and tour operators in Mode 3. While these do not address the challenges mentioned, it is the first step in the desired direction that allows LDCs' providers to establish a commercial presence, get closer to their clientele and promote their services, which is at the root of LDCs' concerns. Some notifying WTO Members go beyond GATS and offer capacity building assistance. India, for example, offers a free space to LDCs during the Indian edition of Global

Exhibition on Services, an interesting unilateral initiative that is worth replicating as it directly supports LDCs and their tourism operators in terms of marketing and information. Likewise, China offers to intensify training programs in several services, including tourism.

5. Education services

a. Definition

Under the WTO's services sectoral classification list 'education services' are sub-divided into primary education services, secondary education services, higher education services, adult education services, and, other education services. Higher education services cover 'post-secondary' (such as technical and vocational training on a large variety of subjects), and other 'higher education services' (mainly university education).

Traditionally, global trade in education services took place primarily in higher education. Today, an increasing number of students travel abroad to receive secondary or even primary education, on a short-term basis or at boarding schools.

Global trade in education services used to take place predominantly through Modes 2 and 4, whereby students travel to the location of the education institution to consume education services abroad. Furthermore, teaching staff and other natural persons engaged in the delivery of education services travel to the location of the education institutions to deliver education services. Today, education services are traded in all modes of supply. Distance and online learning are on the rise (Mode 1) and providers of education services are increasingly establishing offshore campuses or joint ventures in order to offer their services to and in foreign markets (Mode 3).

b. Barriers encountered, possible preferences, actual preferences

Education services are considered in the context of Senegal and Zambia. Senegal is a regional education hub. Its universities and training centres enjoy a good reputation overall, and several institutes are pioneers and standard setters in the region. Senegal is thus a long-standing exporter of education services, and it aspires to further growth in this sector. Zambia, similarly, has a long-standing tradition of supplying education services to its region, including in accountancy. A

special product are hydropower-related education services.

Senegalese stakeholders overall do not complain about excessive challenges posed by measures of foreign governments. Their concerns, if any, focus primarily on the domestic front. That said, there are challenges, and measures to facilitate and further strengthen the export of Senegal's famed education services issues are possible, including regarding the facilitation of further recognition of qualifications and accreditation of programmes (already good in the region and in francophone markets, with potential in markets further afield) and the increased portability of scholarships grants and student loans. Zambian providers do report on recognition issues, including regarding professional education.

Notified preferences do not respond to these needs. Only four WTO Members address education services at all, but none ventures into regulatory aspects such as recognition and accreditation. No WTO Member has responded to the suggestion reflected in the LDCs' Collective Request to grant scholarship portability allowing students to study in LDCs.

6. Insurance and re-insurance services

a. Definition

'Insurance Services' are a sub-sector of 'Financial Services' in WTO's services sectoral classification list, grouped together with banking other non-banking financial services. The same WTO classification sub-divides insurance services into the following four categories: life, accident and health insurance services, non-life insurance services, reinsurance and retrocession services, and, services auxiliary to insurance (including broking and agency services). Insurance services are otherwise often broadly categorized into individual and corporate insurances, or in short-term and long-term insurances. Long-term insurances include, for instance, life, wealth creation, education and funeral insurances.

b. Barriers encountered, possible preferences, actual preferences

These are considered in the context of Zambia. Insurance services in Zambia are mainly provided through small local insurance companies or subsidiaries of large South African banks. Some Zambian direct

insurers export their services in Mode 3 to several regional markets. One Zambian re-insurance company covers over 20 African markets, mostly in Mode 1.

Issues encountered by re-insurers include national and regional quotas and withholding taxes on re-insurance premiums, while direct insurers report on local partner requirements, (apparent) restrictions on Mode 2 consumption, limitations on the employment of foreign (home country) managers and specialists, the domestication of certain insurances, such as “marine” (transport) insurance, and other local insurance requirements.

Possible preferences could include to provide national or preferential treatment for LDCs’ providers of re-insurance services for purposes of receiving mandatory reinsurance premiums, or to exempt LDCs’ reinsurance and life insurance providers from otherwise applicable withholding tax. For direct insurers from LDCs’ requirements relating to local partnering, the form of legal entity, or the participation of foreign capital could be relaxed; restrictions on consumption abroad of life insurance services provided by LDCs’ insurances, generally or for cases of personnel temporarily stationed in the respective LDCs’ market, could be relaxed; and the employment of foreign personnel, including managers and specialists, could be facilitated on a preferential basis; domestication requirements could be waived.

Notified preferences scarcely respond to these specific needs/opportunities. Relevant African regional markets are not covered by waiver notifications; South Africa, the only African country offering waiver preferences, does not address insurance services. Six notifications do address insurance services (Iceland, Liechtenstein, Norway and Switzerland, as well as Brazil and the European Union), but none address problematic restrictions on reinsurance (such as national preferences), possibly because these restrictions do not apply in the respective markets. A few commitments making residency requirements of directors more flexibly are explored in Norway’s and Iceland’s notification. Some notifications, for example Norway’s, cover improved “Mode 4” access for managers and specialists on a horizontal basis.

7. Banking services

a. Definition

The WTO Services Sectoral Classification List sub-divides “Financial services” into “Insurance” and “Banking and other financial services”. Banking and other financial services in turn include virtually any services related to the acceptance, deposit, lending, leasing, transmission, brokering and clearing of financial assets, including asset management for cash or portfolio and advisory and other auxiliary financial services.

b. Barriers encountered, possible preferences, actual preferences

Cambodia is home to a competitive banking sector that exports its services including in Mode 3 to regional markets. Challenges encountered are classical market access restrictions relating to incorporation in foreign markets, limitations on the type of services provided, restrictions on currency of loans (local currency), restrictions on interest rate and limitations on amount of loan offered to customers.

Notwithstanding of the rationale for prudential regulations in the banking sector, WTO Members could relax incorporation related limitations; relax the limitations on the type of service provided; extend national treatment to LDCs’ banking institutions in regard to the currency of loans; extend national treatment to LDCs’ banking institutions in regard to interest rates; extend national treatment to LDCs’ banking institutions in regard to max loan amounts offered to customers.

None of the specific preferences suggested are addressed in the notifications made under the waiver. There are, however, some gradual openings of interest for banking service providers that addressed some of their challenges, particularly on market access in Modes 1 and 3 (e.g. foreign equity participation and commercial presence requirements).

8. Construction services

a. Definition

Under the WTO’s Services Sectoral Classification list “Constructions and related engineering services” include “General construction work for buildings”;

“General construction work for civil engineering”; “Installation and assembly work” and “Building completion and finishing work”. All of these are included in the following assessment. In addition, several professional services are of great relevance for the construction sector, namely architectural, engineering, integrated engineering and urban planning and landscape architectural services, which were already addressed.

b. Barriers encountered, possible preferences, actual preferences

Construction services are considered in the case study of Zambia. In this country, the construction sector has grown significantly over recent years, not least fuelled by the recent mining boom.

Export of construction services take place primarily in Modes 3 and 4, the latter mainly in the form of semi- or low-skilled labour, and thus classically barriers encountered by exporters are often those pertinent to the said modes of supply more generally. In addition, major construction projects including mining and infrastructure projects such as the construction of roads and highways, dams, airports and bridges are classically procured by governments and often aim at generating domestic employment. Therefore, national treatment restrictions including requirements of nationality, residency, local content (including in the form of using local service suppliers) or the employment of local staff are classical barriers encountered by the industry in export markets under projects procured by governments.

Stakeholders report national treatment restrictions and regulatory restrictions encountered in the context of construction projects procured by governments. They further underscored market access, regulatory and other challenges to their exports to regional markets including Eswatini, Mozambique, South Africa, and Uganda. These challenges include restrictions on the form of legal entity and the participation of foreign capital, including especially in the context of large infrastructure projects.

Possible preferences may include to remove or relax market access limitations for LDCs’ providers of construction services especially those related to the form of the legal entity and the participation of foreign capital, and to grant national or preferential treatment to LDCs’ providers of construction services under government procurement tenders.¹⁷

Nine WTO Members address offers in the sector. None of Zambia’s construction companies’ target markets have notified any LDCs’ preferences under the waiver. There are very few notified preferences that provide inspiration for measures that address the mentioned concerns and needs. Several of the notifying WTO Members open up Mode 4 supply in all or some construction sub-sectors in accordance with their horizontal commitments (Canada, Iceland, Norway, Turkey, Uruguay and several European Union Member States). In some cases, this covers CSS. None of these, however, goes the next step to allow CSS that are not highly qualified. Only that would effectively open construction markets to dynamic participation of SMEs building firms.



**ADDRESSING
CROSS-CUTTING ISSUES**

The pilot reviews discussed in the previous Part reveal the existence of general cross-cutting barriers facing LDCs in foreign markets. It seems useful to look at these challenges through the prism of (1) selected real examples and follow them through the (2) Collective Request and WTO Members' response so far, as reflected in the (3) notifications, to (4) gather ideas for further possible steps that would open up real market access for LDCs' services exports.¹⁸

A. PHYSICAL MARKET ACCESS FOR SERVICE PROVIDERS

As discussed in the previous Part, gaining physical market access (visa) and obtaining the necessary authorization to perform economic activities (work permit or similar) is the single most important impediment to LDCs' services exports in a broad range of sectors, from IT to cultural services. Visas and work permits are the minimum prerequisites for the supply of services in Mode 4, as well as, to some extent, in Modes 1, 2 and 3. Initial contacts, occasional meetings and sometimes the intermittent direct service supply in Mode 4 are in practice important elements of many successful client relationships that are primarily based on cross-border supply, consumption abroad or commercial presence. Physical contacts are the 'glue' of many business relationships.

Least development countries service providers and their staff face often very high barriers to entry, often significantly higher than those confronting their direct competitors from other countries, caught in the wider context of immigration policies that are ill-adapted to services trade. Multiple issues persist, including the absence (or non-application) of suitable visa categories, including for LDCs' business visitors; the duration of visa/work permit procedures; documentation requirements, including the need to provide original copies; the requirement to visit consulates, sometimes in third countries, sometimes more than once; high fees, often amounting to a substantial share of per capita GDP in LDCs, and their non-refundability in case of refusal; financial security requirements; visa refusal stamps; the absence of written reasons for refusal; and limited or no rights to appeal.

These and other factors often work in concert, in a 'chicken and egg' relationship, reinforced by additional presence requirements, such as a residency requirement for membership in an accountancy

association, which in turn may be a prerequisite for the authorization to conduct audits, including in other modes of supply than Mode 4.

1. Collective Request

The Collective Request duly emphasizes the importance of the visa/work permit issue.¹⁹ The Collective Request contains a specific part entitled "Across all sectors, especially those found in the Annex, waive visa, work permit, residence permit measures" (part B), where the LDCs included several specific requests, such as:

- Waiving of visa, work permit and residency fees for CSS, independent professionals and Intra-Corporate Transferees;
- Expedited procedures;
- Simplified documentation requirements;
- Sufficient duration for work permits to cover services contracts;
- Waiving of financial security requirements for stays up to 90 days;
- No visa refusal stamps;
- Providing reasons for visa/permit denial and guidance on how to correct deficiencies.

An additional horizontal request, in another section, exhorts WTO Members to "Through administrative, regulatory or other means, create a special temporary entry visa subcategory to allocate quotas within existing or newly created quota systems, for LDC contractual service suppliers or independent professionals".

The fact that a whole part of the Collective Request is dedicated to visas and work and residence permits demonstrates the importance of these regulatory issues for LDCs and the necessity to enable LDCs' services providers to meet relevant requirements in the matter.

2. World Trade Organization Members' notifications of offers under the least developed countries waiver

However, just a few WTO Members responded to that request, and even those did so very selectively. Turkey, for example, provides for access to a facilitated electronic visa process (e-Visa) for tourism and business purposes to almost all LDCs' Members of the WTO. The measure focuses on a crucial difficulty for

LDCs' service providers, namely the many challenges associated with managing 'physical' visa processes through consulates and embassies, often in remote locations, with lengthy travel times for people and documents. However, it is not clear whether this is done on a preferential basis (with LDCs being treated better than others, even with exceptions, for which the waiver would provide cover), or just happens to be the result of a security-based application of a general visa programme.

India, however, offers a straightforward preference by waiving the visa fees for natural persons of LDCs applying for Indian business and employment visas, the visas used by service providers traveling to India in Mode 4.

3. Possible creative responses

The mentioned examples of WTO Members' responses point in the right direction, but they fall well short of an overall satisfying response to what is perhaps the single most important issue for LDCs' service providers. There is clear room for improvement in terms of quantity, but also of quality, to focus on the issues: departure from intuitive restraint; and creative design that targets needs while addressing key needs of other stakeholders, chief of them security and immigration management. It is clear that this will require the active engagement of these stakeholders, such as home offices and other immigration authorities.

Already the Collective Request, as already seen, highlights a number of specific aspects that should be considered and addressed. The careful and sparing deployment of "visa refused" stamps in cases where possibly LDCs' service providers' requests are rejected for reasons other than fraud or the like could indeed be looked at, provided immigration professionals are engaged. The same applies to providing reasons for denial. This could be done with or without recourse to appeal. The important thing for business people is to be able to understand their business and plan ahead. Understanding the reasons for refusal alone can make or break certain business models, such as IT maintenance across borders. This underscores the general necessity for immigration stakeholders to understand the precise business implications of what they do, and how they do it.

The importance of visa fees has been highlighted by the Collective Request but should be underscored again. Beyond the reduction or waiving of fees, which

is the first best option, important flexibilities could be imagined that would have a significant impact for LDCs' service providers. For example, as requested in the Collective Request, visa fees should be refunded to LDCs' service providers in case of refusal. This would significantly reduce their risk, and the deterrent effect it has on exploring export-oriented business models. This could, then, at close to no cost be coupled with another small but effective flexibility, namely the deferral of the payment of the visa fee until a positive response. This would reduce cash flow challenges, which may seem petty from an outsider's perspective, but can operate as threshold issues for LDCs' service providers. Consider young artists or small IT providers who may find it significantly easier to obtain funding for up-front costs if the likely recovery through the envisaged business activity is visible (because the visa has been granted).

The general request to expedite visa/permit procedures for LDCs' providers is also worthy of a more substantial response. Many countries already operate expedited visa procedures against fees, and these could be made available to LDCs' service providers, or even just subsets of them (e.g. certain types of professionals), at no or reduced costs. Access for LDCs' service providers to 'trusted individuals' programmes could be facilitated, including, again, through fee reductions, but also through dedicated interview possibilities, dedicated helpdesk functions and generally a pro-active engagement with the explicit aim to make suitable LDCs' service providers benefit from available possibilities.

A related issue are financial security requirements, which LDCs' nationals are often challenged to meet. This is not only because thresholds are often very high for them, in relation to their income, but also because the general tools foreseen in standard visa procedures are drawn up in capitals far away and may not be as easily accessible. For example, some entirely legitimate service exporters may not have bank accounts or may not receive some of their income through bank transfers but through alternative channels such as cash or M-Pesa, etc.

The Collective Request suggests waiving financial security requirements generally for stays below 90 days. While some WTO Members may find it difficult to go that far (although in practice the financial security requirements operate primarily as a deterrent, rather than an actual means to secure visitors' viability, which would allow flexibility for LDCs' service providers

without preconditions), gradual solutions can be devised by tailoring financial security requirements to the specific situation of LDCs' service providers. For example, existing service contracts presented by LDCs' service providers, generally or in certain sectors, could be allowed as guarantee or collateral.

Generally, or for certain providers, the exporting country government could be allowed to provide statements of support, replacing financial guarantees. While this may at first sight seem challenging, a closer look at the issue reveals that there is room for creative solutions. Take, for example, music and dance performers from The Gambia. Many of them, including many of the country's best, most promising artists, are male, young, and/or have never travelled before. In other words: *per se* raise red flags for the average consular officer. They also find it difficult to show a sufficient bank history to satisfy standard requirements. The net result is that The Gambia finds it hard to export one of its finest services products, namely music and dance. A solution could lie in allowing suitable exporting country institutions, in this case the governmental "National Centre for Arts and Culture", to vouch for trusted performers, ideally without any cash outlay. A smart programme that allows for collaboration of consulates with institutions like that centre, monitors success and foresees safeguards could be devised with very little effort, provided the political will is there. It seems unlikely that the failure rates will be higher than under normal procedures (e.g. the requirement to demonstrate sufficient funds in bank accounts over the past 9 months), but even if they were, safeguards such as maximum numbers or temporary suspensions could be applied. The very limited additional effort (if any) involved in operating such mechanisms would be greatly outweighed by the very significant economic and overall developmental effect of facilitated services exports.

An important impact could also result from the careful crafting of visa categories, without even necessarily engendering any overall change in flexibility. The Collective Request asks WTO Members to "create a special temporary entry visa subcategory to allocate quotas within existing or newly created quota systems, for LDCs' contractual service suppliers or independent professionals". Doing so would indeed be welcome. But even short of allocating quotas the very existence of a suitable visa category for LDCs' service providers (or subsets of them) would likely already have a positive effect, by facilitating *de facto* or

de jure better treatment than under general categories as requirements and practices can be more easily targeted to respond to LDCs' realities.

Many other measures, many achievable at very limited cost, could flow from the consequent extension to LDCs' service providers of existing preferences under FTAs and other regimes (as well as facilitation measures developed under comparable national procedures). Existing preferential visa quotas could be extended, work authorization schemes made accessible on a preferential basis, and administrative mechanisms opened. This should be kept in mind not least as progressively more targeted solutions are sought and found in bilateral and regional contexts. Even where an automatic extension of preferential treatment to LDCs is not possible or suitable, the flexibilities explored could likely often be used as inspiration to devise similar ones for LDCs' service providers.

In conclusion, the importance of granting visa is all the more important that it is actually the starting point to allow any export of services in Mode 4, as well as, very often, in Modes 3, 1 and even 2. Providing market access to service providers that cannot physically enter in the host country has little impact on the actual improvement of LDCs' share in the world services market.

B. FEES, CHARGES, TAXES

It is well known, that costs tend to matter more to SMEs than to bigger companies, in particular when unrelated to turnover or profits such as most licensing, permit, authorization fees. Businesses with weak capital bases are much more vulnerable to cash flow challenges than those with more substance to rely on. In short: LDCs' service providers, usually SMEs, often with very little capital, care deeply about fees, charges and taxes, their timing and their accompanying circumstances such as payment terms, refundability, etc.

Seemingly small costs can operate as formidable barriers to effective market access. Sometimes they stop providers from reaching the crucial first rung of the ladder, as shown earlier for the case of visa fees.

The issue arises across sectors and in multiple forms. Fees for licenses, permits and other forms of authorizations to provide a service, one-off or recurring; fees for the recognition of qualifications, for the administration qualification exams, for the authentication of certificates or the participation

in qualification courses; taxes related or unrelated to turnover, profits, inputs; and social security contributions are among the many fees, charges and taxes that LDCs' service providers face when accessing foreign markets.

Often related assessment and collection mechanisms matter as much as the charges themselves. For example, the collection of a tax in the form of a withholding tax that may be partly refunded later after assessment creates a cash flow disadvantage that could be alleviated by collecting the tax *ex post*; and the assessment of foreign service providers' social security contributions on the basis of an alignment with the rates and mechanisms for local employees rather than in line with the assessment of local independent service providers (as practiced by France, for example) puts a significant additional burden on LDCs' service providers.

1. Collective Request

The Collective Request reflects the issue in multiple ways but remains somewhat short on detailed ideas. The Collective Request, for example, broadly asks WTO Members to “[w]aive social security, income tax and similar deductions to remuneration of all LDCs' service suppliers across all sectors and modes of supply”.²⁰ The same demand is further specified (repeated) specifically for LDCs' performers and cultural professionals, who indeed often encounter arguably unnecessary and sometimes discriminatory social security contribution requirements. The Collective Request also, as already mentioned, asks WTO Members broadly to “[w]aive residence permit, licenses, and work permit fees and any other processing fees” for CSS, independent professionals and intra-corporate transferees.²¹

Another request goes to the waiver of “all fees associated with LDC services suppliers' applications for patents, trademarks, geographical indications registration and other trade and professional fees.”

Apart from the broad reference in the last phrase there is, thus, no specific mentioning of licensing fees for Mode 3 providers (such as banks, hotels, restaurants, remittance service operators, trucking companies, etc.), taxes on inputs (e.g. customs duties on IT hardware for IT service providers), qualification/recognition-related fees, and many other fees, charges or taxes. Assessment and collection mechanisms are also only mentioned in broad terms.

2. World Trade Organization Members' notifications of offers under the least developed country services waiver

In their notifications, WTO Members have so far paid relatively little attention to the issue of fees, charges, taxes and social security contributions. Precious few exceptions seem to underline the rule. India's waiver of visa fees for natural persons of LDCs applying for Indian business and employment visas was already mentioned.

3. Creative responses

What can realistically be expected from WTO Members, assuming the political will is there? In fact, a lot can be done; usually at very limited cost. For example:

- It seems often feasible to exempt LDCs' service providers, partly or wholly, generally or under specified conditions, all or only some sectors, from withholding taxes, as requested in the Collective Request. Many countries apply these to some groups of foreign service providers, such as visiting cultural performers, audiovisual service providers, lawyers and others. In many cases, a relatively straightforward mechanism could be to extend benefits accorded to other foreigners under double taxation agreements unilaterally to LDCs' providers. The sums involved are relatively small and it seems quite feasible to contemplate exemptions. The withholding taxes are primarily imposed to pop stars, opera singers, etc. Most LDCs' performers will not fall into the primary target group. But for the eventuality that some do, it would seem feasibly to limit exemptions to suitably calculated *de minimis* cases (e.g. taxes for performance fees up to \$ X000).
- A similar situation exists with regard to social security contributions, equally mentioned in the Collective Request. Some countries, in an advance defence against abuse and often to placate local providers who otherwise complain about (real or perceived) disadvantages, impose social security contributions on visiting service providers, often directly deducted from fees. While not *per se* wrong in any sense, in some cases this leads to questionable results. As discussed in the context of Senegalese performers, in France, for example, foreign independent professionals are normally charged social security contributions, directly deducted from fees, as if they

were French employees, albeit without necessarily gaining any entitlements in return. This is waived for EEA nationals who are treated as independents (*i.e.*, responsible for their own social security) and, as a result, are exempt from automatic deductions. A possible LDCs' preference seems suitable, namely the extension of the EEA practice to LDCs' providers. More generally social security contributions could be waived, especially in cases where they do not actually lead to any entitlements.

- Even in the absence of actual exemptions there is often room for real-life facilitation that could make a difference. Many LDCs' service providers lack the effective capacity to manage the tax- and social-security-related processes effectively. As a result, refunds due are not claimed, and other facilitation options not used. Facilitated procedures, pro-active support and free advice (*e.g.* by LDCs' Helpdesks) could help equalize what in fact amounts to an existing disadvantage. In many cases the 'preference' would thus merely establish a level playing field.
- In many cases, exemptions from licensing or qualification-related fees seem rather feasible, one case at a time, or even across the board for LDCs' applicants. In the United Kingdom, for example, for 'overseas' nurses seeking registration the application fee, at the first stage of the application process, is GBP 140. This amount is equivalent to around 17 per cent of the per capita gross national income of Lesotho. The mandatory study course and supervised training attracts further fees (over GBP 1,000), in addition to living expenses during that time. But even where a reduction or elimination of these fees is difficult, mechanisms for deferred payment could allow LDCs' providers to be exempted (*i.e.*, after the first three months of practice).
- Exemptions from other fees and contributions should be equally contemplated. An example could be to exempt LDCs' courier service providers from contributions to universal services funds.
- Extending tax privileges available for some domestic providers, for example local start-ups, to Mode 3 service providers from LDCs would also often provide a relatively easy route to meaningful LDCs' preferences.

It seems fair to conclude that WTO Members have left significant room for upgrading their preference offers. Given that many of the conceivable measures

are quite limited in their fiscal impact and often find parallels in existing schemes (*e.g.* fee exemptions for disadvantaged groups), a little more effort may lead to the harvesting of some low-hanging fruit.

C. MODE 4 CATEGORIES: TAILORING RESPONSES, SIDESTEPPING OLD INSTINCTS

Mode 4 commitments made by most WTO Members in their GATS schedules rely on categories of natural persons, in most cases pre-defined for all sectors in the horizontal sections of the schedules. Many WTO Members focused primarily on intra-corporate transferees such as managers and specialists and did not even include CSS and independent professionals in their schedules. Consequently, these two categories of CSS and independent professionals, of significant relevance to LDCs' service providers who often will not have enough capacity to establish and operate a local base in the host country (*i.e.*, provide services in Mode 3), do not benefit from market access.

Effective market access for CSS and independent professionals (in other words: Mode 4 providers not linked to a Mode 3 investment) has been traditionally most elusive for LDCs and other developing countries. This because their service suppliers often encounter myriad restrictions that render business models based on CSS or independent professionals service provision virtually moot. This affects sectors as diverse as cultural services (music performers, dance groups, etc.), transport (truck drivers, etc.), construction (*e.g.* teams of specialized building professionals) or ICT services (*e.g.* computer specialists being sent to clients abroad), apart from traditional professional services, all of significant interest to LDCs.

1. Collective Request

The Collective Request emphasizes the need for better market access for CSS and independent professionals, the four of the first five listed demands relate to these categories. The fourth even singles out a subgroup, namely installers and servicers of machinery, reflecting a demand more often advanced by developed countries, whose businesses usually are the ones that produce and export advanced machinery.

However, somewhat curiously the LDCs themselves couple their requests with some classically applied limitations, such as minimum educational requirements (for independent professionals), the need for an installation or servicing contract to be a condition of purchase of the equipment, or time limits. One may assume that this was done to placate and perhaps stimulate WTO Members to engage in creative design.

2. World Trade Organization Members' notifications of offers under the least developed country services waiver

As discussed earlier, the response from WTO Members has been positive. Around half of WTO Members offered, in some cases significant, new or improved horizontal commitments on CSS and independent professionals. Examples include Chile, the European Union, Norway and Iceland, with Chile arguably leading the way with a rather open category, avoiding overly restrictive requirements regarding specialization, etc.

3. Additional illustrative creative responses

That said, much more can be done if attention is paid to sectoral details. For example, academic or similar qualification requirements for CSS make little or no sense in sectors where quality professionals, especially in LDCs, often lack such credentials, for example in cultural services or construction. Sector-specific preferences can be designed to take this into account (*i.e.*, offer access without qualifications). The Cultural Protocol in the European Union-CARIFORUM EPA, for instance, creates soft market access *inter alia* for music bands and dance combos. This arguably shows that it is possible to approach sectoral preferences for CSS

in a creative way, taking due account of immigration-related needs and sensitivities.

Similar models could be explored much more actively under the LDCs services waiver in the future. To do so, it may be useful to make a step away from the schedule format, which seems to implicitly favour GATS-type responses in format and content and address sectoral needs in a more direct and specific way. For example, a visa quota for LDCs' construction professionals travelling under CSS contracts for their LDCs' employers, applied reasonably easily, can help address host/importing country concerns while at the same time providing interesting new opportunities for competitive LDCs' providers.

Another example raised by the Collective Request, in the CSS/independent professionals' category, are the installers and servicers of machinery and equipment. While the link to a transaction regarding the relevant machinery, as reflected in the Collective Request and apparently taking its inspiration from developed country proposals, captures the classical case (a seller of a piece of equipment also offers and sells the ancillary services), it may not be necessary to exclude alternative contractual arrangements or even cases where the seller of the goods has nothing to do with the servicing, but both seller and buyer work on the basis of the assumption that such services will be available from third party suppliers, for example LDCs' service providers. In fact, this 'disentanglement' will be of particular interest for SME producers (or buyers) of the relevant machinery who need to limit their exposure to contractual risk, while opening opportunities to third-party servicers/installers. Those from LDCs could be treated preferentially in this context.

Both examples show, again, that attention to detail, and application to the specific needs and concerns involving a scenario where LDCs' providers of services are involved, can generate feasible results in terms of meaningful preferential treatment.



CONCLUSIONS AND RECOMMENDATIONS

The consideration of the services export interests of Cambodia, Nepal, Senegal and Zambia, and a closer look at the related challenges encountered in export markets, suggest that there is much room for further developments. The preference notifications submitted clearly mark a step forward, but they often fail to address the matters that occupy LDCs' service suppliers' minds.²²

A. THE GLASS IS HALF FULL

The preference offers presented so far in the context of the LDCs services waiver are a significant development. With 24 notifications for preferences submitted to the WTO covering well over two thousand individual preferences and several more under preparations, the initial response to the LDCs' Collective Request represents an initial achievement. While it remains difficult to assess the extent to which the offers submitted so far go beyond existing applied regimes, they certainly offer opportunities to LDCs in several sectors of interest to them and are doable in practice. Nearly half of the preference offers go beyond DDA offers and 93 per cent match or even exceed commitments under the preference-granting countries' best PTA. Mode 4 is the best represented mode of delivery with one third of the preferences being offered in this area. Overall these achievements are symptomatic of the good will and commitment by trading partners (developed and developing alike) to support LDCs' efforts at strengthening their services sector.

Services are playing an increasingly important role for LDCs not only as a source of export diversification but also as a source of competitiveness for the economy as a whole. In a world characterized by globalization, interconnectedness and competition, the need for LDCs to structurally transform their economies, raise levels of productivity, and integrate into the global trading system has become more pressing. Services which were not tradable several years ago are now being exported, not least because of progress in communication technologies. Services also serve as inputs or "facilitator" in many production processes by providing connectivity (e.g. transportation, logistics, communication, finance) or by enhancing the productivity of factors of production like human capital (e.g. education, health, sanitation, research and development). As such services form the backbone of many economic activities. These effects can be measured by the value added of services included

in output and exports of all economic sectors. While direct exports of services were 13 per cent of total exports in LDCs, services accounted for 39 per cent of total value added in their exports. This value added, the so called "Mode 5" of services trade, confirms that servicification trends also occur in international trade and place services as a key contributor to trade as it is for output. Such important indirect effects have a relevant bearing on inducing efficiency and effectiveness, reducing productive and trade barriers, and contributing to more productivity and increased productive and export capacity.²³

As we move forward, however, implementation should not stop with the notification of this first wave of preferences, nor can such a process be limited to the regular monitoring envisaged under the CTS. Indeed, across the sectors analysed for the four countries reviewed in this study the conclusion was time and again that: i) the preferences that were identified as useful to LDCs' exporters (many of which had already been identified in the LDCs' Collective Request) were not included in the notifications, ii) the identified challenges and constraints faced by LDCs' exporters are not addressed by the notified preferences, iii) the target markets are often not among those covered by the notifications and iv) where preferences do cover sectors and modes of interest to LDCs they fail to remove limitations which render them unusable (e.g. fees, ENTs, accreditation and recognition, etc.).

Unlike what is often done under services agreements, the LDCs services waiver is about providing actual preferences (*i.e.*, real-life deviations from applied MFN treatment and actual improvements in LDCs' trade opportunities). Thus, preferences should not only be focused on preferential market access of the quantitative sort, but also on facilitation. In other words, preferences should target the removal or reduction of the myriad small and sometimes bigger obstacles and challenges on the way. This, however, requires a comprehensive set of international support measures going beyond what has been provided so far. A first set of challenges will consist in building on existing offers and improving the design, implementation and economic significance of preferences. Second, due to their structural handicaps including low income base, economic vulnerability and weak human assets, LDCs face a number of constraints including supply side constraints, which may affect their ability to benefit from trade preferences granted under the waiver. Addressing these supply side constraints is

paramount to enhancing the ability of LDCs to reap the benefits of preferences.

B. SUBSTANCE: TOWARDS ATTENTIVE, GENEROUS AND CREATIVE PREFERENCES²⁴

It is important that we understand the challenges of LDCs when it comes to their services exports. For that it is important to learn experiences of service providers in LDCs. While they encounter classical market access problems, such as quotas, restrictions on Mode 3 investments in certain sectors, and ENTs, many issues they face are under the control of importing country governments. These include myriad aspects of administrative procedures, qualification requirements, fees and charges, and the like. These have so far been left almost entirely untouched in the waiver operationalization process.

Challenges vary from sector to sector, and from one importing country to the other, as legal systems and regulatory practices vary. Many issues, however, reappear across sectors and countries. A cross-cutting, recurring set of challenges relate to physical market access for natural persons, namely visas and work permits, ranging from procedures, visa/permit fees to visa categories and quotas, the basis for effective access in Mode 4. Potential preferences aiming to address this type of barriers would tend to focus on reducing or eliminating legislative, regulatory or administrative strictures, just like preferential trade agreements or general reform schemes may do, ranging from liberalized access to certain sectors to preferential procedures to the reduction of fees, taxes and charges.

In addition, however, many challenges encountered by LDCs' services and service providers relate to hybrid business/government-related issues. This consists on transparency and market information, unequal playing fields affected by business and/or governmental actions. These comprise financing mechanisms, subsidies or market dominance, or simply challenging business realities in foreign markets. Potential preferences aiming to address the second group of barriers may often require positive or pro-active action, such as information mechanisms (*e.g.* an LDCs' helpdesk), direct or indirect support (*e.g.* subsidies) or administrative action (*e.g.* competition oversight to avoid abuse of dominance in LDCs' markets).

WTO Members should pay detailed attention to the issues encountered by LDCs' service providers. General, abstract perspectives of the kind cultivated by services negotiators used to dealing with schedules will not work. Real-life issues may include somewhat rough-cut measures reflected in GATS Article XVI:2 (numerical limits, ENTs, maximum foreign shareholdings, etc.) but in most cases are a lot more subtle. This included travel times to interview locations; suitable visa categories for service providers, sector-specific where appropriate; security and fee requirements, etc. There are potential services exports that could be realized if looked at closely, rather than subjected to mechanisms that are not adapted to them and their market level, that work for big banks and telecoms operators but not small IT, accountancy or construction companies.

Another closely related requirement is to be creative. Specific problems would often need specific responses to be solved. That may require leaving an institutional, sometimes political comfort zone, but often demands much less flexibility and political capital than one might think. A carefully designed, suitably limited exemption from certain fees or taxes; a well communicated extension of existing preferences for FTA partners in the recognition of qualifications also to LDCs' service providers; or the creation of an LDCs' helpdesk can go a long way, without costing much.

Moreover, a forward-looking approach could be further pursued by LDCs. While the requests so far have chiefly focused on areas of current export interest to LDCs, it is also important to seek for preferences in sectors that will contribute to longer-term development goals, including by contributing to diversification and upgrading. This means that LDCs, in addition to build on their existing comparative advantages, also need to challenge them and strive for new avenues and build new comparative advantages. Along this line, data on services value-added in all sectors, which is still scarce in LDCs, could be informative to evaluate what are the services sectors that are contributing more to overall productive capacity, productivity and competitiveness. This is important to expand the debate on development options, revealing that services are not an alternative to agriculture or industrial development, but instead they should be a key element of strengthening agriculture and of industrialization strategies.

C. SCOPE: TOWARDS BROADER GEOGRAPHICAL COVERAGE

The LDCs services waiver is a tool that is available to all. All countries should embrace the opportunities offered by the LDCs services waiver and consider granting preferences to services and service providers from LDCs.

This applies even in the broader context of regional integration. While many of the relevant challenges identified by service exporters may often be equally or better covered under existing or future regional integration agreements, there may still be space for useful LDC-only, unilateral and more easily revocable preferences under the LDCs services waiver to address issues that are not resolved under regional arrangements. To recall an example discussed in this set of papers, this may be interesting in the case of national or regional reserved quotas for reinsurance contracts. There, the objective of the measure in some cases may be to stem the otherwise massive outflow of reinsurance premiums to powerful, more developed regional players, a reasonable and legitimate objective that, however, would not be jeopardized by opening up national quotas to much weaker LDC players. As the waiver would allow for this to be done on a more flexible basis than under regional treaty arrangements, it, in effect, offers additional flexibility that could encourage countries to apply preferences even on a trial basis.

D. INSTITUTIONS AND SUPPORT: TOWARDS A HOLISTIC PROCESS

The notion of a comprehensive, structured and permanent support system for trade preferences in services could emulate the original idea of a generalized system of trade preferences proposed at the first meeting of the UNCTAD in 1964. The main objective at that time was to support developing countries by enhancing their export earnings, promoting industrialization, and encouraging economic diversification. At the second conference held in 1968 in Delhi, UNCTAD formally recommended the creation of the Generalized System of Preferences (GSP) under which industrialized countries would be allowed to grant autonomous trade preferences to all developing countries. In order to create the legal framework for such a system, a waiver from the general MFN treatment obligation provided under

Article 1 of the GATT was granted in 1971 through the adoption of the so-called 'Enabling Clause'. Originally envisaged for a period of ten years, the 'Enabling Clause' was subsequently renewed in 1979 for an indefinite period of time.

While this initiative focused on trade in goods, a similar model might perfectly be envisaged for trade in services. Akin to the 'Enabling Clause', the LDCs services waiver is a legal instrument that provides the possibility to discriminate in favour of LDCs' services and service providers. What is needed now is to embed this instrument in a broader system and structure of support and monitoring that provides a space for follow-up actions to ensure its effective implementation. A further desirable feature would be the permanency of the waiver, again in parallel to the 'Enabling Clause', which would contribute to enhancing predictability and legal certainty for potential investors who might be reluctant to invest in the development of LDCs' services exports if preferences are only granted under a time limited waiver.

More specifically, such new structure could undertake the following four main functions:

- 1) **Data collection** to further improve the availability of disaggregated, timely and reliable information on services trade flows with a particular focus on LDCs, as well as on barriers to trade. Ideally these efforts should move towards sector specific data on trade flows with individual trading partners under the WTO/UNCTAD/ITC services database. It should also contribute to the further development of data on services as input into the production of a good exported abroad under the Trade in Value-Added (TiVA) database or the Export Value-Added (EVA) dataset. The new dataset(s) on applied regimes currently being integrated into the Integrated Trade Intelligence Portal (I-TIP) Services database.
 - 2) **Research, analysis and information dissemination** to improve the design and implementation of trade preferences in services. A first element in this context will consist in raising awareness within LDCs and among LDCs' services stakeholders about services exports, the possibility to tackle and remove clearly identified barriers, the LDCs services waiver, FTAs and other tools, and, not least, existing preferences and market openings to be exploited. A significant challenge facing LDCs' service providers is their lack of awareness about the opportunities offered by the LDCs services
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waiver, and arguably by services market access opportunities more generally. Preferences offers are displayed in a rather technically challenging manner for service providers and information about how to benefit from them is largely confined to the Geneva community. An act of translation and explanation of what these preferences entail for service providers would be a highly desirable contribution for LDCs' services exports. A second task will consist in assessing the significance and "commercial meaningfulness" of preferences granted to LDCs with a particular focus on the qualitative side. This should ideally be done more systematically and regularly in the future, noting that only 24 WTO Members notified preferences so far. There is further a critical need to systematically collect and distil information about best practices in the design, notification and implementation of services preferences granted under the waiver (or broader: services market openings that can benefit LDCs' providers). If done systematically and regularly, this information could significantly contribute to improving the nature, scope and economic relevance of future preferences granted under the waiver.

- 3) Capacity building and technical assistance** to support LDCs in the design of coherent and development oriented domestic policies and regulations in the area of services. As highlighted in Part III, services cover a wide range sectors usually falling under the responsibility of various ministries and government agencies. Given the regulatory intensity of many services activities and the wide range of sectors involved, proper coordination across various government agencies is critical. As a contribution to this process, there is a critical need for demand-driven country specific support in the design and development of friendly services policies and regulations. Such support could start

with the development of services trade diagnostic analysis and promotion in LDCs. As LDCs attempt to develop their services exports, they need to systematically examine alternative modes of supply, identify the geographical pattern of production and demand of services, and identify services sectors in which the country has a comparative advantage for direct or indirect exports. The Diagnostic Trade Integration Studies (DTISs), which are prepared and updated by the LDCs under the EIF constitute a critical starting point to identify relevant sectors, but also constraints and Aid for Trade needs. Thorough services assessments, such as UNCTAD's Services Policy Reviews (SPRs), could also provide key benchmarks of significance and viability to feed preferential treatment initiatives.

- 4) Forum for dialogue, exchange of experiences and continuous monitoring, peer review and mutual inspiration.** There is currently no forum for the discussion of services trade preferences in a comprehensive and inclusive manner, in a non-negotiating setting at the international level. Discussions in the WTO will focus by nature on notifications undertaken by individual Members and on the duration of the waiver. While this is important, there is clearly a need for a more comprehensive discussion based on sound analysis and addressing all the relevant elements preventing LDCs from effectively benefiting from existing and future preferences. Given its longstanding and comprehensive experience in this area, UNCTAD would be ideally placed to provide such a forum.

Establishing such a structure would benefit from the involvement of several institutions including the WTO. Given its long history in this area, its strong development focus and its research and technical assistance capabilities, UNCTAD could however take the lead in advancing this process.

REFERENCES

Books, reports and articles

- Arbis N and Heal A (2015). Waiting for Service? Progress in Preferential Market Access for Asia–Pacific Least Developed Countries' Services Exports, Trade Insights, Issue No.13 (n.p., UN ESCAP).
- _____ (2015). Uganda: LDCs to offer Services to Developed World, East African Business Week, 22 February.
- Hijazi H (2014). *Operationalising The LDCs Services Waiver: Nepal – Country Assessment*. Paper prepared for WTO's LDC Group. Geneva, November.
- _____ (2014). *Operationalising the LDC Services waiver: Zambia – Country Assessment*. Paper prepared for the WTO's LDC group, Geneva. November.
- ITC (2013). LDCs Services Exports: Trends and Success stories. Technical paper. Geneva.
- Lester S (2015). Services Preferences for LDCs, International Economic Law and Policy Blog, 14 September.
- Mendoza MR and *et al.* (2016). The LDCs Services Waiver–Operationalized? A first look at preferences granted, constraints persisting, and early conclusions to be drawn. Paper prepared for UNCTAD. Geneva. 27 May.
- Primack D (2017). Enhancing Access for LDCs Services to the UK Post-Brexit, in *Trade Hot Topics*, issue 145, (n.p., the Commonwealth).
- Saez S and Molinuevo M (2015). Waiting on a waiver – what the WTO's new services could mean for LDCs, in *The Trade Post*, 3 April.
- Schloemann H (2012). The LDCs Services Waiver – Making it Work, in *BRIDGES Africa*, Vol. 1 No. 4.
- _____ (2017). Trade preferences for services from developing countries: why, what and how? in *Trade in Services and Economic Transformation*, Hoekman W and Willem te Velde D, eds. London: ODI.
- Schloemann H, Hadil H and Pitard C (2016). *Now the Real Thing: Getting Creative to Make the LDC Services Waiver Work*. ILEAP, CUTS International Geneva and University of Sussex.
- Schloemann H, Hadil H and Hawkins J (2014). *Operationalising the LDC services waiver, the catalogue of challenges and potential preferences – An introductory narrative*. WTI Advisors
- UNCTAD (2020). *Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Cambodia*. UNCTAD/DITC/TNCD/2019/5. United Nations, New York and Geneva.
- _____ (2020). *Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Nepal*. UNCTAD/DITC/TNCD/2019/6. United Nations, New York and Geneva.
- _____ (2020). *Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Senegal*. UNCTAD/DITC/TNCD/2019/7. United Nations, New York and Geneva.
- _____ (2020). *Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Zambia*. UNCTAD/DITC/TNCD/2019/8. United Nations, New York and Geneva.
- _____ (2017). *Services and Structural Transformation for Development*. UNCTAD/DITC/TNCD/2017/2. United Nations, New York and Geneva.
-

_____ (2017). Trade, Migration and Development in *Handbook for Improving the Production and Use of Migration Data for Development*, Global Migration Group.

UNCTAD and UNDP (2008). *The Challenge of Assessing the Creative Economy: Towards Informed Policy-making. Creative Economy Report*. United Nations, New York and Geneva.

United Nations Statistics Division (2010). *Manual on Statistics on International Trade in Services*. Geneva, Luxembourg, Madrid, New York, Paris and Washington D.C.

Williams B (2013). *Trans-Pacific Partnership Countries: Comparative Trade and Economic Analysis*. Report for Congress, 10 June. United States Congressional Research Service, 2013. Available at <https://fas.org/sgp/crs/row/R42344.pdf>.

Databases

WTO, I-TIP Services trade database (2017). Available at <http://i-tip.wto.org/services/> (accessed 8 December 2017).

Agreements, protocols and laws

WTO. LDC Collective Request, doc S/C/W/356. Available at <http://docsonline.wto.org>

_____. General Agreement on Trade and Services [GATS]. Available at <http://docsonline.wto.org>

_____. Services sectoral classification list, MTN.GNS/W/120. Available at <http://docsonline.wto.org>

_____. LDCs services waiver, WT/MIN(13)/43. Available at <http://docsonline.wto.org>

ENDNOTES

- ¹ GATS Article II articulates this fundamental principle of the multilateral trading system for the realm of services.
- ² The term was used by Schloemann. H. (2012) *The LDCs Services Waiver – Making it Work*, BRIDGES Africa, Vol. 1 No. 4.
- ³ UNCTAD has conducted a number of activities aiming to discuss the operationalization of the LDCs services waiver among policymakers and negotiators. This includes the expert group meeting for LDCs in November 2013 to discuss the “LDC Package” in the run up to the 9th WTO Ministerial Conference, the “Training Workshop on Trade in services Negotiations for AU-CFTA Negotiators” in 2015 and the session “Real Market Access for LDCs’ Services exports – Smartening up the tools” organized in partnership with WTI Advisors at “MC 11 – Make Trade Work for Development” in December 2017, in which several LDC Ministers, diplomats from developing and developed countries and members of the trade community attended. UNCTAD also organized the “Workshop on Enhancing the Development Potential of Services Trade for Least Developed Countries through Preferential Treatment” in March 2018, as part of its consensus building function to provide a forum under which to consider this preferential instrument on services trade, its effectiveness, its utilization by LDCs, and the Aid for Trade support by donor countries providing preferences to LDCs to operationalize the waiver. Other international organizations, NGOs, think tanks, trade advisory firms and academia have also contributed to the discussion with research papers, talks and blogs. See for instance, Schloemann H (2017). Trade preferences for services from developing countries: why, what and how? in *Trade in Services and Economic Transformation*, Hoekman B and Willem te Velde D, eds. London: ODI; Schloemann H, Hijazi H and Pitard C (2016). Now the Real Thing: Getting Creative to Make the LDCs Services Waiver Work, ILEAP, CUTS International Geneva and University of Sussex; Primack D (2017). Enhancing Access for LDCs Services to the UK Post-Brexit, in *Trade Hot Topics*, Issue 145, (n.p., the Commonwealth); ICTSD, Services waiver: Maximising benefits for the LDCs, session at the Trade and Sustainable Development Symposium, Buenos Aires, 2017. Arbis N and Heal A (2015). Waiting for Service? Progress in Preferential Market Access for Asia–Pacific Least Developed Countries’ Services Exports, *Trade Insights*, Issue No.13 (n.p., UN ESCAP); Uganda: LDCs to offer Services to Developed World, *East African Business Week*, 22 February; Saez S, and Molinuevo M (2015). Waiting on a waiver- what the WTO’s new services could mean for LDCs, in *The Trade Post*, 3 April; Lester S (2015). Services Preferences for LDCs, *International Economic Law and Policy Blog*, 14 September.
- ⁴ Paragraph 1.3 of the Decision on Operationalization of the waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries, 7 December of 2013 reads: “Members [...] are encouraged at any time to extend preferences to LDCs’ services and service suppliers [...]. In doing so a Member may accord preferences similar to those arising from preferential trade agreements to which it is a party noting that preferential treatment, with respect to the application of measures other than those described in Article XVI of GATS, may be granted subject to approval by the Council for Trade in Services under paragraph 1 of the waiver Decision.
- ⁵ The reference to the “European Union + some countries” is because the European Union’s notification contains two types of preferences/reservations. Some apply equally in all European Union Members, whereas others specifically refer to one or several countries. For the purpose of the study, in addition to the preferences/reservations applied in the European Union as a whole, we made the choice to also analyse the preferences/reservations of seven countries that can be considered attractive to LDC’s services providers, i.e. Belgium, France, Germany, Italy, Netherlands, Spain and the United Kingdom. As such, although the European Union and its countries are considered as one Member, we mentioned the “European Union + these seven” countries to add precision to the results.
- ⁶ See <http://i-tip.wto.org/services/>.
- ⁷ The reference to the “European Union + some countries” is because the European Union’s notification contains two types of preferences/reservations. Some apply equally in all European Union Members, whereas others specifically refer to one or several countries. For the purpose of the study, in addition to the preferences/reservations applied in the European Union as a whole, we made the choice to also analyse the preferences/reservations of seven countries that can be considered attractive to LDC’s services providers, i.e. Belgium, France, Germany, Italy, Netherlands, Spain and the United Kingdom. As such, although the European Union and its countries are considered as one Member, we mentioned the “European Union + these seven” countries to add precision to the results.

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- ⁸ With three exceptions – Veterinary, Maritime Agency and (financial) Consultancy, Actuarial and Survey Services. See S/C/N/839.
 - ⁹ There are positive linkages between trade in services and migration which are relevant for development. For more details on the trade-migration-development nexus, please see UNCTAD (2017). Trade, Migration and Development, *Handbook for Improving the Production and Use of Migration Data for Development*, Global Migration Group.
 - ¹⁰ During their 3–5 day in country consultations, UNCTAD consultants held 65 consultative sessions in the form of bilateral or small group meetings with services stakeholders including 19 consultations in Cambodia, 14 in Nepal, 14 in Zambia and 20 in Senegal between 13 November and 1 December 2017. In addition to the findings generated as a result of the in-country consultations held in the context of this paper, UNCTAD consultants built on findings generated from their previous work on the LDCs services waiver in the run up to the 2014 Collective Request. See Hijazi H (2014). Operationalising The LDCs Services Waiver. Nepal – Country Assessment, paper prepared for WTO's LDC Group, Geneva, Switzerland, November; Hijazi H (2014), Operationalising the LDCs Services Waiver: Zambia – Country Assessment, paper prepared for the WTO'. LDC group, Geneva, Switzerland, November.
 - ¹¹ United Nations Statistics Division (2010). Manual on Statistics on International Trade in Services.
 - ¹² Williams B (2013). Trans-Pacific Partnership Countries: Comparative Trade and Economic Analysis, Report for Congress, 10 June (n.p., United States Congressional Research Service, 2013), page 17. Available from <https://fas.org/sgp/crs/row/R42344.pdf>.
 - ¹³ See UNCTAD (2020). Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Cambodia; UNCTAD (2020). Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Nepal; UNCTAD (2020). Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Senegal; UNCTAD (2020). Effective market access for least developed countries' services exports – Case study on utilizing the World Trade Organization services waiver in Zambia.
 - ¹⁴ Services Sectoral Classification List adopted on 10 July 1991, commonly referred to as 'W/120.' In World Trade Organization, document WTO Doc.MTN.GNS/W/120. Available from <http://docsonline.wto.org>.
 - ¹⁵ UNCTAD and UNDP (2008). The Challenge of Assessing the Creative Economy: towards Informed Policy-making, Creative Economy Report (Geneva and New York, United Nations), page iv.
 - ¹⁶ These definitional differences are of great importance for all those who need to understand and assess the value of tourism and travel, including for trade negotiations; they go well beyond, and are not of major relevance for purposes of, this assessment. Readers interested in more detail are advised to consult as a first step the MSITS 2010, pages 51–54.
 - ¹⁷ Note, again, for good order that procurement is not covered by the GATS' MFN obligation, and preferences hence do not require coverage by the LDCs services waiver.
 - ¹⁸ This section draws on Schloemann H, Hijazi H and Pitard C (2016). Now the Real Thing: Getting Creative to Make the LDCs Services Waiver Work, ILEAP, CUTS International Geneva and University of Sussex, pages 17–20.
 - ¹⁹ This alone was a significant development at the time. Previously many LDC delegates had joined others in engaging in the mistaken belief that a footnote to the GATS Annex on the Movement of Natural Persons excluded visas *per se* from GATS coverage.
 - ²⁰ S/C/W/356, page 3, Section A, numbered paragraph 9.
 - ²¹ S/C/W/356, page 7, Section B, numbered paragraphs 1 and 2.
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- ²² This section integrates most of the conclusions from Mendoza MR, Schloemann H, Bellmann Ch and Hijazi H, UNCTAD, 2016.
- ²³ UNCTAD (2017). Services and Structural Transformation for Development. UNCTAD/DITC/TNCD/2017/2.
- ²⁴ Several of the conclusions reflected here have been adapted – partly verbatim – from Schloemann H, Hijazi H and Pitard C (2016). Now the Real Thing: Getting Creative to make the LDCs Services Waiver Work, ILEAP, pages16–18.
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Printed at United Nations, Geneva
2000106 (E) – February 2020 – 1,224

UNCTAD/DITC/TNCD/2019/1

United Nations publication
Sales No. E.20.II.D.4

ISBN 978-92-1-112963-2



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