



# Effective Market Access for Least Developed Countries' services exports

Case Study on Utilizing  
the World Trade Organization Services Waiver in  
**Nepal**





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## ABBREVIATIONS AND ACRONYMS

ASEAN	Association of Southeast Asian Nations
BOP	Balance of Payments
BPO	Business Process Outsourcing
CMMI	Capability Maturity Model Integration
CNTA	China National Travel Administration
CPC	United Nations Central Product Classification
CPTPP	Comprehensive and Progressive Trans-Pacific Partnership
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
ENT	Economic Needs Test
FDI	Foreign Direct Investment
Forex Act	Nepal's Foreign Exchange Regulation
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GPA	Government Procurement Agreement
HIPAA	Health Insurance Portability and Accountability Act
ICT	Information and Communication Technology
ILO	International Labour Organization
IT	Information Technology
ITC	International Trade Centre
ITES	Information Technology Enabled Services
LDC	Least Developed Country
MFN	Most-Favoured Nation
MoU	Memorandum of Understanding
MSITS	Manual on Statistics on International Trade in Services
NGO	Non-governmental Organization
NPR	Nepalese Rupee
NTIS	Nepal's Trade Integration Strategy
PTA	Preferential Trade Agreement
RTA	Regional Trade Agreement
SME	Small Medium Enterprise
SAARC	South Asian Association for Regional Integration
SAWTEE	South Asia Watch on Trade, Economics and Environment
UNCTAD	United Nations Conference on Trade and Development
WEF	World Economic Forum
WTTC	World Travel and Tourism Council
WTO	World Trade Organization

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## PREFACE

This paper was prepared in the context of the United Nations Conference on Trade and Development's (UNCTAD) work in support of least developed countries' (LDC) 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; and create linkages in productive value chains - as in the case of telecommunication and 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 LDC 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 (MFN) treatment to all trading partners (General Agreement on Trade in Services (GATS) Article II) when granting trade preferences to LDCs.

After a slow start, WTO Members took up the challenge. Since 2015 developed and several developing Members – in total 24 Members (counting the European Union as one) – have submitted Notifications granting specific preferences to LDCs under the Waiver – 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 actually facilitate LDC 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 2014 Collective Request. This deliberation has now been further developed through four pilot case studies in four LDCs services exporters – Cambodia, Nepal, Senegal and Zambia – that accompany an overview study. The pilot studies aimed at reviewing the implementation of the Waiver in the overarching idea of improving effective market access for LDC services and service providers. This resulted in an overview paper and a set of four country papers.

This paper presents the findings of the pilot study on Nepal. Focusing on a selection of services sectors of particular export interest to Nepal, this case-study assesses, where appropriate on an anecdotal basis, whether and to what extent the preferences granted by WTO Members respond to the market access, regulatory and other barriers experienced by Nepal's services exporters in their export market(s). By converging all available sources of information, the analysis aims to identify the relevance of the notified preferences for Nepal's services exports, possible gaps and opportunities for further development of improved market access mechanisms, as well as its utilization by LDC services exporters.

This is a pilot study. It does not aspire to provide a complete view of services exports from Nepal or of every demand-side barrier existing in respect of the services examined. The analysis neither aims to give a comprehensive picture of all services exported and barriers operating in the sectors chosen for examination. This paper and other works produced under this study are hence selective, aimed at providing a critical mass of useful findings that could meaningfully advance the discussion on LDC services trade. It is based on desk research and in-country consultations with services exporters, services regulators, representatives of relevant government agencies and representatives of services related business associations, against the background of often weak and unreliable services statistics.

This paper 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. The set of papers will not only benefit the countries examined, but other LDCs and the LDC Group, as the barriers faced by one LDC's service or service supplier are often also faced by services and service suppliers from other LDCs. It follows that potential preferences suggested by this study may be relevant for several, often for many, and sometimes for all LDCs.

This exercise remains by its nature necessarily a limited one, a work in progress that should stimulate further, progressively broader and deeper engagement by LDC governments, LDC 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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**INTRODUCTION:  
LDC SERVICES EXPORTS,  
THE WTO SERVICES WAIVER  
FOR LDCs AND PREFERENCES  
NOTIFIED BY MEMBERS**

This paper focuses on Nepal as an LDC and a services exporter. It does so embedded in the immediate context of the overall question of LDC services exports, their promotion and the operationalisation of the WTO's LDC Services Waiver. It thus serves as a case study – one of an initial set of four – and should be read in conjunction with the overview paper “Effective Market Access for LDC Services Exports – An Analysis of the WTO Services Waiver for LDCs”, which considers cross-cutting observations and conclusions.

## A. LDC SERVICES EXPORTS

Least-Developed Countries (LDCs) participation in services trade is on the rise. According to the WTO, LDCs' commercial services exports expanded by 12 per cent on average per year during 2005-2016.<sup>1</sup> An impressive outcome compared to 8 per cent in other developing economies and 5 per cent in the developed group.<sup>2</sup>

While LDCs as group are generally services importers, their share of global services imports is slowly decreasing. In 2016, for instance, LDCs' services imports decreased from 1.7 to 1.4 per cent 2011.<sup>3</sup> In turn, the share of LDCs in global exports of commercial services grew from 0.4 in 2015 to 0.7 per cent in 2016.<sup>4</sup>

However, LDCs services exports have also seen a sharp decline in recent years. Services exports from LDCs in Africa dropped by 5 per cent in 2016. Likewise, services exports from LDCs in Asia, which recorded the most rapid export growth expanding by 14 per cent on average per year during 2005-2016, saw a 3 per cent decline in 2016, while imports recorded 10 per cent growth.<sup>5</sup>

LDCs' portfolio of services exports is mainly focused on tourism with some variations by region. In 2016 exports of LDCs in Africa accounted for more than half of LDCs' total commercial services thanks to transport and tourism services in Ethiopia and in the United Republic of Tanzania and Uganda respectively.<sup>6</sup> LDCs in Asia recorded the most rapid expansion from 2005-2016, mainly due to Myanmar's and Cambodia's performances as the leading tourist destinations in the region, and to Bangladesh and Nepal as leading exporters of information and communications services.<sup>7</sup> In LDC islands, tourism accounted for more than two-thirds of their services exports.<sup>8</sup>

LDCs commercial services exports remain concentrated within a few economies. Myanmar leads

the table boosted by rising travel exports that account for 12.3 per cent of LDCs commercial services exports. It is followed by Cambodia (12.1 per cent), United Republic of Tanzania (11.6 per cent), Ethiopia (8.7 per cent), Bangladesh (6 per cent), Sudan (4.8 per cent), Uganda (4.2 per cent), Angola (3.6 per cent), Senegal (3.3 per cent) and Nepal (3.1 per cent).<sup>9</sup>

In addition to these direct effects, services provide inputs to all economic sectors; are bundled with goods; and create linkages in productive value chains. These indirect 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. 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.<sup>10</sup>

## B. THE WTO SERVICES WAIVER FOR LDCs

While LDCs participation in service trade is slowly increasing, their vast potential is still untapped partly due to capacity constraints and partly due to market access barriers encountered in export markets. This fact has initiated a series of deliberations in the WTO and other multilateral fora.

In 2003 the WTO Council for Trade in Services adopted a Decision on Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services. Quite generally, this decision aimed at defining negotiating modalities for LDCs in the area of services to ensure that WTO Members would take the special situation of LDCs into consideration when negotiating with them. The text also highlighted the need for WTO Members to open their services markets as a priority in sectors of interest to LDCs. A bit more than two years later, further developments on the matter were reflected in the 2005 Hong Kong Ministerial Declaration, where WTO Members agreed to “implement the LDC modalities and give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4”.

After several years of discussions on how to effectively implement those LDCs modalities, trade ministers finally adopted on 17 December 2011 a waiver to enable developing and developed-country WTO Members to provide preferential treatment to services and service suppliers originating in LDCs. The Waiver, initially granted for 15 years from the date of adoption, releases WTO Members from their legal obligation to provide non-discriminatory (MFN) treatment to all trading partners (GATS Article II), when granting trade preferences to LDCs. It effectively operates as a new LDC-specific “Enabling Clause for services”.

Two years later, with no progress made, Ministers came back to the issue with a subsequent decision on the ‘Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least Developed Countries’, adopted on 7 December 2013 at the Ninth Ministerial Conference in Bali. That decision established a process which foresaw that a High-Level Meeting – an idea akin to that of the Signalling Conference of 2008, or a pledging conference – would be held six months after the submission of a Collective Request by the LDC Group. After significant research the LDC Group developed the Collective Request and circulated it to WTO Members in July 2014, followed by the High-Level Meeting in February 2015, at which WTO Members agreed that those intending to grant preferences under the Waiver would follow up by submitting specific and detailed notifications of their intended preferences by July 2015.

Building on this success, the Nairobi Ministerial Conference in 2015 adopted the decision to extend the Waiver until 31 December 2030. The decision encourages WTO Members that have not notified preferences to do so, and WTO Members that have notified one to provide technical assistance and capacity building in order to allow LDCs to actually benefit from the preferences granted. It also asks WTO Members to address regulatory barriers as defined in GATS article VI:4 and mentions tasks to be fulfilled by the Council for Trade in Services (CTS) for quicker and more efficient implementation of the notified preferences.

Since its adoption, the Waiver has 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 LDC service providers and services under the Waiver. For now, this discussion process at the WTO has become a permanent feature of the proceedings in the CTS. One element of that discussion has been the attempts to evaluate the ‘value’ of the preferences offered.

But the task at hand for all those interested in LDCs and their services trade integration is arguably much greater than that. The Waiver is a legal tool that enables WTO Members to sidestep the otherwise applicable MFN obligation when granting preferences to LDCs. As such it 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, LDC exports into their markets.

This paper stands in the context of efforts to assist all stakeholders in doing precisely that: identify, design and implement smart mechanisms to facilitate LDC services exports. It aims to make a contribution to the process stimulated by the LDC 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 the needs are fully understood, and tools are used in the most constructive, creative and productive way.

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 Nepal’s services trade and its interests under the Waiver. By taking a look at a selection of Nepal’s 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.

### **C. PREFERENCES NOTIFIED BY WTO MEMBERS – A SUMMARY ASSESSMENT<sup>11</sup>**

At the time of writing 24 WTO Members have notified preferences under the Waiver to the WTO, including

all developed but also many developing country WTO Members:

Australia; Brazil; Canada; Chile; China; European Union; Iceland; India; Japan; the Republic of Korea; Liechtenstein; Mexico; New Zealand; Norway; Panama; Singapore; South Africa; Switzerland; Thailand; Turkey; United States; Uruguay; Hong Kong, China; and Taiwan Province of China.

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 – by our count well over 2000 preferences – can be made.

- **Rising Above the 2006-2008 Doha Development Agenda (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 MFN treatment rather than new, improved Market Access or National Treatment. 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, *i.e.*, no actual preferences for LDC services and providers, and no additional market opening *vis-à-vis* the *status quo ante*.
- **Getting close to the “Best Preferential Trade Agreement (PTA)” Level:** Preferences already offered under PTAs are politically and technically tested. Their extension to LDCs under the Waiver was therefore a logical demand enshrined in the WTO Ministerial Meeting’s 2013 ‘Operationalization Decision.’ Over two thirds of the preferences promised in the 24 notifications 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 LDC services and service providers. That finding, however, may be affected by the choice of comparator PTAs and other factors, and should be used with caution.
- **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 2014 Collective Request. That, however, is arguably misleading. Over one third of these ‘CR 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 very 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 (including professional, IT and many other services), arguably corresponding to a focus of the Collective Request. 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 the LDCs’ expected strong emphasis on Mode 4. One third of the preferences – as counted here – 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 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’) – almost one third of which, however, are in Mode 2. Often partial commitments

however may in fact be the most interesting ones, as they reflect efforts to carefully craft access opportunities in cases where barriers, but their prevalence also suggests that there is room for improvements in the future.

- **Some WTO Members offer big, some small packages.** While some of these variations may result from scheduling techniques and/or the counting method applied here, large discrepancies remain in any case. Chile, the European Union, Iceland and Norway lead the table, with Australia, Canada, India, Japan, Mexico, Switzerland, and the United States forming a second group. Very few preferences were offered by China and Singapore. Brazil; Liechtenstein; the Republic of Korea; New Zealand; South Africa; Thailand; Turkey; Uruguay; Hong Kong, China; and Taiwan Province of China each offer a small selection of preferences, often however seemingly carefully selected. However, numbers don't necessarily imply quality. Selected, targeted and carefully designed preferences offered by WTO Members with existing geographical or other links to LDC 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.

### Actual preferences?

Unlike normal services trade agreements the LDC Services Waiver is, or was meant to be, about *actual preferences* – meaning: Real-life deviations from MFN treatment – and about *actual improvements for LDC 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 NGOs in particular would ideally fill this gap, bringing clarity to what remains to date an obscure situation.

That said, there has been significant progress with regard to data on applied regimes. While the WTO's and the World Bank's joint *I-TIP Services* database<sup>12</sup> 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 future allow for at least some analysis of the Waiver and other preferences against applied regimes.

That said, “best practices” observed in existing notifications and preliminary lessons for future notifications would include the following:

### Best practices: approach, technique and presentation

- **Comprehensive and systematic approach** proactively considering the complete range of services sectors, rather than a selected approach to ‘cherry-picking’ sub-sectors and modes of supply arguably tends to generate more and more open-ended opportunities, better suited to respond to a very dynamic sector. That said, seriously targeted sets of preferences may be of high value as they may send equally targeted and concentrated signals, and hence make recognizable contributions to the development of LDC services trade as ‘pilots’ or ‘bridgehead’ commitments.
- **Clear identification of preferences vis-à-vis GATS MFN commitments** (ideally *vis-à-vis* applied MFN *treatment*, although no WTO Member made this step). Ideal would be a hybrid: A full schedule with LDC 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 LDC service providers (as for SMEs generally) 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.
- **Using the flexibility of unilateral action to explore uncharted waters.** 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. This is in contrast to multilateral WTO or even bilateral FTA negotiations. Therefore, it seems unnecessary to exercise heightened caution in sectors and modes where the potential impact of LDC services would in any case be marginal for the importing country, but potentially interesting for LDC services exporters.

### Best practices: substance

- **Taking Mode 4 seriously.** Among the most interesting potentials for LDC 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.

- **Taking regulatory issues (and possible preferences) seriously, creatively so.** Unfortunately, most WTO Members have so far shied away from exploring regulatory preferences, an approach that stands in some contrast to the express needs and desires of LDCs and the potentials enshrined in many qualification requirements and procedures, licensing requirements and procedures, and technical standards.
- **Targeted efforts in difficult or complex areas help in exploring possibilities.** India's explorations of limited but creative Mode 4 access for tour guides and language teachers from LDCs show the way towards serious detailed engagement with LDC services issues. The LDC Services Waiver indeed provides the opportunity to expand trade in services by exploring better solutions for SME providers, and should be welcomed as such. This will be for the benefit of LDC providers as well as possibly others, but without detracting from the former.

### Lessons learned

- **The squeaky wheel gets the grease.** LDCs have been proven right in their approach to confront WTO Members with very specific requests. This should be kept up, as there's much room for improvement in how LDCs services and service providers are received.
- **Format influences content: The problematic use of the schedule format.** 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 delegates and observers 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. Its 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 is welcome as long as they actually respond to LDC 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 v. actual preferences – many misunderstandings still intact.** Much of the discourse 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.
- **Forward-looking approach.** 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.

## D. PREFERENCES NOTIFIED AND NEPAL'S SERVICES EXPORTS: APPROACH

The effective value of the preferences for LDC 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 abovementioned study commissioned by UNCTAD in 2016, whose main findings were already reflected, which took a reasonably detailed look at the notifications and juxtaposed them with what LDCs had asked for through their 2014 "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. The present case study serves as one of the pilots for that exercise. It presents a summary of a pilot review conducted in Nepal aimed at reviewing the implementation of the WTO Services Waiver, or rather: The underlying idea of improving effective market access for LDC services.

Taking a bottom-up approach the case study looks at Nepal's 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 all LDC services exporters, and by Nepal's services exporters, in particular. Focusing on sector(s) of particular export interest to the country, this case study assesses, 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 Nepal in their export market(s) of interest. By doing so, the analysis aims at identifying existing gaps and proposing options for further improvements.

This pilot analysis relies on desk research combined with brief and compact in-country consultations held with services exporters, services regulators, representatives of relevant government agencies

and representatives of services related business associations.<sup>13</sup> It aims to bring together what knowledge is available to allow an instructive picture to emerge.

Based in particular on anecdotal research this paper looks at Nepal's current and emerging interests in terms of services exports and hence in the related – potential – removal or modification of barriers encountered in its export markets, under the LDC 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 LDC 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 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.

The purpose of this paper is to generate insights into pertinent challenges to LDC services exports in their export markets, and potential measures that could make a contribution to addressing those challenges. This paper is thus not a "study" on the services sector in Nepal as such; rather, it is a collection of useful anecdotal evidence from a few selected sectors of export interest that serves to understand the bigger picture in order to pave the way for a more meaningful operationalization of the LDC 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 not least 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 was 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 International Monetary Fund (IMF), EUROSTAT, the WTO and UNCTAD, has made significant efforts to compile recommendations and international best practices,<sup>14</sup> 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 Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) looked at United States of America services trade with only eight of the eleven (non-United States) CPTPP parties because the United States Bureau of Economic Analysis (BEA) lacked individual data for trade with the others.<sup>15</sup>

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.



# **SERVICES AND SERVICES TRADE IN NEPAL**

Nepal is a mountainous landlocked country in South Asia that shares its borders with India to the south, east and west and China to the north. It is a member of the South Asian Association for Regional Integration (SAARC) along with Afghanistan, Bangladesh, Bhutan, India, Maldives, Pakistan and Sri Lanka. Nepal's capital, Kathmandu, is the seat of the SAARC Secretariat. In 2016, Nepal's population numbered 28.9 million and its GDP was worth \$ 21.13 billion.<sup>16</sup> The country reported the second highest level of health and primary education in the region and among South Asian countries, was the best performer in terms of macroeconomic environment.<sup>17</sup>

## A. THE ECONOMY – A SNAPSHOT

The Nepalese economy is traditionally agrarian but the significance of manufacturing and to a greater extent services is changing the economic landscape of the country. High price fluctuations of commodities of export concentration to Nepal such as wheat, maize and cash crops in global agricultural commodities markets in the 70's pushed the country to embark on an economic diversification process within the agricultural sector by expanding the production and export of tea and enhancing the national supply capacities in manufacturing and services.<sup>18</sup>

The contribution of agriculture, forestry and fishing to Nepal's GDP declined from 62 per cent in the 80's to 33 per cent in 2016 while the contribution of manufacturing and services increased from 12 and 26 per cent to 15 and 52 per cent respectively during the same period as illustrated in Table 1.

Main exports of goods from Nepal are yarn and fibres, in particular knotted carpets, iron and steel, fruit juice, tea and spices.<sup>19</sup> Nepal's main trading partners are

India, accounting for 69.2 per cent of Nepalese goods imports and exports, followed by China, the European Union, United Arab Emirates and the United States, respectively accounting for 9.7, 3.3, 2.8 and 2 per cent of Nepal's trade.<sup>20</sup>

Figures suggest an overall growth in exports of goods and services from \$ 1.533 billion in 2010 to \$ 2.488 billion in 2014 and a sharp fall in 2015 and 2016 due to the devastating earthquake in 2015.<sup>21</sup> A closer look at statistics reveals that services exports are driving the current growth. Merchandise exports, which grew from \$ 364 million in 1995 to over \$ 760 million in 2011,<sup>22</sup> have decreased to 696 million in 2016;<sup>23</sup> while services exports, which initially decreased from \$ 679 million to \$ 386 million during the same period,<sup>24</sup> have rapidly recovered to \$ 1430 million in 2015.<sup>25</sup>

Despite the overall growth in exports, the country's export potential is still largely untapped. Poor infrastructure, hampered connectivity to world markets, limited export offer, weak regulatory framework and structural challenges hinder the country's export potential. Nepal's road infrastructure, for example, does not only affect the competitiveness of goods trade but also reduces the competitiveness of the tourism sector. Transport inside Nepal and into and out of the country is limited with only one main road connecting Kathmandu to India and the transit of goods through India to international markets – through Kolkata Port which is 1000 km from the Nepal-India boarder - is associated with significant shipping costs and delays.<sup>26</sup> Weak regulatory framework including on intellectual property rights is a major challenge facing the IT and audio-visual services sectors. In addition, certain structural challenges including restrictions on foreign exchange and foreign investment pose significant challenges for services exports as explained in Box 2.

**Table 1: Sectoral contribution in Nepal's gross domestic product, 1980–2016**  
(in percentage of gross domestic product)

Sector	1980	1990	1995	2000	2005	2010	2012	2015	2016
Agriculture	61.77	51.63	41.76	40.82	36.35	36.53	36.49	32.96	32.98
Industry	11.92	16.24	22.75	22.13	17.70	15.63	15.52	15.38	14.76
Services	26.31	32.13	35.49	37.05	45.96	47.84	47.99	51.63	52.26

Source: World Bank, World Development Indicators.

**Box 2: Nepal's Restrictions on Foreign Exchange and Foreign Investments**

Nepal's foreign exchange restrictions—contained in Nepal's Foreign Exchange (Regulation) Act, 1962 (Forex Act) and Act Restricting Investment Abroad, 1964 (Investment Abroad Act)—pose significant challenges for Nepalese services trade including exports as they respectively restrict the ability of Nepalese exporters to receive money from abroad and to open foreign bank accounts for the purposes of *inter alia* receiving payment from their foreign clients. These restrictions limit the development and growth of Nepalese services that can be easily traded cross-border such as those in the vibrant IT-BPO sector.

Nepal's Foreign Exchange (Regulation) Act, 1962 (Forex Act) establishes foreign exchange controls that apply in Nepal as well as extra-territorially to its citizens who reside outside of Nepal. The restrictions also extend to all companies, their parents, subsidiaries, and agencies that have been registered in Nepal and are operating outside of the country.<sup>27</sup> According to section 3 of the Forex Act, any natural or juridical person intending on conducting foreign exchange transactions must apply to the Nepal's Central Bank, the Rastra Bank ("Bank") for an annual or provisional license. The Bank is entitled to make any inquiry it deems necessary into the matter and in issuing the license may also specify *inter alia* the type and limit of the foreign exchange to be transacted and the period for carrying out that transaction.

All foreign exchange transactions from Nepalese Rupees to a foreign currency and *vice versa* must be made at the exchange rate specified by the Bank.<sup>28</sup> Subject to the government of Nepal issuing a notification exempting any foreign exchange from such restrictions, Nepalese citizens and companies are also prohibited from carrying or sending any foreign exchange, except Nepalese Rupees or any foreign exchange obtained from the licensee, outside of the territory of Nepal.<sup>29</sup>

Although the provisions explicitly mention payment for exported *goods*, it would appear that these restrictions apply equally to services and service suppliers. Nevertheless, the Forex Act does specify that procedures for the "export of knowledge and informative technology and payment of the same" shall be in terms of the Bank's public notices.<sup>30</sup> Section 9A of the Forex Act sets out the foreign exchange regime for exporters; it is characterized by declaration of every expected payment, many administrative measures and approvals from the Bank, which include the prescription of *inter alia* the time and manner in which payments for exports must be made.

On the other hand, the Investment Abroad Act applies to all Nepalese citizens irrespective of where they reside.<sup>31</sup> This Act applies to all 'investments', which includes foreign securities, real estate and bank accounts.<sup>32</sup> Subject to exemptions made by the government of Nepal, Nepalese citizens are prohibited from making foreign investments, including holding foreign bank accounts.<sup>33</sup>

Services exports are particularly restricted by the inability to hold foreign bank accounts and obtain payment from their foreign clients in those accounts. Despite this Act and due to its effect on business, Nepalese citizens take risks and do *invest* abroad but it remains an illegal activity.<sup>34</sup>

Both Acts were enacted at a time when Nepal wanted to avoid capital flight. The Nepalese government has meanwhile recognized the need to reform its investment regime. The 2015 Foreign Investment Policy, for instance, proposed revising the ban under the Investment Abroad Act, which should apply once the Amendment of the 1992 Foreign Investment and Technology Transfer Act entered into force. This revision appears to focus on exempting certain sectors from the broad prohibitions contained in the Act rather than reforming the investment abroad regime altogether. While the draft of the Amendment is currently under revision and Nepal is considering significant measures to boost inward FDI, the Investment Abroad Act remains unchanged and continues to have a dampening effect on services exports from Nepal.

These restrictions, most notably the prohibition on opening bank accounts abroad, create major challenges and costs for exporters including services exports and reduce the government's tax revenues as many of Nepal's trade transactions especially services exports in Mode 1 and 4 risk being undeclared. Stakeholders reported that as result of these restrictions, many international transfers are done through expensive operators such as Western Union or PayPal.

## B. SERVICES AND SERVICE TRADE

Trade in services accounted for 69.9 per cent of foreign exchange earnings in Nepal between 2004 and 2011.<sup>35</sup> Not only is the services sector the largest pillar of Nepal's economy; it has also become a major catalyst to economic growth. Although Nepal has been experiencing a period of slower growth in the aftermath of the global economic crises, the services sector still amounted to a significant share of its 5.9 per cent GDP growth in 2014 and it remains an important driver for economic recovery after the 2015 earthquake.

With the overall growth of the services sector, services exports have also been increasing in value over the past years as illustrated in the Table 2.

As mentioned in Table 2, it is important to stress that available services trade statistics generally and in LDCs including Nepal in particular is notoriously incomplete and unreliable and cannot provide the only basis for developing adequate policy responses. The table, for example, does not fully reflect the value and diversity of Nepal's services exports. In addition to tourism services, Nepal exports computer and information technology related services, audio-visual services as well as cultural and recreational services in particular music services, as underscored by stakeholders during the in-country consultations.

Figure 1 provides an insight into the trade value of selected services sectors where data is available. Tourism services (travel) remain the highest earner of foreign currency. However, the high value generated

from the export of communication services, as depicted in Table 2 and Figure 1, is primarily due to call termination charges and not due to the value generated as a result of export transactions. In addition, services exported via Mode 1 including IT and related services and audio-visual services, which are undoubtedly significant in value and volume, do not appear in the Table and the Figure due to the absence of data and statistics. According to Nepal's Investment Board, IT enabled services and BPO services reported approximately \$ 3,572,905 in export revenue in 2013. UNCTAD statistics suggest that as of 2014 the industry was estimated to be worth \$15-20 million in export revenues which accounts for approximately 2.5 per cent of commercial services exports at 2012 values and just above 1 per cent of total exports.<sup>36</sup> However and on the basis of in country consultations including with industry representatives, these figures appear hardly to capture a fraction of the value.

Unlike merchandise trade, where over 50 per cent of Nepal's trade is with India, India's share of Nepal's services exports is around 33 per cent.<sup>37</sup> The actual figure is arguably less as data on exports of computer and related services, which is primarily destined to Europe and the United States, is largely unavailable. For tourism services, India, China and Sri Lanka are Nepal's main export markets.

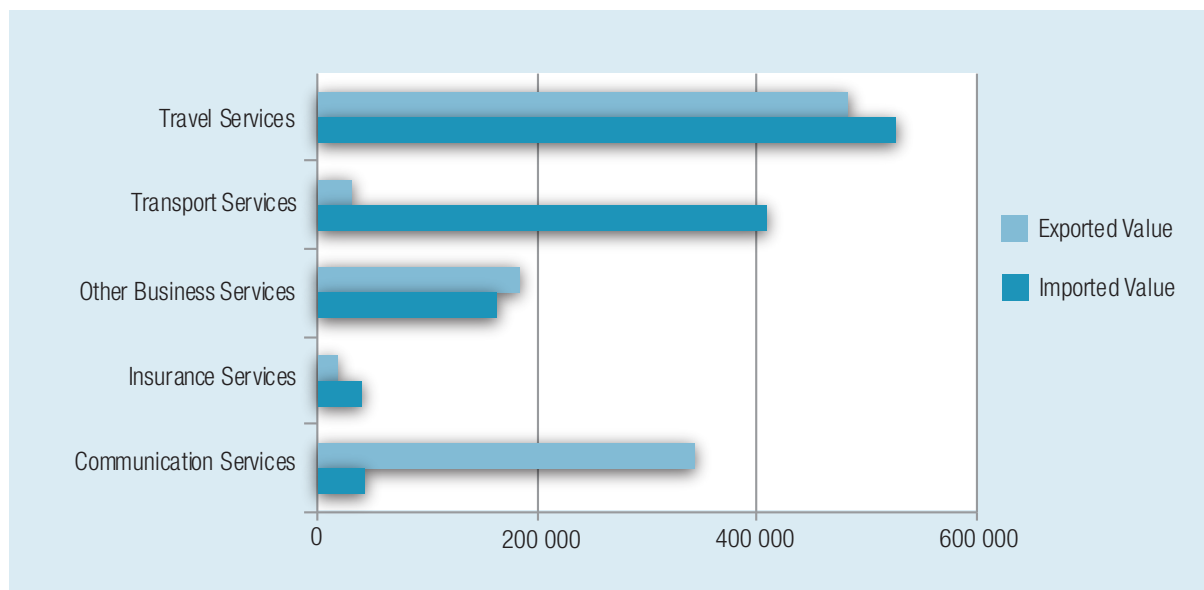
As for employment and the contribution of services to job creation in Nepal, ILO estimates suggest that between 1999 and 2001 the contribution of services to total employment skyrocketed from 14 per cent in 1999 to 20.8 in 2001 while in the following decade the services share of total employment decreased,

**Table 2: Value and share of exports for different service subsectors in Nepal, selected years**

Sector	2000		2005		2010		2015	
	Value (\$ million)	Share (%)	Value (\$ million)	Share (%)	Value (\$ million)	Share (%)	Value (\$ million)	Share (%)
Commercial Services	696.706	100.0	487.817	100.0	871.457	100.0	1 060.299	100.0
Transport	61.365	8.8	32.617	6.7	39.901	4.6	31.349	2.9
Travel	157.820	22.6	131.308	26.9	344.182	39.5	483.158	45.6
Other commercial services	286.749	41.2	216.422	44.4	287.764	33.0	-	0.0
Communications	-	0.0	39.701	8.1	57.901	6.6	343.834	32.5
Insurance	-	0.0	3.862	0.8	0.394	0.1	18.392	1.7
Other business services	190.772	27.4	63.907	13.1	141.315	16.2	183.476	17.3

Source: UNCTAD, UNCTADStat and ITC, Trade Map.

Note: The shares in the table have been calculated after excluding government services.

**Figure 1: Nepal's export and import in commercial services in 2015** (value in thousand \$)

Source: ITC, Trade Map, 2018.

reaching 15.1 per cent in 2011. Since then, services contribution to job creation have modestly increased to 16.5 per cent of total employment in 2016. These figures appear low given the expansion of services in Nepal especially in sectors such as IT and related services and tourism services and could well be an underrepresentation of the actual figures.<sup>38</sup>

The share of the agriculture in job creation and employment has moderately decreased from 74.5 per cent in 2011 to 72.6 per cent in 2016, suggesting a slowly, but steady shift towards the services and industry economy (the last contributes 10.9 per cent to total employment).

## C. CONTEXT: SERVICES TRADE POLICY IN NEPAL

Nepal does not have a formulated services trade policy *per se* but services figure prominently in discussions with policy makers and are reflected in trade related strategies including Nepal's Trade Integration Strategy (NTIS) 2016.<sup>39</sup>

The NTIS identifies services sectors with export potential to include IT and business process outsourcing services, tourism and Mode 4 and recommends the following to enhance the country's services exports:

- "Take necessary actions for the recognition of qualifications, skills and experiences of Nepalese service providers by the importing countries;

- Negotiate to relax economic needs and labour market test requirements being faced by Nepalese services and service providers in importing countries;
- Take necessary legal and regulatory reforms related to service trade in order to facilitate Nepalese service providers to explore and exploit potential market; and
- Utilize the provision of services waiver that has already been notified by more than 20 developed and developing countries".<sup>40</sup>

Sectoral policies and strategies especially for sectors of export interest like ICT were developed by government and relevant agencies over the past years.<sup>41</sup> In addition, Nepal's Investment Board developed sectoral profiles for sectors of interest to investors including the ICT Sector Profile 2017. On financial services, the central bank of Nepal, Rasta Bank, published recently the Financial Inclusion Roadmap (2017-2022) that provides an interesting account of the financial services in the country and the policy, regulatory and other recommendations to enhance financial inclusion in Nepal.

In addition, several initiatives are currently underway to modernize and reform aspects of the services related regulatory framework in an effort to improve the services economy including regulations related to digital signature, banking and financial institutions and foreign investment.







# **CROSS-SECTORAL ISSUES: MODE 4**

## A. DEFINITION

As explained in section A.2.1, the GATS defines Mode 4 as 'the supply of service by a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Members'. As noted the GATS and other trade agreements aim to distinguish between temporary presence to provide services, on the one side, and labour migration which involves joining the local labour market, on the other side.<sup>42</sup> Thus, this section assesses services supplied in Mode 4 by Nepalese providers, as a subset of the broader group of (temporary) economic migrants from Nepal. This should be kept in mind when considering this section— particularly where reference is made to data on economic migration, which may encompass more than Mode 4 exports.

## B. MODE 4 SERVICES EXPORTS FROM NEPAL: AN OVERVIEW

### 1. Non or semi-skilled labour

Nepal exported Gurkha soldiers to the British Empire as early as 1816. Economic migrants from Nepal have been steadily growing in numbers since 1999. In 2013/14, 519'638 labour permits were granted for Nepali residents to work abroad; five times more than in 2008/9.<sup>43</sup> In 2011, 1.92 million Nepalese lived abroad for more than six months, around 8.3 per cent of the country's total population.<sup>44</sup> 1.7 million of these are temporary migrants for employment (2006-2011) with an annual out flow of 385'000 in 2011. As migrant workers going to India through the open border are largely not accounted for, the actual number of migrant workers is even higher.<sup>45</sup>

The vast majority of Nepal's export of people is in the form of unskilled labour (young men, between 20 and 30 years old) employed abroad in agriculture, manufacturing and services (sanitation, construction, hospitality) by a foreign service supplier (secured for the most part through placement agencies). In other words, most of Nepal's exported labour, including those engaged in services industries, do not fall under the definition of Mode 4 as they get employed by local employers (placement agencies) in their host countries. Only 5 per cent of those are skilled labour including supervisors, civil engineers, doctors and nurses.<sup>46</sup>

The principal destinations for these workers are India (41.7 per cent), the Middle East (35 per cent), and East Asia. The World Bank reports that India is the single-most important destination for work migration

from Nepal<sup>47</sup> followed by Gulf countries, Malaysia and the Republic of Korea.<sup>48</sup>

Nepal concluded bilateral labour mobility agreements with Bahrain, Israel, Japan, Jordan, the Republic of Korea, Qatar, and the United Arab Emirates and is negotiating agreements with Malaysia and Saudi Arabia. These agreements cover the mobility of unskilled labour. Nepal is in talks with bilateral partners to expand the scope to include categories of skilled labour including engineers and doctors who are currently providing their services as independent professionals in export markets.

The contribution of remittances to Nepal's economy is significant. Nearly 50 per cent of Nepali families rely on financial help from relatives living and working abroad. In 2016, total remittances sent by migrant workers to Nepal was worth 31.3 per cent of GDP, ranking first globally in terms of remittances to GDP.<sup>49</sup> This share has doubled from 14.9 per cent in 2005/06.<sup>50</sup> It has surpassed the incomes received from tourism and goods exports for the last three consecutive years. The flow of remittances into Nepal is almost tenfold that of Overseas Development Assistance, 3 times higher than goods export and 40 times higher than the amount of FDI into Nepal, indicating that remittances from migrant workers have become a major foreign exchange earner for the government of Nepal.<sup>51</sup>

### 2. Mode 4

Mode 4 export covered by the GATS encompasses natural person service suppliers that supply their service in export markets through their presence abroad such as Nepalese musicians performing live music abroad, engineers or providers of IT services servicing clients abroad. These Mode 4 service suppliers, although low in number, should be seen both as an integral element of the bigger picture of Nepalese economic migration and labour mobility and as a distinct feature meriting special attention under trade in services arrangements and the WTO LDC Services Waiver.

The importance of Mode 4 for professional services should not be underestimated. Beyond the close connection with Mode 3, the ability for persons (Mode 4 service suppliers) to gain entry into foreign territories is important for exports in Modes 1 and 2. By way of illustrative examples (and in no way exhaustive) the attendance of fairs abroad is very important for tourism exports and the ability to commit to service contracts that involve travel abroad can be a deal-breaker for Mode 1 suppliers of computer and related services for example.



**SECTORAL REVIEW LDCs  
SERVICES EXPORTS  
AND THEIR INTERESTS  
UNDER THE WAIVER**

## **A. IT AND IT RELATED SERVICES**

### **1. Definition**

The provision of IT and IT-enabled services, including – for purposes of this discussion – business process outsourcing (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".

BPO 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.

## **2. IT and IT related services in Nepal**

While Nepal's ICT performance has stagnated in the past years, ranking 8 among LDCs and 28 (out of 34) among the Asian and Pacific countries in the ICT Development Index,<sup>52</sup> Nepal's IT and IT-enabled BPO services are the fastest growing services exports, similar to neighbouring India and Bangladesh. The growth of the IT services sector has the potential to facilitate the growth of other services exports. On one hand, developed IT services and IT infrastructure has an impact on the overall economy. On the other, Mode 1 exports can generate spill-over effects for exports in other modes of supply including in sectors other than IT and IT-enabled services.

The Government of Nepal, in its 2016 Trade Integration Strategy, has identified IT enabled services and BPO as one of the five priority export potential services based on the sector's export performance and inclusive and sustainable development.<sup>53</sup> The availability of English-speaking IT graduates, the growing local and global market opportunities and the liberalization efforts by the government of Nepal are attracting hundreds of young, dynamic and innovative Nepalese professionals to invest in the sector.<sup>54</sup>

Nepal's IT industry is fairly diversified despite its state of infancy. In the area of BPOs, Nepalese companies are not limited to conventional BPO services, such as customer interaction services or data based back office operations. Companies also provide, for instance, information technology enabled services (ITeS), such as complex medical transcription services and geographical information systems.

According to Nepal's Investment Board there are approximately 500 IT companies in the country with few having more than 300 employees.<sup>55</sup> The vast majority focus exclusively on design of web-enabled applications, software development and deployment of management information systems. Among the 'Everest Top 10 IT Companies in Nepal 2016' about 9 work in more advanced segments, offering specialized and targeted services. Most of the international competitive companies offer advanced web-design, web development, e-commerce solutions, mobile application development and internet marketing strategy development services. Moreover, these companies use various development languages, focus on different operating systems and are well

versed with novel integrated business management solutions.<sup>56</sup>

About 20 per cent of Nepal's IT enterprises possess quality certification such as ISO or are recognized as proficient under the Capability Maturity Model Integration (CMMI)<sup>57</sup> a private standard that often is required, for example, in order to have access to United States government projects. Internet searches reveal that, as of 2016 at least one CMMI level 5 and one CMMI level 3 appraised companies are based in Nepal.

Many of Nepal's promising IT companies are offshore operations for Nepalese owned companies abroad including in the United States; India; and Hong Kong, China. Most of them, however, have small operations abroad that serve to facilitate marketing and financial transactions in light of Nepal's current restrictions on investment abroad and its foreign exchange regime, as explained in Box 2. It also enables the transfer of 'sensitive data' to the operation based in the export market with server localization requirements.

Anecdotal reports of successful companies encountered during the in-country consultations suggest that there is a small, but growing number of exporting businesses and export transactions in the IT sector some of which is of high sophistication and innovation.

CloudFactory is Nepal's largest IT/BPO with 155 full time staff and 1'800 independent contractors in Nepal alone and with operations in Kenya, the United Kingdom of Great Britain and Northern Ireland and the United States.<sup>58</sup> The company offers managed, trained and scalable workforce to service international clients in matters related artificial intelligence, data management and transcription and other IT related support. The company assists in large data management primarily for clients in the healthcare, financial and accountancy sectors. Recently, the company has started providing services to businesses developing artificial intelligence for autonomous driving vehicles. It prepares massive datasets to fuel the machine vision algorithms making them safer and closer to reality. CloudFactory exports its services to Canada, the United States, Australia, Kenya and is looking into other African markets including Ghana.

With an operation in the United States (primarily for sales and account management) and over 300 employees in Nepal, Deerwalk is the second largest IT company in the country with the largest client

base in the healthcare sector in the United States and the United Kingdom markets.<sup>59</sup> The company provides software development solutions and a great array of data management, data conversion and product development for data management services. The company is Health Insurance Portability and Accountability Act (HIPAA) certified and complies with data security requirements of its export markets.

Young Innovations is a start-up specialized in development solutions. By building tools, webs and technologies focused on using Open Data, the company facilitates the work of development organizations and government agencies.<sup>60</sup> The company serves clients in the United Republic of Tanzania, Moldova, Indonesia, the United States, Canada, the United Kingdom, Germany and Australia. Some of its noteworthy products include Aidstream - an online platform for publishing information on aid for development related projects and Development Check - an app that captures real-time citizens' feedback on the transparency, participation and effectiveness of development projects.

Grepsr's platform for data extraction and web crawling services has attracted international clients' attention. Since its foundation in 2011, the company has provided services to over 1200 companies worldwide, including in the United States, the United Kingdom, Germany, Canada and Australia.<sup>61</sup>

### 3. Barriers encountered, possible preferences, actual preferences

#### Barriers encountered

Stakeholder reported several challenges to their exports including supply-side challenges such as those related to international payments, data protection and intellectual property laws and specialized expertise. Challenges to exports of relevance for purposes of this study in export markets as underscored by stakeholders include difficulties in obtaining visas and work permits, cumbersome incorporation requirements and procedures, challenges in tendering on government procurement tenders, data security and localization requirements.

#### Visas and work permits

Stakeholders reported challenges in obtaining visas to most countries including Australia; Canada; Kenya; Pakistan; the Republic of Korea; the United Kingdom;

the United States; and Hong Kong, China, to name just a few. This reduces the chances of Nepalese providers to obtain trainings abroad, participate in international conferences, assess export opportunities, undertake pre-contractual arrangements and meet with the clients abroad.

Virtually all stakeholders had experience with visa applications denials including for CEOs and senior staff in Nepal's prominent IT companies.

One industry representative whose company is a subsidiary of a United States-based IT company reported difficulties in obtaining L-1 visas for the company's Nepalese engineers to get on job training in the head office in the United States for few months. An L-1 visa, enables intra-corporate transferees of an international company with offices in the United States and abroad - to relocate to the company's office in United States for a period of time ranging from three months to five years.

Another industry representative could not obtain entry visas to travel within a short period of time to participate in pre-bid meetings and meet clients at short notice.

Some countries like the United Kingdom do not offer consular services in Nepal. They receive visa applications in Kathmandu but process them in Delhi, India, which translates into time delays and possibly, limited understanding of the industry and business context behind the applications.

Most of the companies consulted circumvent these challenges through redundancy. They maintain western workforce that can travel more easily and at short notice if required by the clients, which means higher cost for the company and reduced exposure for Nepali workforce to opportunities abroad.

Obtaining work permits for intra-corporate transferees in foreign markets is another major challenge for some IT companies encountered. An industry representative who is currently implementing a large IT contract in Kenya employing dozens of Kenyan IT/BPO workers reported challenges in obtaining work permits for the company's senior managers in Kenya mentioning that the visa they got did not allow sufficient time to apply for and obtain the necessary work permits.

### **Cumbersome incorporation requirements and procedures**

Stakeholders further reported cumbersome procedures and requirements related to incorporation in export markets including Kenya.

### **Data security and localization requirements**

Data security is a major concern for clients when outsourcing IT related services that involve data transfer in sensitive areas such as health related data or financial data to foreign providers especially those operating in jurisdictions with weak intellectual property regulatory framework.

Stakeholders reported that localization requirement (requirement to store certain types of data only on servers in certain locations, mostly in the home country of the client) is still a challenge but to a lesser extent than before due to technological advancement and availability of cloud servers.

Stakeholders reported that in most cases they find second best solutions to address such challenge, including through: Transferring the 'sensitive data' to the company's operation in the export market, 'chopping' the data or encrypting it so that it is no longer recognizable and only then transferring the chopped/encrypted data to Nepal for further processing, remote work on the clients' servers, and undertaking additional certifications and/or creating secure spaces – camera installations connected to the client base – where the sensitive data is processed. These solutions still reduce the scope of possible services and increase efforts and costs per output unit for Nepalese providers.

### **Challenges in tendering on government procurement tenders**

Stakeholders further reported that governments are major clients for the IT sector worldwide but tendering on government procurement tenders poses national treatment and regulatory challenges. In this context, it is important to note that government procurement is largely not disciplined by the GATS and technically WTO Members do not need the Waiver to grant preferences for LDC providers as explained in Box 3.

**Box 3: Government procurement under the GATS and the LDC Services Waiver**

Government procurement is largely exempted from GATS disciplines. Article XIII of the GATS specifies that Articles II (MFN), XVI (market access) and XVII (national treatment) *shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes.*

Therefore, WTO Members are permitted to prefer national suppliers or distinguish between services on the basis of their origin and to prefer the services of particular origin(s) over those of other origin(s) provided that two conditions are met:

- (i) The services are purchased by governmental agencies; and
- (ii) The services are purchased for “governmental purposes” (*i.e.*, for example, not for resale or other commercial purposes).

This means that already under the GATS WTO Members are entitled to prefer LDC services over services originating in non-LDCs. Recourse to the LDC Services Waiver is therefore not necessary to justify such preferential treatment.<sup>62</sup>

It is not clear whether any such preferential treatment is currently extended to LDCs by any WTO Member. In contrast, however, non-LDCs are indeed recipients of preferential treatment with respect to foreign procurement markets, not least under the WTO’s Government Procurement Agreement (GPA), a reciprocal plurilateral agreement.

This contrasts sharply with the needs on the ground as far as LDC service providers are concerned. While government is often one of the biggest consumers in many sectors and hence one of the biggest potential customers for foreign services exporters, many LDC service providers encountered underscored the difficulty in bidding on government procurement tenders and providing services to government-procured projects in their actual or potential export markets. In light of the economic significance of services procured by governments for service providers including LDC providers, not least especially in some key sectors of interest to LDCs such as construction, engineering, IT and computer-related services (*e.g.* to provide e-government solutions), it seems appropriate to harness the momentum generated by the LDC Services Waiver to consider demand-side measures that would facilitate LDC access to services procured under government procurement tenders.

Industry representatives underscored that government tenders including for e-government, for example, in most countries are subject to (1) nationality requirements and/or (2) a local content requirement in the form of employment of local staff. Stakeholders further reported that most donor-funded tenders in the export markets have similar requirements.

In some countries, domestic legislation requires contractors supplying services to public authorities under government procurement tenders to prove that sufficient domestic skills are not available before hiring foreign workers, which *de facto* often excludes foreign companies, which would like to use their own (foreign) workers especially highly skilled software engineers and senior managers.

Nepal’s innovative and dynamic IT and IT-enabled industry could benefit from larger exposure to export markets and facilitating measures by governments in export markets. Concerted marketing efforts by the industry, the government and possibly donors can play a major role in enhancing the export potential of the sector. Further, positive interventions by governments in export markets in encouraging their companies to outsource to Nepal (LDCs) through tax exemptions, subsidies and transfer of technology schemes can be of great significance in boosting Nepal’s exports.

**Possible preferences**

Possible measures that could be devised as preferences for LDCs under the Waiver to address the challenges encountered would thus include the following:



- Facilitate visa/work permits. In particular:
  - Grant facilitated access to visas/work permits for visiting IT professionals (Mode 4, usually as CSS or ICT); ideally create a suitable, separate visa category, or ensure uncomplicated coverage in larger category;
  - Create reliable and easily accessible 'trusted person' system to benefit LDC service providers generally and those operating in sectors of export interests like IT and related services more specifically;
  - United States-specific: Facilitate the granting of L-1 visas for eligible LDC IT companies;
  - Grant an LDC quota for work permits;
  - In cases where work permit is granted on the basis of a quota system, grant preferential treatment for LDC service providers in filling applicable quotas;
  - Grant preferential treatment for LDC service providers in cases where work permit is granted on the basis shortage of domestic skills;
  - Fast track procedure for obtaining work permits for LDC service providers establishing commercial presence (Mode 3);
- Relax incorporation requirements and procedures for LDC service providers;
- Facilitated and possibly supported (e.g. by tutoring) access for LDC IT service providers to existing exemptions to localization requirements. For example, where certain security/quality certifications would allow an LDC provider to handle sensitive data outside the country of the client, achieving such certification could be supported under a pro-LDC programme; additional conditions could be imposed to ensure the appropriate level of security protection; the use by LDC providers of certain technologies to defuse data safety or security risks could be actively supported by importing countries; data security audits and recognition of any comparable audits conducted by or under the auspices of a trusted third country with comparable standards;
- Grant LDC IT/BPO service providers access to otherwise closed government procurement; grant national treatment to LDC IT/BPO service providers (i.e., grant access to national quota) (Note: These preferences do not require Waiver coverage, as procurement is not covered by the GATS and hence not subject to the MFN obligation.):
  - Relax or remove nationality requirements for LDC tenderers under government procurement schemes;
  - Relax or remove local content requirements for LDC and other tenderers in respect of LDC services content;
  - Relax or remove local employment requirements for LDC tenderers and others in respect of LDC employees;
  - Extend/apply existing national preferences to LDCs and their tenderers;
  - Extend third country preferences, e.g. under GPA, to LDC tenderers;
  - Provide specific subsidies for the benefit of imported LDC services.
- Provide tax exemptions for enterprises' consumption of imported services from LDCs;
- Provide tax and/or other incentives to companies dealing with, especially sourcing from LDC services exporters to provide transfer of know-how and technology.

### Preference notifications by WTO Members: to what extent they respond to the needs?

None of the preference notifications directly address the mentioned specific barriers and challenges.

However, the notifications received from nine WTO Members still overall represent a significant 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 subsectors, and all or most modes of supply, in 'Computer and Related Services' (CPC 84), often on the basis of a 'best PTA' approach:

- Panama offers comprehensive market access, with the exception of Database services where it only opens Mode 3, corresponding to its commitments under the European Union -Central America Association Agreement.
- Chile offers complete coverage, corresponding to its CPTPP offer.
- India offers comprehensive market access, save for an incorporation requirement for Mode 3, corresponding to its commitments under the 2015 India-ASEAN agreement.
- Mexico offers comprehensive coverage, except for one subsector (System analysis and data processing, where it leaves out Modes 1 and 2, allowing for localization).
- The European Union offers comprehensive coverage in Modes 1-3, but several European Union Members reserve ENTs for Mode 4, watering down the otherwise significant opening due to the inclusion of IT services in the general promise to admit CSS.
- Australia opens Mode 4 ('as in horizontal section') which means that IT services now benefit from the arguably improved horizontal coverage of CSS and independent professionals.
- Brazil only offers Mode 3, but without limitations
- Switzerland complements its already almost comprehensive commitments in 'Computer and Related Services' a comprehensive offer in the apparently only remaining subsector not yet committed under GATS, namely "Services for the analysis and diagnosis of addictive and compulsive Internet-related behaviour; Internet addiction treatment services" ('best PTA')
- Iceland complements its schedule with a Mode 4 opening (also 'best PTA').

While it is not clear how much of the above, if anything, represents new and increased openness rather than already existing MFN reality, the signal WTO Members sent in this sector still rings clear: There is a general trend towards broad openness in this sector, something that caters to the needs of LDCs such as Nepal who will benefit from overall increased markets where it can advance its cost advantage.

Other issues such as the localization of servers and public procurement preferences were not tackled in any of the notifications. It is worth noting that, while the LDC Services Waiver would not be needed to cover such preferences as they are already possibly under the GATS, and while this would thus explain why they do not appear in Waiver-related notifications, it bears repeating that a meaningful opening of procurement markets would be of great interest to the Nepalese IT and related services sector.

## B. AUDIO-VISUAL SERVICES

### 1. Definition

Under the WTO's Services Sectoral Classification List 'Communication Services' include postal, courier, telecommunication, audio-visual and other communication services.

The focus of the in-country consultations and thereby in this paper is on audio-visual services. Under the W/120 definition audio-visual services include motion picture and video tape production and distribution services, motion picture projection services, radio and television services, radio and television transmission services and sound recording.

### 2. Audio-visual services in Nepal

The rapid advancement in computer technologies, telecommunication infrastructure and the increase in broadcasting hours by cable, satellite television and internet have expanded the demand for animated entertainment worldwide. Today, digital animation is one of the fastest growing creative industries with an annual growth rate of 5 per cent. In 2015, the global animation industry recorded output value of approximately \$ 244 billion.<sup>63</sup> The United States made the greatest contribution to the industry's output with about a 38 per cent market share. Canada, Japan, China, France, United Kingdom, the Republic of Korea and Germany followed as the major animation markets.

Large multinational studios, television broadcast companies and cable channel companies influence the global animation industry through their sheer engagement in all production and distribution activities and intellectual property licensing.<sup>64</sup> As technology and connectivity advance multinational studios have sought various forms of partnership, joint ventures and coproduction with global partners to explore wider market opportunities and reduce production costs. North American and European film and television producers lead the outsourced digital animation production market. Asia has become an attractive destination for outsourced input producing about 90 per cent of American television animation.<sup>65</sup>

The South Asian outsourced digital animation production market is mainly led by India, followed by Nepal.<sup>66</sup>

Nepal is home to a small but growing number of inspiring animation studios active in the global outsourced digital animation production marketplace. Incessant Rain Animation Studios (IRAS) established in 2008 services clients in the United States including Disney studios, the United Kingdom and Japan.<sup>67</sup> IRAS worked on projects such as Diwali with Mickey & Donald, Karate Kid 2, Zombie Land, Death At Funeral, Thirty Minutes or Less, Burlesque, Devil. IRAS employs over 135 artists and IT professionals and specializes in the production of features, television content, animations, visual effects, game cinematic and trailers and integrated media. Its CEO, an animator who worked at Disney studios for many years, is keen not only to develop Nepal as an outsource destination for animation productions but also as a source of creative local content.

Arcube Games & Animation, a young studio with about 10 developers, has developed 3D games and animated productions for clients in France, Pakistan, Singapore and the United States.<sup>68</sup> In 2016, the company was a finalist in the mBillionth Award South Asia - an award that recognizes excellence in mobile innovations for development. The company specializes in creating and publishing of games, apps for mobile devices and personal computers, CGI animation, commercials and content creation for virtual reality.

### 3. Barriers encountered, possible preferences, actual preferences

#### Barriers encountered

Stakeholders reported a wide array of barriers that hinder the development of the sector including supply-side constraints such as weak intellectual property regulations and enforcement, barriers to international payments, connectivity and the cost thereof and skilled and creative work force. Barriers encountered in export markets as reported by stakeholders include local content requirements and visas.

As to market access and regulatory barriers in export markets, stakeholders reported local content limitations and visa related restrictions.

#### Local content - Coproduction

A classical barrier facing film productions including animation is that funding for films in important film producing markets is heavily state driven and this funding translates into a strong local content requirement to use national inputs as a precondition for access to financial support by the state (film funding, tax relief, other). This significantly limits the marketplace not only for LDC movies but also input services that are, or could be, provided by Nepalese and other LDC service providers to international productions.

These (local content) requirements are often effectively modified through co-production agreements, but these again impose specific requirements that often exclude LDC inputs. Their impact on third parties is sometimes even worse than 'pure' local content requirements. This is because bilateral co-production agreements often require all or a fixed share of inputs of production services (including studio and post-production work) to be provided in the coproduction parties, hence effectively excluding third party (e.g. Nepalese) audio-visual service inputs.

Nepal is not a party to any co-production agreement. The result is a disincentive for film producers from film producing countries with state funding to cooperate with (outsource part of the production to) Nepalese studios.

#### Physical market access: visas

Another barrier LDC service providers including in animation face is the difficulty to obtain entry visas to

travel to meet clients to participate in important film festivals and events.

One might mistakenly assume that visas are less important for producers of animation services as their main service – the animated production – can be transmitted to foreign clients in Mode 1, without them travelling. That however would mean to miss a key element. For artists and animators, the physical presence at film festivals in addition to special screenings, award ceremonies and workshops/‘marketplaces’ for filmmakers (often organized in the context of festivals) is of crucial importance.<sup>69</sup> In addition, the ability to

travel to meet clients (or potential clients) is also key to concluding contracts. This is especially true when the service provider is established in countries with weak regulatory frameworks (e.g.: Weak intellectual property protection), which can affect the building of trust, the face to face personal interaction between the provider and client is of paramount importance.

### Possible preferences

Possible measures that could be devised as preferences for LDCs under the waiver to address the challenges encountered would thus include the following:

- Unilaterally extend the benefits of coproduction agreements (with third parties) to LDC services and service suppliers, possibly even under more favourable terms, e.g. lower minimum financial contribution requirements (e.g. 10 per cent for LDCs, while maintaining 20 per cent minimum for all others).
- Reduce local content requirements to allow for greater shares of inputs from LDCs (e.g. by allowing for X per cent LDC inputs to qualify as local content for purposes of screen quotas or subsidies).
- Waive for LDC input services any restrictions on third party inputs contained in co-production agreements between A and B (e.g. the requirement that production and post-production services must be performed in A or B), thus allowing LDC inputs without affecting the benefits of the co-production agreement for the participating providers from A and B.
- Create special visa categories for *bona fide* LDC cultural professionals, with fewer conditions attached, to account for their often-challenging visa profiles (young, unmarried, no bank account, no visa track record, etc.).
- Reduce visa fees for *bona fide* LDC cultural service providers.
- Refund visa fees in case of refusal.
- Grant longer visa duration and multiple entry visas for cultural professionals where needed to cover several festivals, possibly in several countries (often a challenge in Europe as festivals are spread out over the season).

### Preference notifications by WTO Members: to what extent they respond to the needs?

While many of the mentioned suggested preferences were in fact demanded in the 2014 Collective Request submitted by the LDC Group, the response in the 24 notifications is very limited.

- **Only two WTO Members – the United States and Taiwan Province of China – offer preferences in the audio-visual sector.** The United States in particular underscores its strong commitment to open markets for audio-visual by providing for near-full market opening, especially in motion picture and video-related subsectors, complementing its existing

GATS offer. The United States inter alia commits to open distribution markets – a commitment that, if it were undertaken by France, would address the requirement there to go through local film distributors. That said, the United States solution likely does not involve an LDC-only preference but rather an existing MFN openness, so its value as an example for preferential (carve-out based) solutions is limited.

- **None however addresses the specific issues related to local content/coproduction.**
- **None of the notifications addresses Mode 4 issues of physical market access (visa, work permit-related).**

## C. MUSIC SERVICES

### 1. Definition

Music services are spread across two different services sectors, namely entertainment services as a sub-category to recreational, cultural and sporting services and audio-visual services as part of communication services.

As for entertainment services, these include theatre, live bans and circus services, and are usually provided through Mode 1 or 4. In the case of Nepal Mode 4 supply through the live performance of music artists is particularly relevant.

### 2. Music services in Nepal

#### Live performance of artists

With more than 50 ethnicities, Nepal has a rich music culture characterized by traditional Hindi and Buddhist music and by folk music. Devotional and meditation music are popular worldwide, as are traditional instrumental music genre such as Sitar music. Contemporary musicians also increasingly combine traditional elements with contemporary genre such as electronic house music.<sup>70</sup>

Among the most popular musicians from Nepal are Sur Sudha and Sukarma, two bands that combine traditional instruments such as flute, table and sitar to interpret traditional melodies, in particular from the Himalayan regions. Both bands have attended numerous music festival tours abroad, including in Europe. Other famous bands include Kutumba, who attended life performance tours in the United States and in Europe, Trikaal, and Ani Choying Drolma; a UNICEF Goodwill Ambassador.<sup>71</sup>

Like for many other LDCs the currently greatest export potential for entertainment services lies in the supply of artists and artistic contributions for live performances abroad.

Live performances abroad do not only generate significant profit margins for the musicians, but they also promote the country's tourism sector and can function as a catalyst for other music industry related services, such as audio-visual services. Comprehensive data on Nepali artists' performance abroad is not available but an overview on visa applications in popular destinations, however, gives an indication of the demand and supply.

In the United States, one major destination for foreign artists, 337 P3 entry visa for artistic life performances were granted to Nepali artists between 1996 and 2016. During the first eight years annual figured fluctuated slightly between two and six annually. In 2004, applications rose drastically, and 20 visas were granted that year. Until 2012 this figure fluctuated slightly between 20 and 27 per annum, with an exception in 2007 when 55 visas were granted. Since 2012/2013, however, only few artists were able to enter the United States on a P3 visa. In mid-2013 the United States declared a temporary halt on P3 visa issuance for Nepali artists, which was reflected in only 16 visas issued in 2014. For the year 2015, 29 visas were granted and 32 in 2016.<sup>72</sup>

#### Sound recording

The distribution of music witnessed significant changes over the past decade moving from the physical sale and distribution of music albums to the digital distribution of music through downloads and streaming.

Music Nepal, prominent among the Nepali sound recording and music distribution agencies, played a significant role in riding the wave of change and digitalizing the distribution of Nepali music. Recording three quarters of the music market in the country, Music Nepal has 1.3 million subscribers and alliances with over 500 music companies for the digital distribution of their music and videos.<sup>73</sup>

Capturing music rights and the collection of royalties for artist is facilitated in the age of digital distribution of music (and artistic work generally). Music Nepal prides itself for securing music rights and royalty payment to artists and creators of music in Nepal. Further, the company is a member of the International Federation of Phonographic Industries and a strong lobbyist for the protection of intellectual property rights in Nepal.

### 3. Barriers encountered, possible preferences, actual preferences

#### Barriers encountered

Stakeholder reported various supply side constraints including piracy (weak intellectual property regulatory framework and enforcement), connectivity and technological infrastructure. Stakeholders further reported visas, social security deductions and income tax deductions in the export market.

On market access and regulatory barriers, stakeholders reported restrictions related to entry visas, withholding taxes and social security contributions and barriers related to intellectual property protections in export markets.

### Physical market access: visa

*Performing artists* are among those most affected by horizontal visa/work permit issues, *i.e.* physical entry challenges faced by all Mode 4 services suppliers. Musicians, dancers and other performers, often young, unmarried and without a visa track record, are particularly affected compared to other service providers and professionals.

Bank account balance requirements are frequently required to obtain visa, posing a major challenge, especially for younger performers. When it is required from each member of a music or dance group individually (something reportedly practiced by some Schengen countries, for example), it often means that the band/troupe as a whole will not be able to perform, and hence will not travel.

The costs of visas are another challenge and so is the non-refundability of visa fees in case of rejection.

### Withholding taxes and social security contributions

Nepalese performing artists who as contractual service suppliers or independent professionals provide their services in Mode 4 sometimes see their fees subjected to withholding taxes and social security contributions. This is, for example the case in France, which imposes

the deduction from their income of the contributions and costs of affiliation to the social security system in France, usually applicable to all employment contracts in France. Article L762-1 of the French Labour Code specifies that “any contract by which a natural or legal person ensures, for remuneration, the assistance of a performer in order to of its production, is presumed to be a contract of employment (...)”.<sup>74</sup> Foreign visiting artists, in other words, are treated as local employees for purposes of social security treatment, with expensive consequences. This stands in contrast to the treatment granted to performing artists from EEA countries who get treated as independents/entrepreneurs, and hence do not pay the same charges – a situation that demonstrates, incidentally, that better treatment is reasonably possible from an administrative perspective, provided the required will is there.

In addition, some export markets such as India and Malaysia deduct income tax from the service provider until a proof of tax payment in the country of residency of the service supplier is provided. In other countries the procedures to reclaim tax deductions is cumbersome and LDC musicians do not succeed in reclaiming their payments.

### Intellectual property protection

Industry representatives of the music-recording sector underscored challenges related to piracy and lack of intellectual property protection in export markets where consumers of music services download music illegally to circumvent the payment of music rights for creators and musicians.

### Possible preferences

- Create special visa categories for *bona fide* LDC cultural professionals, with less conditions attached, to account for their often-challenging visa profiles (young, male, unmarried, no bank account, no visa track record, etc.).
- Reduce visa fees for *bona fide* LDC cultural service providers.
- Refund visa fees in case of refusal.
- Reduce or waive bond/guarantee requirements, and/or flexible mechanisms to allow exporting governments or other third parties to provide guarantees on preferential terms.
- Grant longer visa duration and multiple entry visas for cultural professionals where needed to cover several festivals, possibly in several countries (often a challenge in Europe as festivals are spread out over the summer).
- Waive or reduce withholding taxes and social security contributions for performing artists and other visiting cultural professionals.
- Facilitate copyrights registration procedures for LDCs (including reducing or eliminating fees) and enforce mechanisms to protect them.

### Preference notifications by WTO Members: to what extent they respond to the needs?

There appears to be some correlation between the challenges identified and the preferences notified so far under the LDC Services Waiver.

• **Eight WTO Members offer preferences in “Entertainment Services”, the main sector for cultural performers.** These are Chile; Iceland; India; Japan; the Republic of Korea; Mexico; Hong Kong, China; and Taiwan Province of China. Some of these are interesting, at least in principle and to some extent.

– Chile, Iceland, India, the Republic of Korea, and Mexico explicitly extend their horizontal commitments on Mode 4 to this subsector, with small differences in coverage (India, e.g., does not seem to include circus performances, Chile does not explicitly mention live bands). Taiwan Province of China similarly indicates that “CSS conditions” apply. While this does not solve an important issue in the classical Mode 4 categories, namely education requirements for Independent Professionals and Contractual Service Suppliers (CSS) – most musicians professionals do not have master’s degrees – it is a step in the right direction, and may indeed help in practice, depending on implementation (including visa/work permit practice).

– The remainder of the preferences offered are mostly full market access commitments in Modes 1, 2 and 3, some with small caveats.

• **None of the notifications addresses withholding taxes, social security contributions, nor Mode 4 issues of physical market access (visa, work permit-related) or intellectual property protection issues.**

## D. TOURISM SERVICES

### 1. 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 (very) different categorizations and clusters are used to capture what happens when people travel. For example, under the EBOPS 2010 (Extended Balance of Payments Services Classification) 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.<sup>75</sup>

### 2. Tourism services in Nepal

Nepal’s price competitiveness, astonishing natural landscape and relaxed visa requirements makes it an attractive destination for adventurous travellers. According to WEF’s Travel and Tourism Competitiveness Report Nepal ranks 8 in visa requirements, 19 in price competitiveness – or 7 in purchasing power parity terms- and 27 in national resources.<sup>76</sup> Moreover, it is above the South Asian average in terms of safety and security, health and hygiene, human resources and labour market.<sup>77</sup>

Possessing eight of the ten highest mountains in the world, Nepal has become a hotspot destination for mountaineers, rock climbers, wilderness tourists and tourists seeking adventure sports such as rafting, paragliding and canoeing. The great Hindu and Buddhist cultural heritages are a further core reason for Nepal’s topping the list of tourism destinations. The country experienced an increase in tourism since 2006 after a peace accord ended a ten-year long civil war. Up to 2012, the average growth was around 20 per cent per annum when counting the total number of tourism arrivals.<sup>78</sup> From 2012 to 2014 tourism growth slightly dropped down, falling dramatically in 2015 due to the devastating earthquake occurred in April that year. In 2016 tourist arrivals increased 40 per cent (753,000) compared to 2015.<sup>79</sup> The growth in the sector is expected to continue and the Government envisions increasing international tourist arrivals to Nepal to two million by 2020.

Nepal's geographic position between two of the world's fastest growing economies also offers its tourism sector spillover opportunities.<sup>80</sup> In 2015, Nepal's tourism sector accounted for over 45 per cent of all commercial services exports.<sup>81</sup>

The vast majority of tourism and travel related services are traded through Mode 2 with tourists consuming tourism services in Nepal. As a consequence, most action on increasing tourism service revenues concentrate on attracting growing tourism flows and up scaling tourism from basic to luxury travel.

Beyond increasing the flow of incoming tourists, export potential exists in particular for travel agencies, tour operators and tourist guides interested to supply their services to the consumers by offering electronic booking and travel management services.

The vast majority of agencies and tour operators in Nepal, however, continue to co-operate with foreign partners who are responsible for the greatest share of tour booking services, as the sector remains highly integrated – both horizontally and vertically.

According to the Ministry of Finance, in 2016 there were around 3'444 travel agencies and 2'790 trekking and rafting agencies registered in the country. Seventeen specialized companies offering paragliding, ultralight and skydiving activities and a total of 13'256 tourist trekking and river guides.<sup>82</sup>

All sectors grew rapidly over the period between 2005 and 2011, though rafting and air adventure services emerged only recently with significant growth since 2010.<sup>83</sup>

In addition to the local suppliers there is a high number of Indian trekking agencies and guides operating in Nepal as part of cross-border activities. Cross-border Himalaya trips along the border of the two countries are increasing in popularity and many tourists continue to choose Delhi as their point of departure for Nepal. As a consequence, Indian travel agencies and tour operators often supply the services directly, either by arranging for booking of Nepalese services or by directly supply the services by travelling cross-border with the tourists as part of cross-border tracks and rafting tours.

As for hotel services, the Nepalese supply is also increasing though great differences remain between star and low budget accommodation with the latter clearly dominating the market and the former having a low occupancy rate at around 40 to 80 per cent

during peak season.<sup>84</sup> In 2017, hotel's occupancy rate reached 60 per cent, the highest since April 2015.<sup>85</sup>

According to the World Travel and Tourism Council (WTTC), in 2016 travel and tourism services as per the CPC classification accounted for 3.6 per cent of Nepal's GDP and was expected to rise by 6.8 per cent in 2017. If indirect and induced impact is also accounted, the total contribution of this sector to the GDP reached 7.5 per cent in 2016.<sup>86</sup> The share of domestic tourism was much greater than that of international tourism (65.6 per cent as opposed to 34.4 per cent).<sup>87</sup>

These statistics, however, go beyond the services provided by hotels, restaurants, travel agencies and tour guides, as explained. At a more disaggregated level the Nepal Rastra Bank reports that travel agency exports accounted for 381 million Nepalese Rupee (NPR) in 2011 (\$ 4 million) while trekking and rafting agency services exports amounted to NPR 1'587 million (\$ 16.8 million).<sup>88</sup> This data is based on the expenditure by tourists.

The vast majority of travellers come to Nepal for holiday, pleasure and mountaineering purposes, accounting for over two thirds of tourist arrivals during the past 10 years and 74.83 per cent in 2016.<sup>89</sup> The majority of travellers from India, Thailand and Sri Lanka come for pilgrimage reasons. In 2016, pilgrims accounted for 11 per cent of total tourist arrivals.

The greatest share of tourists by nationality is Indian. In 2016, Indian tourists made up at least 17.5 per cent of all the tourists to Nepal.<sup>90</sup> This number, however, only includes Indian tourists coming by air. Tourists arriving by land are not accounted for due to the open borders between the two countries. China and Sri Lanka make up the second and third largest group of tourists in Nepal followed by the United States and the United Kingdom.<sup>91</sup> In 2016, the share of tourist arrivals from these countries accounted for more than 50 per cent of the total number of tourist arrivals.<sup>92</sup> These top countries also include the countries responsible for the greatest share of travel spending at a global scale.

### 3. Barriers encountered, possible preferences, actual preferences

#### Barriers encountered

Stakeholders highlighted several challenges to their exports of tourism services, many of which are supply-side constraints including restrictions on investment



abroad which translate into heavy reliance and often dependency on the marketing efforts of foreign tour operators and difficulties to market the tourism offers, in addition to weak infrastructure including road infrastructure.

Other barriers identified include barriers to the promotion of tourism services, travel warnings and restrictions on the type of services offered by foreign tour operators and tourist agencies.

### Barriers to the promotion of tourism services from LDCs

One of the key challenges facing Nepalese tour operators and tourist agencies is to **effectively market their tourism offer** and to identify the needs of tourists from specific destinations, to anticipate the flow of visitors, and to design and tailor their tourism offer to those needs.

These challenges can be exacerbated (i) by the exclusion of LDC service suppliers and services from the benefits of preferential agreements (*i.e.* tourism MoUs) entered into by the countries to promote their tourism services exports and (ii) by comparison with the large tourism marketing budgets available to developed countries in particular (*i.e.* supporting/promoting domestic tourism services exports).

### Travel warnings (travel advisories)

Travel warnings are published by foreign embassies, foreign ministries or other agencies warning their nationals from political, health, other risks in the travel destination. Travel warnings have a major impact on tourism arrivals not only because tourists shy away from such travel destinations but also insurance

coverage is not extended to these destinations. While it is fully legitimate for government to protect their nationals from any risks abroad, the authorities publishing the warning often do not communicate sufficiently with host country authorities, operators and experts before issuing warnings. Also, risks might be overstated or poorly described, and advisories do not differentiate sufficiently between regions affected and regions not affected by risks. In addition, advisories are not updated frequently enough and often stay on websites for months after the risk dissipated. Nepal's experience with travel warnings is bitter during the times prior to the peace process but also recently in the aftermath of the 2015 earthquake.

### Restrictions on the type of services provided

Stakeholders further reported that China maintains restrictions on the types of services foreign travel agencies can provide to Chinese nationals. These restrict foreign travel agencies and tour operators from establishing a presence in Mode 3 and limits their ability to be close to their Chinese clientele. Foreign travel agencies must *inter alia* obtain a 10-year licence and register with the China National Travel Administration (CNTA), provide a feasibility study to CNTA/ the Ministry of Commerce and meet annual sales target of more than \$ 40 million; the latter does not apply to domestic tour operators and travel agencies.<sup>93</sup>

### Possible preferences

Possible measures that could be devised as preferences for LDCs under the Waiver to address the challenges encountered would thus include the following:

- Provide direct support to LDCs and their tourism operators in terms of marketing and information;
- Extend unilaterally the benefits found in tourism MoUs to LDC tourism service suppliers;
- With respect to the promotion of domestic tourism services through marketing campaigns, including those organized by countries' tourism boards, extend national treatment so the tourism boards market LDC tourism services too;
- Red telephone consultation mechanisms specifically for LDC tourism destinations to ensure prior consultation with LDC local authorities, operators etc. before any warning is issued, including on the formulation of the text;
- Regular review of travel warnings for LDCs;
- Provide space alongside the travel warning for tourism authorities of affected LDCs to comment publicly;
- Remove restriction for LDC travel agencies. Grant national treatment.

### Preference notifications by WTO Members: To what extent they respond to the needs?

The 24 notifications partially respond to challenges identified by LDCs services providers of tourism services.

- **Fourteen WTO Members offer preferences in “Tourism services”.** Australia, Brazil, Canada, Chile, the European Union (Belgium, France, Germany, Italy, Netherlands, Spain and all European Union), Iceland, India, Japan, the Republic of Korea, Liechtenstein, Mexico, Norway, Panama, Thailand, and Turkey, . Some of these are interesting *vis-a-vis* the challenges underscored by LDC exporters, at least in principle and to some extent.

- Brazil, Canada, and Iceland explicitly open their markets to services provided by travel agencies and tour operators in Mode 3. While these do not address the national treatment challenges faced by LDCs providers, it is the first step in the

desired direction that allows them to establish a commercial presence, get closer to their clientele and promote their services, which is at the root of LDCs concerns.

- **Some WTO Members explicitly extend their horizontal commitments on Mode 4 to this sector, with small differences in coverage.** Such measures facilitate business visits of executives, managers and specialists to promotional events and deal-breakers negotiations with key international partners.
- **Some 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 (GES). Likewise, China offers to intensify training programs in several services, including tourism.
- **None of the notifications addresses travel warnings or travel advisories problematic.**





# CONCLUDING OBSERVATIONS

Nepal, a landlocked country with weak infrastructure, is on the path of development with fast growing services industries; some - especially in the IT/BPO sector - are with an impressive level of sophistication. Traditional services, such as tourism, are primarily focused on attracting tourist arrivals from neighbouring countries, while other services including IT/BPO and animation services are reaching out to a remote clientele in Europe and the United States. The task is thus to create an enabling environment for the services economy to flourish, reform the regulatory framework in support of the services economy and develop Nepal's human capital.

As services providers from other LDCs, Nepal's services exporters, encounter market access, national treatment and regulatory challenges in export markets (including visas, local content requirements and access to public procurement). Besides these classical barriers to trade, services exporters face a myriad of additional challenges ranging from administrative procedures, to qualification requirements, to fees and charges. So far, these challenges have been left almost entirely untouched in the Waiver operationalization process. This has several reasons, some structural, some substantive. The main reason is that preferences are designed broadly and lack attention to detail; consequently, preferences notified so far appear to contain little direct value for Nepal's services exporters.

This pilot case study, shows that while the preference notifications submitted under the LDC Services Waiver clearly mark a step forward, they often fail to address the specific challenges faced by LDC service suppliers. Further efforts towards more attentive, generous and creative preferences are needed. WTO Members should pay detailed attention to the issues encountered by LDC 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 and 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.

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.

An option for the future is the expansion of geographical coverage. While the primary expectations to provide preferences are on "developed countries and developing countries in a position to do so", unilateral preferences for LDCs can be usefully considered and granted by all WTO Members, including LDCs themselves.

This applies even in the context of progressive regional integration. The LDC Services Waiver, even in the immediate context of regional integration, can offer a complementary tool, namely in cases where there is readiness to grant limited preferences to weak exporters only, hence not to all RTA partners; where there is hesitation or insecurity as to whether a facilitation measure will work and not cause damage, so that the flexibility to retract a preference under the Waiver is welcome; or where the implementation of regional measures depends on cooperation that may be delayed, so that a unilateral measure under the Waiver could be a useful way to make provisional progress.

This paper shares and supports the cross-cutting conclusions emerging from the overall pilot exercise. These are reflected and explored in some detail in the Overview Paper. Suffice it thus to recall here that:

- There is a need for, and a space for, a move towards more attentive, generous and creative preferences to address – through realistic, feasible but targeted measures – the specific challenges encountered by Nepalese and other LDC services exporters.
- There is a need and space for broader geographical coverage. The LDC Services Waiver is a tool that is available to all WTO Members. All countries could and should embrace the opportunities offered by the LDC Services Waiver and consider granting preferences to services and service providers from LDCs.

- There is a case for moving towards a more holistic process of support to LDC services exports, including on the institutional level. Better data collection will help understand current and future services trade options; better research, analysis and information dissemination could help improve the design and implementation of trade preferences in services; 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 will contribute greatly to the goal – where UNCTAD's Services Policy Reviews (SPRs) could provide key benchmarks of significance and viability to feed preferential treatment initiatives; and establishing and empowering a forum for dialogue, exchange of experiences and continuous monitoring, peer review and mutual inspiration will be very useful. Given its longstanding and comprehensive experience in this area, UNCTAD would be ideally placed to provide such a forum.
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- <sup>3</sup> Ibid, p. 21.
- <sup>4</sup> Ibid.
- <sup>5</sup> Ibid, p. 22.
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- <sup>8</sup> Ibid.
- <sup>9</sup> Ibid, p. 23.
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- <sup>59</sup> Information generated in discussions with company representatives during the in-country consultations.
- <sup>60</sup> Information generated in discussions with company representatives during the in-country consultations.
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- <sup>64</sup> Ibid.
- <sup>65</sup> Research and Markets, "Press release of the Asian Animation Industry Strategies, Trends and Opportunities Report 2017: Featuring 950+ Companies", 25 October 2017. Available from <https://globenewswire.com/news-release/2017/10/25/1153109/0/en/Asian-Animation-Industry-Strategies-Trends-and-Opportunities-Report-2017-Featuring-950-Companies.html>.
- <sup>66</sup> John A. Lent, "Animation in South Asia", South Asia Film and Media, vol. 1, No. 1 (September 2009), p. 113.
- <sup>67</sup> In country consultations.
- <sup>68</sup> In country consultations.
- <sup>69</sup> It is worth recalling that GATS Article XXVIII defines 'supply of a service' to include marketing and sale activities, *i.e.* 'business visits' of various types, which for filmmakers etc. logically includes presence at festivals.
- <sup>70</sup> Outcome of authors' interviews and web-search on CD sales, track sales and festival and tour performances.

<sup>71</sup> Ibid.

<sup>72</sup> United States Department of State, Bureau of Consular Affairs, Nonimmigrant visa statistics TravelStats. Available from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

<sup>73</sup> In-country consultations and review of the company's profile. Available from <http://www.nepalmusiccenter.com/>.

<sup>74</sup> While an agreement was signed on 29 March 1974 between France and Senegal on social security and which ensures the rights acquired under the legislation of one of the States, it only concerns nationals exercising or having exercised, as permanent or seasonal workers, a salaried or similar activity. Artists appear not to be covered.

<sup>75</sup> 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, p. 51-54.

<sup>76</sup> World Economic Forum, *Travel and Tourism Competitiveness Index*, p. 41, 46, 255.

<sup>77</sup> Ibid., p. 22.

<sup>78</sup> Compilation on the basis of World Travel and Tourism Council (WTTC) statistics for tourism, excluding other travel.

<sup>79</sup> Nepal, Ministry of Culture, Tourism & Civil Aviation, *Nepal Tourism Statistics 2016* (Kathmandu, 2016), p. 7–11.

<sup>80</sup> UNCTAD, *National Services Policy Review Nepal*, p. 57.

<sup>81</sup> World Bank, *World Development Indicators*, Data Bank. Available from <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators>.

<sup>82</sup> Nepal, Ministry of Finance, *Economic Survey: Fiscal Year 2016/17* (Kathmandu, 2017), paras. 9.63–9.65.

<sup>83</sup> Ibid.

<sup>84</sup> Federation of Nepalese Chambers of Commerce and Industry (FNCCI), "Tourism: Sector Overview". Available from <http://www.fncci.org/tourism-154.html>.

<sup>85</sup> "Hotel occupancy rate rebounds to 60 per cent", *The Himalayan Times*, 13 March 2017. Available from <https://thehimalayantimes.com/business/hotel-occupancy-rate-rebounds-60-per-cent/>.

<sup>86</sup> World Travel & Tourism Council, *Travel & Tourism: Economic Impact 2017 – Nepal*, p.3. Available from <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/nepal2017.pdf>.

<sup>87</sup> Ibid, p. 6.

<sup>88</sup> SAWTEE, p. 69.

<sup>89</sup> In country consultations with Nepal Tourism Board. See also Nepal, Ministry of Finance, para. 9.56.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

<sup>92</sup> Nepal, Ministry of Finance, para. 9.54.

<sup>93</sup> Ibid.

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