



Effective Market Access for LDC Services Exports – Is the LDC Services Waiver Being Implemented?

Focus on
Cambodia, Nepal,
Senegal and
Zambia



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Effective Market Access for LDC Services Exports – Is the LDC Services Waiver Being Implemented?¹

A Pilot Review of
Services Export Interests and Waiver Preferences Granted –
Focus on Cambodia, Nepal, Senegal and Zambia

ADVANCED DRAFT

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List of Abbreviations

ACP	African Caribbean and Pacific Group of States
AfCFTA	African Continental Free Trade Area
AfDB	African Development Bank
ASEAN	Association of Southeast Asian Nations
B-BBEE	Broad-Based Black Economic Empowerment
BAKC	Bar association of the Kingdom of Cambodia
BEA	United States of America Bureau of Economic Analysis
BOP	Balance of Payments
BPO	Business Process Outsourcing
CIPC	Companies and Intellectual Property Commission
CMMI	Capability Maturity Model Integration
CNTA	China National Travel Administration
COMESA	Common Market for Eastern and Southern Africa
CR	Collective Request
CSS	Contractual Service Suppliers
CTF	Cultural Task Force
CTI	Commercial Trade and Industrial Policy of Zambia
CTS	Council for Trade in Services
DDA	Doha Development Agenda
DHA	Department of Home Affairs
DTIS	Diagnostic Trade Integration Study
EBOPS	Extended Balance of Payments Services Classification
ECOWAS	Economic Community of West African States
ECSA	Engineering Council of South Africa
EFTA	European Free Trade Association
EIF	Enhanced Integrated Framework
EIZ	Engineering Institute of Zambia
ENT	Economic Needs Test
FATS	Foreign Affiliates Trade in Services Statistics
FDI	Foreign Direct Investment
Forex Act	Nepal's Foreign Exchange Regulation
FTA	Free Trade Agreement
FWMP	Foreign Workplace Management Program
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GNC	General Nursing Council of Zambia
GPA	Government Procurement Agreement
GWP	Gross Written Premiums
HPCSA	Health Professions Council of South Africa
IAM	Institut Africaine du Management
ICMPD	International Centre for Migration Policy Development
ICT	Information and Communication Technology
IELTS	International English Language Testing System
IFAC	International Federation of Accountants
ILO	International Labour Organization
IMED	International Medical Education Directory
IMF	International Monetary Fund
IOM	International Organization for Migration
IP	Independent Professionals
IRBA	Independent Regulatory Board for Auditors
IT	Information Technology
ITC	International Trade Centre
ITES	Information Technology Enabled Services
KICPAA	Kampuchea Institute of Certified Public Accountants and Auditors
KGRTC	Kafue Gorge Regional Training Centre
LDC	Least Developed Country

MCFA	Ministry of Culture and Fine Arts of Cambodia
MFN	Most-Favoured Nation
MOU	Memorandum of Understanding
MRA	Mutual Recognition Agreement
MSITS	Manual on Statistics on International Trade in Services
MTOSB	Manpower Training and Overseas Sending Board
NAC	National Accounting Council of Cambodia
NCC	National Council for Construction of Zambia
NGO	Non-governmental Organization
NMC	United Kingdom of Great Britain and Northern Ireland Nursing and Midwifery
Council	
NTIS	Nepal's Trade Integration Strategy
OECD	Organisation for Economic Co-operation and Development
O.N.M.S.	Ordre National des Médecins du Sénégal
ONP	Overseas Nurses Program
PAFA	Pan African Federation of Accountants
PIA	Pensions and Insurance Authority
PTA	Preferential Trade Agreement
SME	Small Medium Enterprise
SAARC	South Asian Association for Regional Integration
SAICA	South African Institute of Chartered Accountants
SADC	Southern African Development Community
SAQA	South African Qualification Authority
SONATEL	Société nationale des télécommunications
TEVETA	Technical Education, Vocational and Entrepreneurship Training Authority
TPP	Trans-Pacific Partnership
UN CPC	United Nations Central Product Classification
UNCTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Educational, Scientific and Cultural Organization
USMLE	United States Medical Licensing Examination
WAEMU	West African Economic and Monetary Union
WEF	World Economic Forum
WHO	World Health Organization
WTTC	World Travel and Tourism Council
WTO	World Trade Organization
ZCAS	Zambian Institute of Accountancy Studies
ZDA	Zambian Development Agency
ZIA	Zambian Institute of Architects
ZICA	Zambian Institute of Chartered Accountants

Executive Summary

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

The "LDC Services Waiver", after a slow start, has since been a catalyst for a growing discussion and growing awareness among policy makers, service suppliers and other stakeholders both from and in LDCs and from and in many other countries that import services from LDCs, or may do so in the future. 24 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. A discussion process at the WTO has been made for now a permanent feature of the proceedings in the Council for Trade in Services (CTS). One element of that discussion have been 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 best understood as one tool among others – from autonomous liberalization to regional and bilateral agreements – to support and foster LDCs' great, in fact: vast untapped potential of development through services exports.

The Waiver itself does very little: It is a legal tool that enables WTO Members to sidestep the otherwise applicable obligation to treat all services imports equally under the Most-Favoured Nation (MFN) clause² and grant instead preferential treatment to services and service exporters from LDCs. This is akin to the much older 'Enabling Clause' for goods, which covers GSP preferences, with the difference that the Waiver only benefits LDCs, not all developing countries. It operates thus as an 'LDC-Only Enabling Clause for Services.'³ 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 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.

Overall Assessment of the Preferences Offered

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

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 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 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

² GATS Article II articulates this fundamental principle of the multilateral trading system for the realm of services.

³ The term was first coined by Schloemann. H. (2012) *The LDC Services Waiver – Making it Work*, BRIDGES Africa, Vol. 1 No. 4.

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 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’s 2013 ‘Operationalization Decision.’ Over two thirds of the preferences promised in the 24 notifications correspond to what the respective Members have granted to third parties under recent PTAs. Almost on 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, 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 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 IP – 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 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. The European Union, Chile, Iceland and Norway lead the table, with the United States of America, Canada, Australia, Japan and Mexico, India and Switzerland forming a second group. Very few preferences were offered by China and Singapore. Brazil; Taiwan Province of China; Hong Kong, China; Liechtenstein; New Zealand; Republic of Korea; South Africa; Thailand; Turkey; and Uruguay 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 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 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 significant progress with regard to data on applied regimes. While the WTO's and the World Bank's joint *I-TIP Services* database⁴ 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 Waiver and other preferences against applied regimes.

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

Best Practices: Approach, technique and presentation

- **Comprehensive and systematic approach** pro-actively considering the complete range of services sectors, rather than a selected approach to ‘cherry-pick’ 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, serious and 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 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 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 Members to maintaining them indefinitely or indeed at all if and when found to be undesirable. In contrast to multilateral WTO or even bilateral FTA negotiations it therefore seems often unnecessary to exercise heightened caution in sectors and modes where the potential impact of 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 (IP), often effective trailblazers for and components of primarily Mode 1-based business models, alongside Service Sellers (SS) and Business Visitors (BV). While many 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 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 Waiver indeed provides the opportunity to expand trade in services by exploring better solutions for SME providers,

⁴ See <http://i-tip.wto.org/services/>.

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 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.** Arguably a bit of a trap has been the fact that 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 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 – 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.

Pilot Review – Four LDCs, their Services Exports and their Interests under the Waiver

Four pilot case studies reflected in this paper aim at reviewing the implementation, or operationalization, of the WTO Services Waiver and the underlying – or overarching – idea of improving effective market access for LDC services. The case studies look at four LDCs – Zambia, Senegal, Nepal and Cambodia – their services exports, the relevance of the notified preferences for these exports, and possible gaps and opportunities for further development of mechanisms for improved effective market access and its utilization by LDC services exporters. Focusing on a selection of sector(s) of particular export interest to the LDC in question, the case studies assess, where appropriate on an anecdotal basis, whether and to what extent the preferences granted respond to the market access, regulatory and other barriers experienced by services exporters from the LDC in question in the export market(s) of interest to the LDC. By doing so, the analysis aims at identifying existing gaps and proposing options for further improvements.

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

The studies look in particular at LDC-specific current and emerging interests in terms of services exports and hence in the related removal or modification of barriers encountered in their export markets, using the flexibility granted by the 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.

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 must rely on anecdotal evidence provided primarily by those who know: the service 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.

Cambodia, Nepal, Senegal and Zambia – Four out of Many Successful and Promising LDC Services Exporters

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

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

Cross-Cutting Issues

The four pilot reviews reveal a great number of governmental challenges encountered by these and other service providers in export markets – issues that could potentially be address through preferences under the LDC Waiver. These challenges vary from exporting LDC to exporting LDC, from sub-sector to sub-sector, from export market to export market. The corresponding needs, or possible facilitating responses by preference-granting countries, vary accordingly. While a look at the details of each case is therefore unavoidable, some challenges appear across several sectors, some issues reappear in one form or another in several export markets.

Following the detailed examinations by country and sector (see summary below) the paper looks at three of these cross-cutting challenges again through the prism of (1) selected real examples and follow them through the (2) Collective Request and Members' response so far, as reflected in the (3) Notifications, to (4) gather ideas for further possible steps that would open up real market access for LDC services exports.

First, one of the most significant barriers to LDCs services exports is gaining physical market access (visa) and obtaining the necessary authorization to perform economic activities (work permit or similar). Visas and work permits are the minimum prerequisites for the supply of services in Mode 4, but also to some extent, in Modes 1, 2 and 3. The Collective Request duly emphasizes the importance of the visa/work permit issue, however, just a few WTO Members responded to that request, and even those did so very selectively. Thus, creative responses to the issue may include the refund to LDC service providers of visa fees in case of refusal, explain the cause of refusal, expedite visa/permit procedures for LDC providers, replace financial guarantees by statements of support for certain providers and/or carefully craft visa categories.

Second, fees, charges and taxes are another major impediment to LDCs services exports. A seemingly small cost can stop providers from reaching the crucial first rung of the ladder, particularly in SMEs. The issue arises across sectors and in multiple forms, such as fees for licenses, permits and other forms of authorizations to provide a service or fees for the recognition of qualifications. The Collective Request reflects the issue in multiple ways, but remains somewhat short on detailed ideas and Members have so far paid relatively little attention to the issue. While LDCs have made it clear that costs matter, only one or two Members have taken the message to heart. This is problematic, not least because myriad possibilities to send the message (that costs should not deter *bona fide* services business development) exist, many of them easy to implement. Thus, some creative responses may exempt LDC service providers – partly or wholly, generally or under specified conditions, all or only some sectors – from (some) fees, charges or taxes, such as withholding taxes for visiting cultural performers, audiovisual service providers, lawyers and others or exempt visiting service providers from social security contributions.

A third cross-cutting issue concerns the categories of Independent Professionals (IP) and Contractual services suppliers (CSS). These are of significant relevance to LDC service providers, who often will not have enough capacity to establish and operate a local base in the host country (i.e., provide services in Mode 3) and thus do not benefit from market access. The Collective Request emphasizes the need for better market access for CSS and IP and the response from WTO Members has been encouraging. Around a dozen Members offer new or improved horizontal commitments, or promises to provide preferences, on CSS and IP. Further steps in this direction should include sector-specific approaches, by, for instance, designing preferences that offer access without academic qualifications for certain services, where quality professionals, especially in LDCs, often lack such credentials, for example in cultural services or construction.

Looking at Countries, Looking at Sectors: Barriers Encountered, Possible Preferences, Actual Preferences

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

The following provides a summary along sectoral lines. The details of the respective country context, however, often matter greatly.

Professional Services (and Related Health Services)

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

Legal services

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

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

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

Accounting/auditing

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

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

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

Most of the suggested preferences are not addressed through the notifications. The primary target markets for accounting and auditing services for Zambia are so far not covered by any preference notifications. South Africa's preference notification contains no preferences relating to professional services, nor any improvements over its horizontal GATS commitments on Mode 4. Some inspiration for the future for this sector however can arguably be drawn from other Members' notifications. Several provinces of Canada have gradually relaxed their requirements for Mode 1 – instead of residency or even nationality requirements for auditing services they now (only) require (also) a commercial presence, i.e., a Mode 3 investment. While that remains burdensome, it is easier to overcome, and often makes business sense anyway, so it does pave the way for viable business models involving an important Mode 1 component for accountancy/auditing firms. Switzerland opens Mode 1 and Mode 4 to foreign service providers, except that “at least one auditor of a "joint-stock company" or a "stock company with unlimited partners" must have his domicile, his principal office or a registered branch in Switzerland.” In the European Union, Belgium waives the otherwise applicable ENT for accounting and bookkeeping services in Mode 4 “for CSS when the annual wage is above the amount defined by the relevant laws and regulations.” This model could be used by others who maintain ENTs for fear of salary dumping. While this would take away the cost advantage of LDC providers, it arguably still provides an opening, a foot in the door.

Hospitals, doctors, nurses, veterinarians

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

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

None of the specific preferences suggested above are addressed in the notifications. There are, however, some gradual openings of interest for doctors, nurses and veterinarians, including in the European Union. Notable however is also what is not offered – for example: Remaining limitations on telemedicine.

IT and IT-enabled Services

Cambodia ranks third among LDC in the ICT development index attracting capital and talent to invest in the sector. Nepal is home to fast growing and innovative IT industry offering sophisticated services including in the area of artificial intelligence to international clients. The sector is also growing in Senegal which positioned itself as the leading sub-Saharan French-speaking country in the *IT and IT enabled services* sector. Issues encountered in export markets – apart from, again, physical market access issues relating to visas and work permits (and related procedures, fees etc.) affecting Mode 4 – include local staffing and incorporation requirements (Mode 3), equity caps and localization requirements.

Possible preferences include to exempt LDC operators from maximum equity caps, from local hiring requirements or and/or from the requirement to include a certain number of locals in management bodies / on the board (Modes 3, 4). Issues encountered also include – prominently – local preferences in public procurement processes and access subsidies and tax breaks. Possible preferences could include exemptions for LDC IT/BPO suppliers from local partnering requirements, and/or access to otherwise closed government procurement, e.g. through preferential national treatment. These preferences, it bears repeating, do not require Waiver coverage as government procurement is not covered by the GATS’ MFN obligation in the first place. None of the preference notifications specifically address the above-mentioned specific barriers and challenges in problematic markets. However, the notifications received from nine WTO Members still overall represent a significantly increased bundle of market access opportunities for IT service providers, at least on paper, as several 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. While it is not sure how much of this represents actual, let alone preferential market opening in the respective markets, it represents an encouraging signal in the right direction for LDC providers of IT and IT related services, including in Cambodia, Nepal and Senegal.

Creative Industries: Entertainment services and Audiovisual Services

Creative industries including *entertainment and audiovisual services* are key for many LDCs including Cambodia, Nepal and Senegal. Entertainment services have major spillover effects on other services sectors like tourism services. The audiovisual sector is a forward looking sector with significant potential to create jobs among the youth is fast developing in Cambodia, Nepal and Senegal. Barriers encountered include – apart from multiple issues relating to physical access and Mode 4 – withholding taxes, social security contributions (for performers and others in Mode 4) and weak IP protection in export markets. Barriers encountered by exporters of audiovisual services include mandatory film distribution through local distributors, screen / air quotas and coproduction requirements and local partnering and hiring requirements. Possible preferences responding to these issues could include to waive or reduce withholding taxes and social security contributions for performing artists and other visiting cultural professionals; to allow for the direct distribution of audiovisual content by LDC service suppliers and sellers in derogation from otherwise applicable mandatory distribution through designated local channels; to reduce local content requirements to allow for greater shares of inputs from LDCs; or to unilaterally extend the benefits of coproduction agreements (with third parties) to LDC services and service suppliers. The response to these needs in notifications is limited. Only two Members – Taiwan Province of China and the United States of America – offer preferences in the audiovisual sector at all, with the United States of America leading the way in the form of full commitments. Were these commitments undertaken by target markets like France, Ireland and other European film producing markets, LDCs like Cambodia, Nepal and Senegal would benefit greatly from these preferences. No Member however addresses the issue of local content and coproduction agreements, nor of withholding taxes or social charges. Eight Members offer preferences in “Entertainment Services”, the main sector for cultural performers. Some of these are potentially interesting for Senegalese performers. The Republic of Korea, Mexico, India, Chile and Iceland, for example, explicitly extend their horizontal commitments on Mode 4 to this subsector, with Chile and Taiwan Province of China at the same time offering (apparently) flexible access for CSS without onerous qualification requirements. While Senegal’s traditionally preferred markets are thus not covered, progress in principle must be acknowledged.

Tourism

Tourism is a main export sector for many LDCs including Cambodia and Nepal. In addition to visa restrictions addressed above, other regulatory and market access challenges encountered include those associated with the promotion of the tourism offer from LDCs. Possible preferences to address this include direct support to LDCs and their tourism operators with respect to marketing and information; unilateral extension of the benefits found in tourism MoUs to LDC tourism service suppliers; extending national treatment so the tourism boards market LDC tourism services too. Other barriers include travel warnings and restriction on the type of services offered. Possible preferences include the regular review of travel warnings for LDCs and granting national treatment / or removing restriction for LDC travel agencies. 14 Members offered preferences in “Tourism services”. Some of these are interesting *vis-a-vis* the challenges underscored by LDC exporters, at least in principle and to some extent. Canada, Iceland and Brazil, in particular, explicitly open their markets to services provided by travel agencies

and tour operators in Mode 3. While these do not address the particular challenges mentioned above, it is the first step in the desired direction that allows LDC providers to establish a commercial presence, get closer to their clientele and promote their services, which is at the root of LDCs concerns. Some notifying 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) - an interesting unilateral initiative that is worth replicating as it directly supports LDCs and their tourism operators in terms of marketing and information. Likewise, China offers to intensify training programs in several services, including tourism.

Education Services

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

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

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

Insurance and Re-Insurance Services

These are considered in the context of Zambia. Insurance services in Zambia are mainly provided through small local insurance companies or subsidiaries of large South African banks. Some Zambian direct insurers export their services in Mode 3 to several regional markets. A Zambian re-insurance company covers over 20 African markets, mostly in Mode 1.

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

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

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

example Norway's – cover improved “Mode 4” access for managers and specialists on a horizontal basis.)

Banking Services

Cambodia is home to a competitive banking sector that exports its services including in Mode 3 to regional markets. Challenges encountered are classical market access restrictions relating to incorporation in foreign markets, limitations on the type of services provided, restrictions on currency of loans (local currency), restrictions on interest rate and limitations on amount of loan offered to customers. Notwithstanding of the rationale for prudential regulations in the banking sector, Members could relax incorporation related limitations; relax the limitations on the type of service provided; extend national treatment to LDC banking institutions in regard to the currency of loans; extend national treatment to LDC banking institutions in regard to interest rates; extend national treatment to LDC banking institutions in regard to max loan amounts offered to customers. None of the specific preferences suggested above are addressed in the Notifications made under the Waiver. There are, however, some gradual openings of interest for banking service providers that addressed some of their challenges, particularly on market access in Modes 1 and 3 (e.g. foreign equity participation and commercial presence requirements).

Construction Services

Construction services are considered in the context of Zambia, whose construction sector has grown significantly over recent years, not least fueled by the recent mining boom.

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

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

Possible preferences may include to remove or relax market access limitations for LDC providers of construction services especially those related to the form of the legal entity and the participation of foreign capital, and to grant national or preferential treatment to LDC providers of construction services under government procurement tenders.⁵

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

Conclusions and Recommendations

⁵ Note, again, for good order that procurement is not covered by the GATS' MFN obligation, and preferences hence do not require coverage by the LDC Waiver.

The glass is in the process of being filled. While the response to the LDC Collective Request represents an initial achievement, there is much room for further developments in the context of the LDC waiver. The preference notifications submitted clearly mark a step forward, but they often fail to address the specific matters that occupy LDC service suppliers' minds.

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

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”, the LDC Services Waiver is a tool that is in principle available to all – including even LDCs themselves, which may in some contexts find that selective preferences for their LDC partners may offer interesting possibilities complementing regional integration efforts.

The paper concludes by suggesting a comprehensive, structured and permanent support system for trade preferences in services drawing inspiration from the experience of the “Generalized System of Trade Preferences” proposed by UNCTAD in the mid-60s. Such a system would not only focus on reviewing the implementation of the Waiver but also on addressing supply side constraints and information and analysis deficits while providing a constructive forum for dialogue among government representatives, IGOs, private sector and relevant stakeholders.

I. Introduction: Services, LDC Services Exports, and the LDC Services Waiver as One of Many Tools

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

The LDC Services Waiver has since been a catalyst for a growing discussion and increasing awareness among policy makers, service suppliers and other stakeholders both in LDCs and in countries that import services from LDCs.⁶ Twenty-four of these WTO Members have so far notified the lists of preferences they grant to LDCs’ service providers under the Waiver. A discussion process at the WTO has been made a permanent feature of the proceedings in the Council for Trade in Services (CTS). One element of that discussion was an attempt to evaluate the ‘value’ of the preferences offered.

Arguably, the Waiver by itself cannot do much. It is merely a legal tool that enables WTO Members to derogate from Most-Favoured Nation (MFN) clause⁷ and grant a preferential treatment to services and service exporters from LDCs. This is akin to the much older ‘Enabling Clause’ for goods, which covers GSP preferences, with the difference that the Waiver only benefits LDCs, not all developing countries. Importantly, the Waiver only *enables* preferences, but *does not require* WTO Members to grant them. Furthermore, the Waiver does not provide for any specific tools on how to devise preferences in a way that they could practically help LDCs to facilitate their exports into preferences granting countries.

This paper aims at assisting stakeholders including WTO Members, LDC negotiators, international organizations and policymakers in identifying, designing and implementing mechanisms that could facilitate LDCs’ services exports. The WTO’s LDC Waiver is obviously only one tool in the toolbox. Other tools may serve the same purpose. For instance, regional services integration may also provide a basis for specific facilitating measures, as such integration arrangements may involve regulatory coordination, cooperation or convergence.

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

⁶ UNCTAD has conducted a number of activities aiming to discuss the operationalization of the LDC services waiver among policymakers and negotiators. This includes the expert group meeting for LDCs in November 2013 to discuss on the “LDC Package” in the run up to the 9th WTO Ministerial Conference, the “Training Workshop on Trade in services Negotiations for AU-CFTA Negotiators” in 2015 and the session “Real Market Access for LDC Services exports – Smartening up the tools” organized in partnership with WTI Advisors at “MC 11 – Make Trade Work for Development” in December 2017, in which several LDC Ministers, diplomats from developing and developed countries and members of the trade community attended.

The ITC with the support of the mission of Australia in Geneva also organized the series of seminars “Making Sense of the GATS and Applying Good Practices”, in which the LDCs Services waiver was discussed among GATS practitioners at the sixth meeting. Furthermore, the ITC launched in 2015 its publication “Making the most of the LDC services waiver” to assist LDC negotiators, government officials and services SMEs on how to benefit from the Waiver. NGOs, think tanks, trade advisory firms and academia have also contributed to the discussion with research papers, talks and blogs. See for instance, Hannes Schloemann, “Trade preferences for services from developing countries: why, what and how?” In *Trade in Services and Economic Transformation*, Bernard Hoekman and Dirl Willem te Velde, eds. London: ODI, 2017; Hannes Schloemann, Hadil Hijazi and Clementine Pitard, “Now the Real Thing: Getting Creative to Make the LDC Services Waiver Work”, ILEAP, CUTS International Geneva and University of Sussex, 2016; David Primack, “Enhancing Access for LDC Services to the UK Post-Brexit” in *Trade Hot Topics*, Issue 145, (n.p., the Commonwealth, 2017); ICTSD, “Services waiver: Maximising benefits for the LDCs” session at the Trade and Sustainable Development Symposium, Buenos Aires, 2017. Noelan Arbis and Adam Heal, “Waiting for Service? Progress in Preferential Market Access for Asia- Pacific Least Developed Countries’ Services Exports”, *Trade Insights*, Issue No.13 (n.p., UN ESCAP, 2015); “Uganda: LDCs to offer Services to Developed World”, *East African Business Week*, 22 February 2015; Sebastian Saez, Martin Molinuevo, “Waiting on a waiver- what the WTO’s new services could mean for LDCs”, *The Trade Post*, 3 April 2015; Simon Lester, “Services Preferences for LDCs”, *International Economic Law and Policy Blog*, 14 September 2015.

basis, consider specific issues encountered in export markets, and devise specific responses, whether incremental improvements or complete solutions, to these challenges.

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

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

II. An Updated Assessment of Preferences Offers Notified by WTO Members: Where do we stand?

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

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

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

A. Main Findings: Who, What and How Much?

1. A Word of Caution

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

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

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

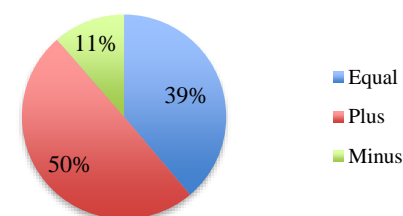
2.1 Rising above the DDA Offers

A first finding is rather encouraging: While the LDCs had encouraged Members to consider at least their DDA offers as a place where possibilities of preferential treatment could be found – a tree full of low-hanging fruits, so to say – our analysis shows that in many cases Members managed to rise above that level.

Almost half of the preferences promised to LDCs now go beyond what was offered a decade ago to all WTO Members. In another 40 per cent of the cases the preferences correspond to the DDA offers. Only 12 per cent remain below that threshold.

While that is indeed encouraging in the sense that it reflects a willingness of Members to engage seriously in the challenge to design services preferences and make the Waiver work – something that could not necessarily be expected given the history – it needs to be taken with a grain of salt. Already when they were presented a decade or more ago most of the DDA offers reflected applied MFN treatment rather than new, improved Market Access or National Treatment. As services regulation tends to move towards more rather than less liberalization, it is fair to assume that at least half of the preferences – those that

Figure 1: Notifications of preferences in comparison with DDA offers

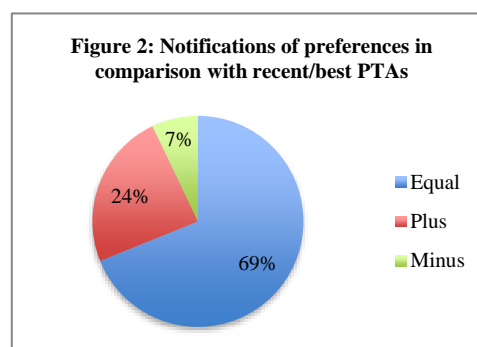


are either equal or less than the DDA offers – reflect currently applied MFN treatment or less – in other words: no actual preferences for LDC services and providers.

2.2 Getting Close to the “Best PTA” Level

Arguably more encouraging is the comparison of notified preferences for LDCs with recent or best PTAs concluded by the respective Members.

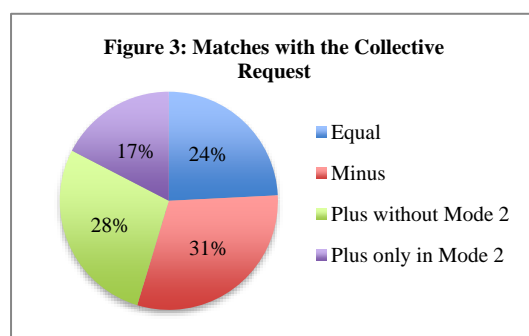
The idea that existing preferential treatment offered to third countries through PTAs could also be unilaterally extended to LDCs under the Waiver had and has an obvious appeal: Those preferences are already tested, technically and politically; and they have been granted to what usually are services exporters that are significantly more powerful than LDCs, in terms of their services export potential, meaning that extending them to LDCs will likely have no or very limited impact on the competitive environment in the market. It is therefore unsurprising that Members agreed to enshrine the “best PTA” idea – in the form of a general encouragement – in the Operationalization Decision of 2013.⁸



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

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

2.3 More than Demanded in the Collective Request? Yes, but...



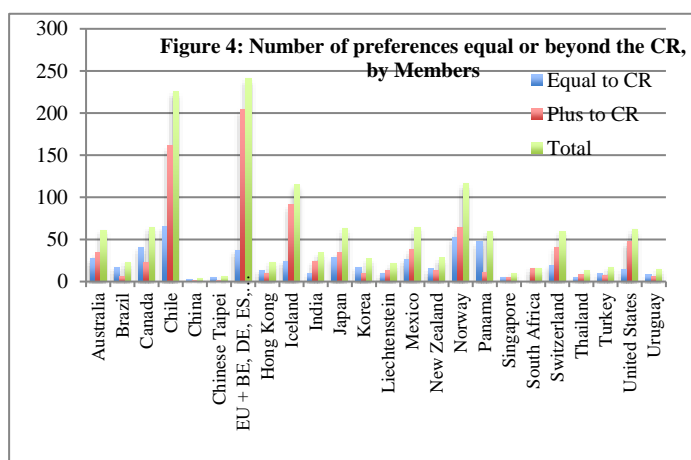
Perhaps most surprising is that at least some of the preferences offered seem to go beyond what the LDCs requested in their July 2014 Collective Request. Our count shows that 46 per cent of the preferences notified exceed what was specifically asked for. However, again a good dose of salt must be added.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

First, 17 per cent of the 46 per cent ‘CR plus’ preferences are in Mode 2. Not only is Mode 2 in all but few sectors the easiest Mode to commit, as no restrictions apply anyway, and there is little interest in introducing them. Many of these would be counted as ‘CR plus’ for a purely technical reason: A key part of the Collective Request consists of a list of sectors and subsectors for which the LDCs specifically request openings in Modes 1, 3 and 4, leaving out Mode 2, presumably precisely in order to focus Members’ attention on those Modes that matter more. So where Members included Mode 2 commitments alongside preferences in other Modes, these would be counted as ‘plus.’

⁸ Paragraph 1.3 of the Decision on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries, 7 December of 2013 reads: “Members [...] are encouraged at any time to extend preferences to LDCs’ services and service suppliers [...]. In doing so a Member may accord preferences similar to those arising from preferential trade agreements to which it is a party noting that preferential treatment, with respect to the application of measures other than those described in Article XVI of GATS, may be granted subject to approval by the Council for Trade in Services under paragraph 1 of the waiver Decision.

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

A third observation goes back to the first: When comparing to a 2014 LDCs' Collective Request for preferences under the Waiver, the analysis of granted offers may seem positive at first sight. It is often observed that the preferences are offered in sectors/modes of services supply that were not originally asked for. However, it may, arguably, in part reflect a choice by preference grantors to 'boost' their packages by adding more easily feasible but less relevant preferences. In some cases this may effectively serve to mask limited responsiveness to the actual needs of LDCs. So what appears as 'plus' may in fact be 'minus', and what appears to be 'minus' may often be an attempt to walk at least some of the way to respond to the Collective Request.



3. Types of Preferences

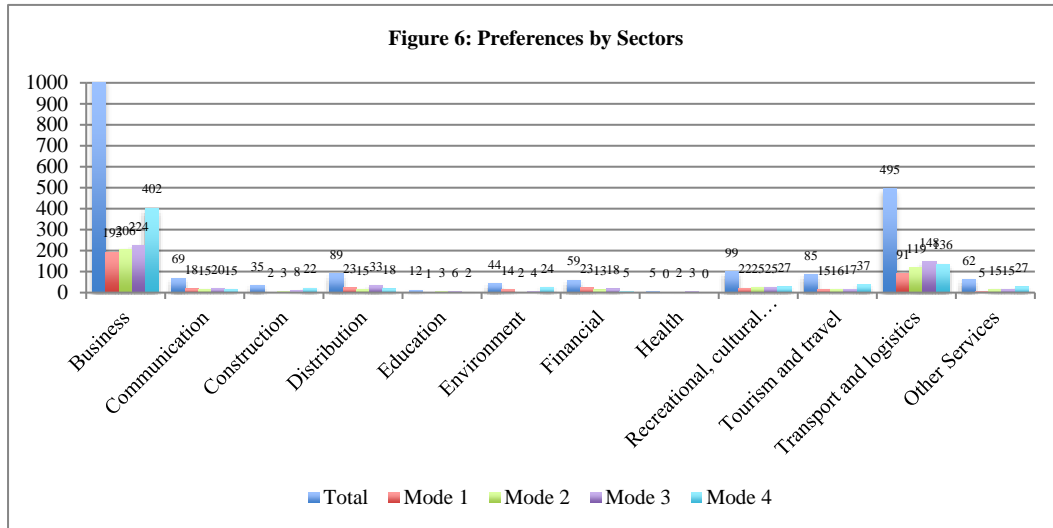
Most preferences offered are in the classical area of market access as defined by GATS Article XVI. However, 15 per cent of the preferences counted concern aspects other than market access. Almost all of these come in the form of National Treatment offers. However, very few of them provide preferential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

4. Preferences by Sector

The distribution of notified preferences among services sectors is rather uneven. By far the largest number is found in Business Services. While some of that effect is due to the sector's size and diversity, this is also one of the sectors where some of the most interesting sub-sectors for LDCs are, sub-sectors in which LDC providers may enjoy a comparative advantage. These include Professional Services (encompassing *e.g.* accounting, engineering and nursing - professions where many LDCs have highly trained professionals often with internationally recognized qualifications to offer); Computer and Related Services (which covers most IT and some IT-enabled services); and the myriad 'Other' business services, from consulting to packaging to building cleaning services. The LDC's Collective Request itself contains many references to this sector.

The second largest sector is Transport Services. Again, this seems both logical and to be welcomed as responsive to LDC needs and demands, as in particular cross-border transport operations are not only highly relevant in their role as providers of crucial infrastructure for trade in goods, but also as a very significant value-adding activity – and highly tradable service with limited prerequisites in terms of qualifications, – in its own right.

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



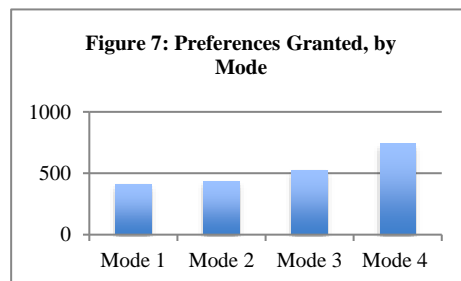
A small number of preferences offered in Tourism. While it is true that the main mode of supply – Mode 2 – encounters relatively few hard obstacles to start with, there are significant export potentials related to mode 4 (e.g. tour guides, but also business visitors such as agency operators visiting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

The offer in Construction Services is also rather limited. Here LDC operators often have a comparative advantage, to which the preferences on offer only respond partly. Most crucial here is liberal and effective access for CSS – something most Members find difficult to offer, and if they do usually make unusable for construction companies as they routinely require academic qualifications, with few exceptions.

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

5. Preferences by Mode

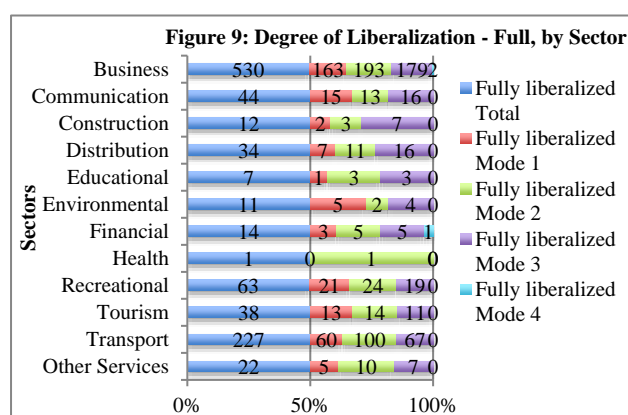
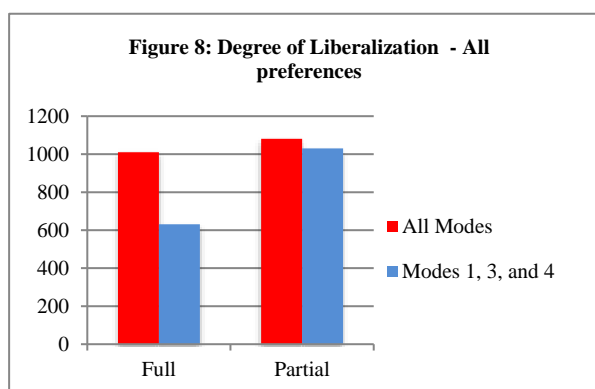
Rather encouraging is the notifying Members’ response to the LDCs’ expected strong emphasis on Mode 4. One third of the preferences concern Mode 4. This effect is to some extent linked to the counting method applied, where improved horizontal commitments are counted per each sub-sector to which they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



Leaving Mode 4 aside it is worth noting that preferences in Modes 1, 2 and 3 are almost evenly distributed, with Mode 3 attracting marginally more attention than the others. This appears to reflect both the practice of Members to often approach these three modes as a package and the fact that Mode 3 offers more restrictions to be removed. Further, there is again a multiplication effect as some improvements in Mode 3 happen through horizontal commitments.

5.1 How Far Does It Go? Degrees of Liberalisation

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

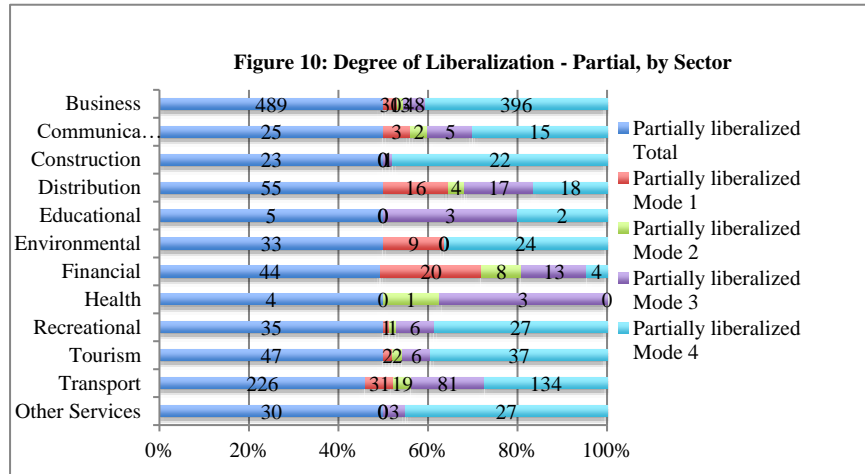


The Overall Picture: Full versus Partial Commitments, and the Mode 2 Factor

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

The picture changes, however, when considering the impact of Mode 2 commitments – which are in most cases of limited relevance. Most of these are full commitments (‘none’) – not surprisingly, as Mode 2 in many if not most sectors rarely attracts any limitations in the first place. For some countries, full liberalization in Mode 2 forms a substantial part of their overall full liberalization commitments. For instance, India’s Mode 2 commitments account for 64 per cent of its full liberalization offers. For the European Union and some of its Member States the ratio is 52 per cent. The most pronounced case is Thailand, which offers full commitments exclusively in Mode 2 (100 per cent), not in Modes 1, 3 and 4.

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



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commitments remain in one way or another qualified, almost by definition, and are counted here as ‘partial’ commitments. Because Mode 4 commitments amount to one third (700+ out of 2100+) of all preferences accounted for in the analysis, the picture for the remaining ‘classical’ focuses, namely Modes 1 and 3, looks again different: the ratio of full versus partial commitments is 2:1.

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

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

‘Partial liberalization’ covers in particular three cases:

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

5.2 Degree of Liberalisation by Sector and Mode

Of some additional interest is, or could have been, the distribution of full versus partial commitments within sectors.

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

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

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

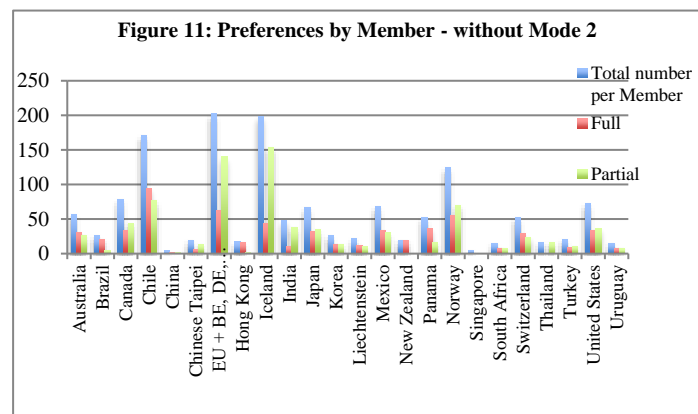
6. Preferences by Members

A closer look at the number of preferences offered by the 24 Members that have submitted notifications presents a heterogeneous picture. The total numbers vary dramatically, and while some of these variations may result from scheduling techniques and/or the counting method applied here, large discrepancies remain.

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

Brazil; Taiwan Province of China; Hong Kong, China; Liechtenstein; New Zealand; Republic of Korea; South Africa; Thailand; Turkey; and Uruguay each offer a small selection of preferences, often however seemingly carefully selected.

As indicated, these numbers have to be understood as implying significant limitations. The first and most obvious one is that numbers do not necessarily imply quality. Selected, targeted and carefully designed preferences offered by 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.



B. Best Practices and Lessons Learned

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

The LDC Waiver should 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.

There is a significant progress with regard to data on applied regimes. While the WTO's and the World Bank's joint *I-TIP Services* database⁹ began integrating applied regime data some time ago, it appears that recently new and much richer data has become available and is now being integrated into the database. It is hoped that this will in the future allow for at least some analysis of Waiver and other preferences against applied regimes.

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

- **Clear identification of preferences *vis-à-vis* GATS MFN commitments** (ideally *vis-à-vis* applied MFN *treatment*). Brazil's notification, for example, clearly juxtaposes each preference offer with the status quo under the GATS schedule. The approach taken by Norway, Iceland and Switzerland

⁹ See <http://i-tip.wto.org/services/>.

to re-issue a complete schedule with integrated LDC preferences is very user-friendly, as long as one does not look specifically for preferences. 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 separating modes is often particularly difficult. It is therefore desirable for Members to provide to the greatest extent possible market access across all/most modes of supply. A best practice example among others would be Chile, which is offering as a standard approach in most of its many committed sectors full commitments in Modes 1-3 combined with a substantial (additional) opening for CSS in Mode 4. This combination will usually allow for sustainable and substantial business relationships between suppliers and clients.
- **Using the flexibility of unilateral action.** The Waiver offers the possibility of unilateral preferences, but does not commit Members to maintaining them indefinitely or indeed at all if and when found to be undesirable. In contrast to multilateral WTO or even bilateral FTA negotiations it therefore seems often unnecessary to exercise heightened caution in sectors and modes where the potential impact of LDC services would in any case be marginal for the importing country, but potentially interesting for LDC services exporters. Brazil's practice, for example, to keep Mode 1 and 2 systematically 'unbound'¹⁰ would appear to reflect such caution.
- **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 (IP), often effective trailblazers for and components of primarily Mode 1-based business models, alongside Service Sellers (SS) and Business Visitors (BV). While many 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. Chile's pragmatic and generous CSS commitment, for example, stands out in this respect.
- **Tackling regulatory issues.** Services are regulation intensive sectors, particularly compared to goods. Therefore, exploring regulatory preferences including through the ease of qualification requirements and procedures, licensing requirements and procedures, and technical standards is desirable for ensuring sustainable outcomes offered by the Waiver.
- **Format influences content.** It is observed that many Members often discuss commitments rather than applied measures. This risks reducing the Waiver's operation to very little. The aim of the Waiver is to enable Members to grant preferences that go beyond applied MFN regime.

Lessons learned include:

- **The squeaky wheel gets the grease.** LDCs have been proven right in their approach to confront Members with very specific requests, room for improvement in the form and content of the request notwithstanding. The notifications on offer show that Members have indeed responded to the challenge, some more enthusiastically than others, and some more creatively than others. But the overall lesson is clear: Asking works, and there's much room for improvement in how LDCs services and service providers are received.
- **Format influences content.** Arguably a bit of a trap has been the fact that 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 Members, their delegates and observers, including expert commentators, often find themselves discussing commitments rather than applied measures. While this works comfortably in trade negotiations, it risks reducing the Waiver's operation to very little. That function is to enable Members to grant *actually applied MFN-violating preferences*. A promise to apply treatment that is actually granted to all on an MFN basis means something in FTAs, but nothing under the Waiver; such treatment does not require any deviation from MFN, hence does not need the Waiver, and should not count as its operationalization (even if intelligent and /or overdue MFN liberalization stimulated by reflections on preferences are welcome as long as they actually respond to LDC services exporters challenges). Second, the schedule format has allowed – if not enticed – 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.** As just indicated, much of the discourse (including admittedly within this paper) gravitates towards a consideration of

¹⁰ With three exceptions – Veterinary, Maritime Agency and (financial) Consultancy, Actuarial and Survey Services. See S/C/N/839.

'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.

III. Pilot Review – Four LDCs, their Services Exports and their Interests under the Waiver

Introduction

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 above-mentioned study commissioned by UNCTAD (DITC) in 2016, whose main findings are reflected above, 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. This present series of four connected studies serves as a pilot for that exercise.

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

Approach

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

The studies look in particular at LDC-specific current and emerging interests in terms of services exports and hence in the related removal or modification of barriers encountered in their export markets, using the flexibility granted by the 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 must rely on anecdotal evidence provided primarily by those who know: the service 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.

Therefore, the following pilot analysis rely on desk research and brief and compact in-country consultations held with services exporters, services regulators, representatives of relevant government agencies and representatives of services related business associations.¹¹ This exercise thus aims to bring together what is available to allow an instructive picture to emerge.

¹¹ During their 3-5 day in country consultations, the authors held 65 consultative sessions in the form of bilateral or small group meetings with services stakeholders including 19 consultations in Cambodia, 14 in Nepal, 14 in Zambia and 20 in Senegal between 13 November and 1 December 2017. In addition to the findings generated as a result of the in country consultations held in the context of this paper, the authors built on findings generated from their previous work on the LDC Waiver in the run up to the 2014 Collective Request. See Hadil Hijazi, "Operationalising The LDC Services Waiver. Nepal – Country Assessment", paper prepared for WTO's LDC Group, Geneva, Switzerland, November 2014; Hadil Hijazi, "Operationalising the LDC services waiver: Zambia-Country Assessment", paper prepared for the WTO's LDC group, Geneva, Switzerland, November 2014.

The purpose of this section is to generate insights into pertinent challenges to LDC services exports in their export markets, and potential measures that could as preferences under the LDC Services Waiver make a contribution to addressing those challenges. This section is thus not a “study” on the services sector in Cambodia, Nepal, Senegal or Zambia; rather, it is a collection of useful anecdotal evidence that serves to understand the bigger picture in order to pave the way for a more meaningful operationalization of the 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 actually applied – did the lawyer travel to the client, the client to the lawyer, or just the legal memo through the internet before the client made the bank transfer to the lawyer?

The picture is further complicated for purposes of accounting the value of services provided by natural persons (Mode 4) who stay for a period that is longer than a year in the export market. Those are usually treated as residents of the host country while under the GATS they are still considered as Mode 4 services providers beyond this period - for example as intra corporate transferees staying for 2-3 years. Remuneration for services provided by (resident) natural persons often appear only as net of costs in the form of remittances in the BOP statistics, effectively underreporting the value of services.

- Second, sectoral classifications traditionally used in BOPs are largely out of synch with categories usually used in trade policy, making it difficult for policy makers to use BOP data for many sectors, even if such data are available, as they will often be too aggregated. Much work has been done to advance convergence, but until today services trade statistics remain mostly unusable for trade policy making and trade negotiations.
- Third, mode 3 is almost entirely under the BOP radar screen as it triggers local, not international payments (from a local service consumer to a foreign-invested, but locally established provider). The needed Foreign Affiliates Trade in Services Statistics (FATS), both inbound and outbound, are difficult and tedious to establish, and most developing countries do not even try. As a result, mode 3 services provision goes largely unmeasured, except to the extent that it appears as part of FDI statistics.

All these (and some more) issues have long been recognised, and a group of international agencies including among others the IMF, EUROSTAT, the WTO and UNCTAD, has made significant efforts to compile recommendations and international best practices,¹² 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. To pick a random example, a report by the United States of America Congressional Research Service on members of the Trans Pacific Partnership (TPP) looked at United States of America services trade with only eight of the eleven (non-United States of America) TPP parties because the United States of America Bureau of Economic Analysis (BEA) lacked individual data for trade with the others.¹³

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. The above 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.

¹² United Nations Statistics Division, Manual on Statistics on International Trade in Services (MSITS), 2010.

¹³ Brock Williams, “Trans-Pacific Partnership (TPP) Countries: Comparative Trade and Economic Analysis”, Report for Congress, 10 June 2013 (n.p., United States of America Congressional Research Service, 2013), p. 17. Available from <https://fas.org/sgp/crs/row/R42344.pdf>.

Cross-Cutting Issues: A Word Up-Front

Before engaging in the country case studies it is useful to briefly discuss up-front a handful of cross-cutting issues that appear repeatedly across the range of countries and sectors. These are physical market access (visa, work permits etc.); taxes and charges; and mode 4 categories.

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

These cross cutting issues are addressed in the country chapters and revisited in more detail under Section IV below.

Public Procurement

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

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

A. Cambodia

1. Introduction: Services and Services Trade

Cambodia is a Southeast Asian country with over 15 million inhabitants, neighbored by Viet Nam, the Lao People's Democratic Republic, Thailand and the Gulf of Thailand. It is a member of the Association of Southeast Asian Nations (ASEAN).

Cambodia is one of East Asia's most liberal economies. The country's accession to the WTO in 2004 followed by two decades of economic modernization and regulatory reforms led to an impressive economic growth and to the country's upgrade from low-income to lower middle-income status in 2015. Cambodia's openness, its young population and agile work force attracted the flow of foreign capital and foreign skill to invest in and develop the country's fast growing industries especially in sectors such as tourism, infrastructure, construction, telecommunication and manufacturing. It is not surprising that Cambodia recorded the largest improvement among its ASEAN neighbours since 2007 in WEF's Global Competitiveness Index (from 3.5 to a 4.0 score).¹⁴

Much of Cambodia's economic growth is driven by its services sector as illustrated in Table 1 below. At 41.6 percent, the contribution of services to Cambodia's GDP is much higher than the regional average.¹⁵ Originally dominated by textile, wearing apparel and footwear destined for export, Cambodia's industrial sector is going through a process of diversification to manufacture electric machinery, auto parts and equipment started few years ago. Within five years the number of factories in the metallic, electronic, electrical, machinery, motor vehicle and other transport equipment segments have almost tripled.¹⁶ Manufacturing contributed 31.7 per cent to Cambodia's GDP in 2016 while the contribution of the agriculture stood at 26.6 per cent in 2016, 24 per cent lower than that two decades ago.

Table 1: Sectoral contribution in Cambodia's GDP, 1980–2016 (% of GDP)

Sector	1995	2000	2005	2010	2015	2016
Agriculture	50.07	38.3	32.74	36.45	28.6	26.6
Industry	14.96	23.3	26.64	23.5	29.8	31.7
Services	34.9	38.4	40.6	40	41.5	41.6

Source: World Bank, World Development Indicators.

The value and share of services exports illustrated in Table 2 below is arguably higher than indicated as most of Cambodia's exports in mode 1 and 4 including IT and related, animation, design, entertainment and professional services are likely not captured by trade data and statistics.

Table 2: Value and Share of Exports for Different Commercial Service Subsectors in Cambodia, Selected Years (USD million and per cent)

Sector	2012		2014		2015	
	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)
Commercial Services	3054.346	100	3713.478	100	3783.9	100
Transport	333.935	10.93	417.239	11.23	459.0	12.13
Travel	2462.750	80.6	2,953.12	79.6	3,137.0	82.9
Other commercial services	-	0	-	0	-	-
Communications and Computer & information services	45.3	1.47	49.2	1.2	47.0	1.24
Construction	16.557	0.542	10.237	0.27	10.1	0.27
Insurance	1.4	0.05	0.436	0.012	0.2	0.005
Financial services	19.120	0.63	25.057	0.67	33.8	0.89
Royalties and license fees	3.84	0.13	2.659	0.071	0.6	0.0158
Other business services	168.990	5.53	251.938	6.78	95.7	2.52
Personal, cultural & recreational services	2.5	0.08	3.6	0.1	0.5	0.013

Source: Cambodia's Trade in Services, by Major Categories, ASEANstats. See also: ITC, Trade Map.

Note: The shares in the above table have been calculated after excluding "Government services n.i.e." The export value for Total Commercial services is estimated by UNCTAD, WTO and ITC.

¹⁴ Klaus Schwab, *The Global Competitiveness Report 2016-2017*, Geneva, World Economic Forum, 2016, p. 31.

¹⁵ World Bank, Cambodia Services Trade: Performance and Regulatory Framework Assessment, p.7

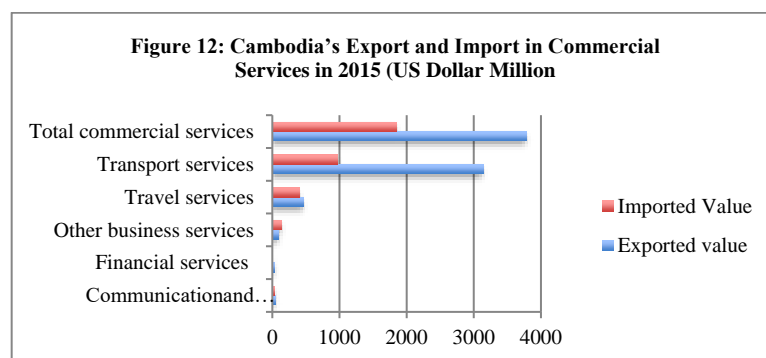
¹⁶ World Bank, Cambodia Economic Update, p. 18.

Tourism remains Cambodia’s largest services export sector as illustrated above. According to World Bank data, tourism accounts for about 27.49 per cent of total exports in 2015 and this figure is expected to grow in the upcoming years. During the first six months of 2017, the total tourist arrivals grew by 12.8 per cent in relation to the same period in 2016; in particular, air arrivals recorded the highest level since a decade ago with 23.1 per cent increase.¹⁷

Construction is another key driver of growth, mainly boosted by rising inflows of FDI. In 2015, the sector reported a 19 per cent growth with respect to the previous year. The majority of the construction activity is focused on modern commercial and residential projects, and in a newly emergent small segment of affordable housing projects.¹⁸

The modest values attached to Cambodia’s exports of services such as information technology and related services (IT and IT-enabled services), animation services, entertainment, design and professional services – exported via mode 1 and 4 – are likely due to lack of statistics and data. As mentioned in Box 1, it is important to stress that available services trade statistics generally and in LDCs including Cambodia in particular is notoriously incomplete and unreliable, and therefore cannot provide the only basis for developing adequate policy responses.

Despite the inaccuracy of services data, statistics indicate that Cambodia is a net exporter of services as illustrated in Figure 12 below.



Source: Asean, Cambodia’s Trade in Services, by Major Categories, ASEANstats.

As to employment, 44 per cent of the labour force works in the agriculture sector. Nevertheless services are the second largest employer contributing 30.4 per cent to total employment. The majority of it focused in tourism, which directly contributes 11.4 per cent of total employment.¹⁹

2. Cross-Sectoral: Mode 4

2.1 Definition

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’. It is worth recalling, that 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.

This section ultimately focuses on trade in services, and hence services supplied in mode 4 by Cambodian providers, as a subset of the broader group of (temporary) economic migrants from Cambodia. This should be kept in mind when considering this section– particularly where reference is made to data on economic migration, which encompasses more than Mode 4 exports.

2.2 Mode 4 and Economic Migration From Cambodia: An Overview

¹⁷ Ibid.

¹⁸ Ibid, p.15.

¹⁹ World Bank, Cambodia Economic Update, p.50.

Comprehensive data on the number of temporary economic migrants is not available. The primary destination for Cambodian workers is Thailand.²⁰ The geographical proximity and the governments' efforts to enhance cross-border labour movement under the Memorandum of Understanding on cooperation in the employment of workers (MOU) have increased the flow of labour migration to the country. In 2016, 117'424 entries under the MOU were registered in Thailand, the majority of them to work in fishing, agriculture, livestock, construction, manufacturing and services sectors, including domestic work.²¹

The second major destination for Cambodian economic migrants is the Republic of Korea. The Manpower Training and Overseas Sending Board (MTOSB) regulates Cambodian labour migration to the Republic of Korea in the manufacturing, construction, agriculture and livestock, fishing, and service industry sectors.²² The MTOSB allows SMEs from the Republic of Korea to recruit internationally when the demand for labour cannot be supplied locally. As part of the program, 43'571 Cambodian temporary migrants for employment were registered between 2007 and 2015.²³

Malaysia was also a major destination for work until 2011, when the government of Cambodia restricted recruitment agencies to send workers to the country. Despite the restriction, 40'011 temporary workers migrated to Malaysia between 1998 and 2016. This number is expected to grow in the coming years, as the restriction was lifted in 2015. The Government of Cambodia has also signed an MOU with Japan, however far fewer have been deployed since 2007, due to the technical requirements of the Industrial Training Program and Technical Internship Program. In addition, Cambodia signed similar MOUs with Kuwait (2009), Qatar (2011) and Saudi Arabia (2016), but so far there is no data capturing the migration of Cambodian employees to these destinations.

The vast majority of Cambodia's economic migrants do not fall under the definition of mode 4 as those are employed by foreign service suppliers in their host countries (secured for the most part through placement agencies).

The Economic Significance of Economic Migration in Cambodia

Total remittances sent by migrant workers to Cambodia were worth 1.9 per cent of the GDP in 2016 -²⁴ higher than its neighboring countries except for Viet Nam. This share has varied from the past twenty years. A major growth was reported from 1997 to 2002, when remittances increased from 0.35 to 2.9 per cent of the GDP. Since then the share decreased to 1.1 per cent in 2013, followed by a major growth to 2.5 per cent in 2014.

Despite the small GDP share of remittances, financial help from relatives working abroad have a major impact in Cambodian households. "Forty per cent of Cambodian migrant workers in Thailand reported that remittances were the main sources of income for their families".²⁵ The money sent helps to provide a better quality of life, as families are able to cover daily expenses, health care, and household appliances.

3. Sectoral Review

3.1 Audiovisual Services / Animation Services

3.1.1 Definition

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

²⁰ See, for instance, Cambodia, Ministry of Labour and Vocational Training, "Policy on Labour Migration for Cambodia", December 2014. Available from <http://un-act.org/publication/view/policy-on-labour-migration-for-cambodia/> (accessed 30 December 2017); Emerging Markets Consulting, "Economic Targeting for Employment: A study on the drivers behind international migration from Cambodia and domestic labour market", paper prepared for the United States Agency for International Development (USAID), September 2016; International Labour Organization and Australian Department of Foreign Aid, "Triangle in ASEAN", Quarterly briefing note, Cambodia January –March 2017 (Bangkok, ILO, 2017).

²¹ International Labour Organization and Australian Department of Foreign Aid, "Triangle in ASEAN".

²² Cambodia, Ministry of Labour and Vocational Training, "Policy on Labour Migration for Cambodia", p.18.

²³ International Labour Organization and Australian Department of Foreign Aid, "Triangle in ASEAN".

²⁴ World Bank, Personal remittances, Data Bank. Available from https://data.worldbank.org/?year_high_desc=true (accessed 30 December 2017).

²⁵ Has Khunearay and Tan Sokunkolyan, "Labor Migration in Cambodia", Research paper, March 2016. (n.p., Parliamentary Institute of Cambodia (PIC), 2016), p. 3.

Under the W/120 definition, audiovisual 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. The focus of the in-country consultations and thereby of this study is on animation services – a subsector of audiovisual services.

3.1.2 Audiovisual / Animation Services in Cambodia

Animation is a forward looking fast growing industry worldwide. Animation, including animated films, augmented reality, gaming, design and advertising does not only capture the interest of young people but it also creates jobs in a creative industry. Producing animated content requires skill, creativity and imagination but it does not necessarily require formal education, which makes it an interesting industry to support and develop especially in countries with high unemployment rates among the youth.

The rapid advancement in computer technologies, telecommunication infrastructure and the increase in broadcasting hours by cable, satellite TV and Internet have expanded the demand for animated entertainment worldwide. Digital animation today 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 USD 244 billion.²⁶

Large multinational studios, TV broadcast companies and cable channels are engaged in all production and distribution activities, as well as in DVD sales and intellectual property licensing of animated content.²⁷ 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 costs. Coproduction has particularly become the most common strategy. Some countries subsidize their national film industries, including animation, increasing multinational studios' interest to partner with local studios and benefit from production subsidies.

Asia has particularly become an attractive destination. China, Taiwan Province of China, Japan and the Republic of Korea used to be the main outsourcing destination; but over the past decade India, the Philippines, Indonesia, Thailand and Viet Nam have emerged as new outsourcing locations. Today about 90 per cent of all American television animation is produced in Asia.²⁸

Cambodia is home to few but interesting high quality providers of animation services, some with social and human development missions, offering full production services of 2D animation for television series, feature films, commercials and public service announcements. Some also offer 3D animation and at least two of the studios offer post-production services (special effects, editing and output) to international companies.²⁹

Data on the growth of Cambodia's animation industry is not available. Anecdotal evidence generated during the in-country consultations confirms World Bank's findings that despite the industry's infancy stage, 3D animation studios in Cambodia are already exporting high-value-added niche services, such as digital animation.³⁰

iThink Asia, Cambodia's top animation studio founded in 2010, has already been engaged in several noteworthy animation projects. The company's international portfolio includes the French film 'Funan the New People', the Irish series 'Joe & Jack, The Neighbours' and its currently working on the French production 'Khmer Smile'. Other export markets include China, Republic of Korea; the Netherlands, Australia and New Zealand. Besides full service production, iThink Asia offers post-production finishing

²⁶ Research and Markets, "Press release of the Global Animation Industry Strategies Trends & Opportunities Report 2017", 25 October 2017. Available from <https://globenewswire.com/news-release/2017/10/25/1153106/0/en/Global-Animation-Industry-Strategies-Trends-Opportunities-Report-2017.html>.

²⁷ Ibid.

²⁸ 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>.

²⁹ Based on a comparison of companies' profiles available at their websites. See also Logan Connor, "Cambodia's cartoonists out grand designs for animation domination", *Globe Southeast Asia*, 24 August 2017. Available from <http://sea-globe.com/cambodia-animation/>.

³⁰ World Bank, Cambodia Services Trade: Performance and Regulatory Framework Assessment (Phnom Penh, World Bank, 2014), p. 1.

animation services, online editing suites, closed caption services and mastering., The company also does film production and post-production services.³¹ With a visionary CEO, committed to building capacities, iThink Asia is not only contributing to developing the industry in Cambodia but also to nurturing creativity and building excellence at home.

Phare Creative Studio offers animation, graphic design and video productions to local clients and international development agencies including UNICEF, Oxfam Quebec and EXO Foundation. The studio is a social enterprise that helps fund the NGO Phare Ponleu Selpak. It specializes in cartoon animation with focus on educational and public service projects.³²

Social Compass, an NGO with the aim to address social problems through design has created interesting animated content most recently to further the physical education, promote environmental objectives and online safety to name just a few. Social Compass services Japanese clients and local and international NGOs.³³

3.1.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Stakeholders reported a host of supply side constraints including access to finance which translates into access to technology, shortage in skills and weak exposure of Cambodian staff to creative content, disconnect between the academia and the requirements of the market place, infrastructure constrains including unreliable electricity supply and connectivity in addition to challenges related to marketing and outreach.

To address financing constraints, operators heavily rely on private financing, which if limited, inhibits necessary developments, expansion potential and the scaling up of Cambodian animation studios.

In regard to capacity constraint, the main animation studios in Cambodia, iThink Asia and Phare Creative Studio, provide their own capacity building and training. iThink Asia has developed its own 2D animation curriculum, which the company intends to certify soon and to develop into an online learning system. It has also been granted exclusivity over the 3D curriculum developed by Edenz Colleagues - a tertiary institution based in New Zealand.³⁴ The company currently provides training free of charge to over 20 young Cambodians. Phare Creative Studio provides training on 2D animation through its sister institution Visual & Applied Art School. The School has developed its own curriculums in graphic design, animation and visual arts. Both organizations are part of Phare Ponleu Selpak, a non-governmental organization founded in 1986.

In regard to market access and regulatory constraints, stakeholders reported local content and film funding - coproduction, visas and withholding taxes as the main barriers encountered in export markets.

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, etc.). This significantly limits the marketplace not only for LDC movies but also input services that are, or could be, provided by Cambodian and other LDC service providers to international productions.

Such 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

³¹ In-country consultations, compilation of news and review of iThink Asia company's profile at <http://www.ithinkasia.com/>. See also "iThinkAsia", *Animation magazine*, Anniversary Issue (june-july 2017), p.160; AsianLife, "iThinkAsia 2D Animation Class", 10 January 2017. Available from <https://www.asialifemagazine.com/cambodia/ithinkasia-2d-animation-class/>.

³² In-country consultations and review of Phare Creative Studio company's profile at the website, <https://pharestudio.org/>. See also Michelle Vachon, "NGO Cheers opening of Animation Studio in Phnom Penh", *The Cambodia Daily*, 18 May 2017. Available from <https://www.cambodiadaily.com/news/ngo-cheers-opening-of-animation-studio-in-phnom-penh-129888/>.

³³ In country Consultations.

³⁴ In-country consultations.

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. Cambodian) audiovisual service inputs.

Cambodia 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 cooperating with (outsource part of the production to) Cambodian studios.

Physical Market Access: Visas

Another barrier LDC service providers face, including in animation, 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 including at Cannes, Florida and Annecy for example in addition to special screenings, award ceremonies and workshops'/marketplaces' for filmmakers (often organized in the context of festivals) is of crucial importance.³⁵ 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 IP protection), which can affect the building of trust. Face to face personal interaction between the provider and client is, therefore, of paramount importance.

Withholding taxes

One of Cambodia's animation studios reported a withholding of income tax at a 25 percent on income in Spain.

Possible Preferences

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

- Reduce local content requirements to allow for greater shares of inputs from LDCs (e.g. by allowing for X% LDC inputs to qualify as local content for purposes of or subsidies).
- Relax or remove local content requirements for access to public funding and tax reliefs for LDCs productions.
- Grant national treatment to LDC providers of audiovisual services under government procurement tenders.
- 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% for LDCs, while maintaining 20% minimum for all others).
- 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 including providers of audiovisual services, with fewer conditions attached.
- 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.
- Waive or reduce withholding taxes for LDC service providers.

³⁵ 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.

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

While many of the above-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 Members – Taiwan Province of China and the United States of America – offer preferences in the audiovisual sector.** The United States of America in particular underscores its strong commitment to open markets for audiovisual by providing for near-full market opening, especially in motion picture and video-related subsectors, complementing its existing GATS offer. The United States of America *inter alia* commits to open distribution markets. That said, the United States of America 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 – in relation to this sector – withholding taxes, social security contributions, nor Mode 4 issues of physical market access (visa, work permit-related).**

3.2 Entertainment Services

3.2.1 Definition

In the WTO's Services Sectoral Classification List W/120 "Entertainment services" are a sub-category to "Recreational, cultural and sporting services". It includes theatre, live bands and circus services.

The subcategory of "Entertainment services" has seen some significant evolution since the provisional CPC was drawn up in 1991, still acting as the reference document for the WTO's W/120 list. There the relevant services are subdivided into in particular "Theatrical producer, singer group, band and orchestra entertainment services" and "Services provided by authors, composers, sculptors, entertainers and other individual artists". (Later versions of the CPC go into significantly more detail and would appear to more accurately reflect the reality of the various services involved.) In the case of Cambodia Mode 4 supply through the live performance of artists and circus services is particularly relevant.

3.2.2 Entertainment Services in Cambodia: Performing arts and circus services

Cambodia's oral and intangible cultural heritage is vast, ranking 36 in terms of number of expressions in WEF's Travel and Tourism Competitiveness Report and first in South Asia.³⁶ The country's impressive cultural heritage encompasses a long-standing lineage of performing arts traditions whose roots and evolution are difficult to trace as knowledge is mainly passed by word-of-mouth. In the 1970s during the Pol Pot regime, Cambodia's intangible heritage was nearly annihilated. Artists were killed or forcibly displaced, and with them, significant part of Cambodia's performing arts. Several initiatives to revive these arts were introduced over the past two decades and new genres have come into existence with the return of diaspora artists, who infused traditional art with western elements.³⁷

Traditional performing arts in Cambodia are classified in five genres, including over 83 titles of classical dance, 49 folk and popular dances, over 20 forms of theatre, music and traditional circus.³⁸ Apsara dance and traditional shadow puppet shows are two of the most internationally recognized performances. With precise hands movements, ornate and elegant customs or with intricate carved leather puppets, these dances tell Cambodian mythical stories of spirits, nymphs and gods.

Cambodia is home to internationally recognized makers and providers of culture. The Royal Ballet of Cambodia, founded by the Princess Norodom Buppha Devi, was established with the aim of rescuing traditional royal dances after the end of the civil war. It is mainly focused on Apsara dances that

³⁶ World Economic Forum, *The Travel and Tourism Competitiveness Report 2017* (Geneva, 2017), p. 117; See also, World Economic Forum, "Oral and intangible cultural heritage", Available from <http://reports.weforum.org/travel-and-tourism-competitiveness-report-2017/ranking/#series=INTANGHERITAGE>.

³⁷ Giovanni Giuriati, "Idealization and change in the music of the Cambodian Diaspora" in *Diasporas and Interculturalism in Asian Performing Arts: Translating Traditions*, Hae-kyung Um, ed. (New York, Routledge Curzon, 2005), p.139- 140.

³⁸ Some Chan Thoeun, "Country Report: Cambodia Safeguarding of Cultural Heritage Performing Arts: Royal Ballet is Special", paper presented at the Training Course for Safeguarding of Intangible Cultural Heritage of the International Partnership Programme for Safeguarding of Intangible Cultural Heritage, 11-17 December, Kyoto, Japan.

perpetuate myths and legends on the origins of Khmer people. The Ballet embodies values of refinement, respect and spirituality expressed through graceful hand gestures and elegant costumes.³⁹ Considering its particular features and invaluable history, the UNESCO proclaimed the Royal Ballet of Cambodia a masterpiece of oral and intangible heritage in 2013.⁴⁰ This status has helped to raise the Ballet's profile opening doors in several countries. It has performed in international theatres across Europe, North America, Morocco and Hong Kong, China.

Phare Performing Arts is one of the organizations committed to the further development and exposure of Cambodian performing arts. It is part of the NGO Phare Ponleu Selpak that works to improve the lives of Cambodian children and young adults through artistic expression. Phare Performing Arts was founded in 1996 as a music school, but today it contains circus, music and theatre departments. The organization offers training in seven disciplines and in three different levels to young Cambodians aged between 7 and 18 years. For almost 15 years, circus and music students from Phare Performing Arts have toured Europe performing in different festivals.⁴¹ Recently, Phare performed the contemporary circus "See You Yesterday" at the Kigeme refugee camp in Rwanda, attracting over 5,000 people each night.⁴²

Cambodia Living Arts has become a key international exponent of Cambodia's performing arts. Founded in 1998 by a genocide survivor, Cambodia Living Arts is an NGO devoted to the transformation of individuals and communities in Cambodia through arts. It offers capacity building programs to artist and the arts community. Some of its activities include courses and conferences, as well as regular exchange programs, in which students and fellows not only participate in festival and conferences, but also in workshops worldwide. The NGO offers the Living Arts Fellow program, in which artists and arts managers study a dedicated professional development curriculum and exchange with artists and cultural leaders from around the region.⁴³ In 2012, Cambodia Living Arts organized the first-ever festival of Cambodian traditional arts, dance and music in New York with over 200 Khmer artists performed across the interdisciplinary platform.⁴⁴ Entitled "Season of Cambodia" and led by Cambodian artists and cultural workers, the festival took place also a year later and in 2015.⁴⁵

The sector suffers from funding related challenges. Public funding for culture is limited and culture is hardly self-sustainable and is in need for public funding. The government has recently launched promotion programs, such as the Arts Forum of Cambodia chaired by the Ministry of Culture and Fine Arts (MCFA). The forum gathers stakeholders representing government agencies, NGOs, private companies and individual artists to discuss funding and promotion alternatives of Cambodian arts. During the second meeting of the Forum held in November 2017 a Cultural Task Force (CTF) was established to develop strategies and build bridges among cultural actors and to find means to provide training on arts management related aspects. The MCFA was mandated to operationalize the National Arts Support and Development Fund in consultation with the CTF, and to advocate and discuss with the Ministry of Economy and Finance tax support measures to promote arts. NGOs and international support organizations provide some support to the sector especially training and capacity building.

3.2.3 Barriers encountered, possible preferences, actual preferences

Stakeholders reported several supply-side constraints including access to finance, additional taxation imposed on entertainment services and capacity constraints.

Entertainment services are exported primarily through Modes 2 and 4. Some of Cambodia's providers of entertainment services are based in Siem Riep to perform for tourists visiting Cambodia (Mode 2). No barriers of relevance are reported in this context.

³⁹ In country consultations. See also Kate Whitehead, "Royal Ballet of Cambodia: a princess brings sacred dance to the masses", *Post magazine*, 2 September 2017. Available from <http://www.scmp.com/magazines/post-magazine/long-reads/article/2109137/royal-ballet-cambodia-princess-brings-sacred>.

⁴⁰ UNESCO, Royal ballet of Cambodia. Available from <https://ich.unesco.org/en/RL/royal-ballet-of-cambodia-00060>.

⁴¹ Compilation of information based on discussions during the in country consultations and the Phare Ponleu Selpak website, <https://phareps.org/>.

⁴² Rama Ariadi, "Cambodia's arts and culture scene growing and improving", *Khmer Times*, 2 January 2018. Available from <http://www.khmertimeskh.com/5099237/cambodias-arts-culture-scene-growing-improving/>.

⁴³ Information generated from in country consultations and from Cambodia Living Arts website, <https://www.cambodianlivingarts.org/about-us/>

⁴⁴ Kate Hodal, "Cambodia's art of survival".

⁴⁵ Information available at Season of Cambodia website, <http://www.seasonofcambodia.org>

Export of entertainment services in Mode 4 through live performances abroad, however, encounters a host of market access and regulatory barriers mostly classical to Mode 4 service delivery including visas, social security contributions and withholding taxes.

Barriers Encountered

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 required from each member of a music or dance group individually (something reportedly practiced by some Schengen countries, for example). The inability to meet such requirements often means that the band/troupe as a whole will not be able to travel, and hence will not perform.

The cost of visas is another challenge. The cost of a Schengen visa, for example – EUR 40.00 – may not appear much to the casual observer, but corresponds to a significant portion of a minimum salary in some LDCs, and so is the non-refundability of visa fees in case of rejection.

Withholding taxes and social security contributions

Cambodian 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 Labor 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 (...)".⁴⁶ 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.

Possible Preferences

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

- Create special visa categories for *bona fide* LDC cultural professionals, with less 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.
- 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 a season).
- Waive or reduce withholding taxes and social security contributions for performing artists and other visiting cultural professionals.

⁴⁶ 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.

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

While many of the above-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.

- **Eight Members offer preferences in “Entertainment Services”, the main sector for cultural performers. These are Hong Kong, China; Japan; Republic of Korea; Taiwan Province of China; Mexico; India; Chile and Iceland.** Some of these are interesting, at least in principle and to some extent.
 - o The Republic of Korea, Mexico, India, Chile and Iceland explicitly extend their horizontal commitments on Mode 4 to this subsector, with small differences in coverage. (India’s and Chile’s notification remains partly ambiguous on the sectoral coverage). While this does not solve an important issue in the classical Mode 4 categories, namely (where reserved) education requirements for Independent Professionals (IPs) and Contractual Service Suppliers (CSS) – most musicians, dancers and art performers do not possess academic degrees – it is a step in the desired direction, and may indeed help in practice, depending on implementation (including visa/work permit practice).
 - o Importantly, Chile’s definition of CSS does not insist on such educational requirements, but rather states in general and open terms that “They must also have the necessary qualifications, expertise and proven work experience (...) in conformity with Chile’s domestic legislation on the activity in which the service supplier wishes to engage in Chile.” This would appear to normally exclude education requirements not suited to the sector.
 - o The situation is similar for Taiwan Province of China, which includes a subset of entertainment services in a list of CSS openings, with no onerous formal education requirements attached.
 - o The remainder of the preferences offered is mostly full market access commitments in Modes 1, 2 and 3, some with small caveats.
- **None of the notifications addresses – in relation to this sector – withholding taxes, social security contributions, nor Mode 4 issues of physical market access (visa, work permit-related).**

3.3 IT and IT related Services

3.3.1 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.

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 UN’s 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 the purposes of this study, the discussion below 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.

3.3.2 IT and IT related Services in Cambodia

Cambodia's rapid economic growth has increased the demand for modern technological solutions for non-technology businesses, which in turn has attracted young and innovative foreign and local professionals living abroad to invest in the sector. Mobile telephony costs in Cambodia are among the lowest in the region,⁴⁷ postpaid computer-based mobile broadband prices are the lowest worldwide⁴⁸ and recent developments in the telecoms infrastructure further enhanced the competitiveness of the IT sector to position itself as a new place for outsourcing and innovation in the region. The country ranks third among LDCs in the ICT development Index⁴⁹ and according to WEF's Global Competitiveness Index, it ranks 54 in FDI and technology transfer,⁵⁰ a position higher than its regional partners except for Thailand, to which score difference is of 0.2 points (Cambodia scores 4.6, while Thailand 4.8 and ranks 40).⁵¹

Cambodia's IT industry is primarily concentrated in the BPO segment offering services to international clients. There is also a growing niche of call centers, as well as web and IT software development businesses and e-commerce companies. In the area of BPOs, companies are focused on data processing, data analysis, document processing and non-voice call centers (e.g. chat services or IT support).⁵² Call centers mainly provide services to other countries in the region, profiting from language skills of young Cambodians.

According to the last economic census of 2011, there were 4'711 establishments in the ICT sector.⁵³ Of those 701 focused on information technology and computer services including computer programming activities, data processing, hosting and related activities and web portals.⁵⁴ As of 2017, there are a number of recognized outsourcing Cambodian companies with international presence and wide foreign clientele.

With 300 employees in Cambodia (and 1000 worldwide) and branches in the Lao People's Democratic Republic and Kenya and a sales offices in the United States of America, Digital Divide Data (DDD), provides BPO solutions including digitalization of content including newspapers, books and journals to libraries and universities, such as Harvard and Brown universities. The company also offers content development, data services, research services and image processing. DDD has been recognized worldwide for quality service, innovation and social impact. Besides its ISO certification, the company was awarded the Google Award for Innovation in BPO and was recognized as a "Rising star" by the International Association of Outsourcing Professionals in 2015.⁵⁵ In addition to in-house trainings, DDD offers scholarships for employees after 4 years of service to pursue academic education.

Another example is Pathmazing. Inc, a software solution provider, which has established itself as the strategic technology partner of over ten startups in the area of biotech, e-commerce, gaming, virtual reality and social media. With a team of over 80 developers fluent in English, the company provides services to several international clients such as Coca-Cola and eBay. It has also expanded to Malaysia, the United States of America and Singapore through joint ventures (Mode 3).⁵⁶ In 2017, Tesjor, the

⁴⁷ Sven Callebaut, Cambodia Services Sector Assessment and Contribution to SDG, 2016; see also ITU, *Measuring the Information Society Report 2016* (Geneva, 2016), p.135, 138.

⁴⁸ ITU, *Measuring the Information Society Report 2016*, p.138.

⁴⁹ ITU, "IDI 2017 RANK: LDC". Available from <https://www.itu.int/net4/ITU-D/idi/2017/#idi2017byregion-tab>.

⁵⁰ Klaus Schwab, *The Global Competitiveness Report 2017-2018* (Geneva, WEF, 2017), p. 79.

⁵¹ *Ibid*, pp. 135 and 341.

⁵² Matthieu de Gaudemar, "An inside track on outsourcing", *Phnom Penh Post*, 08 August 2016. Available from <http://www.phnompenhpost.com/business/inside-track-outsourcing>.

⁵³ Cambodia, National Institute of Statistics, *Economic Census of Cambodia 2011 National Report on Final Census Results* (Phnom Penh, Ministry of Planning, 2012), p. III-2-3. Available from https://www.nis.gov.kh/nis/EC2011/EC2011_Final_Results_Revised.pdf.

⁵⁴ *Ibid*, p. III-2-37.

⁵⁵ In-country consultations and review of company's profile available at the Digital Divide Data website: <https://www.digitaldividedata.com/about>.

⁵⁶ In-country consultations and company's profile available at the Pathmazing Inc. website: <http://www.pathmazing.com/about>.

company's latest e-payment app, won the Best Product in Private Sector prize in Cambodia's ICT Awards and the Best E-Commerce Startup prize in Cambodia Rice Bowl Startup Awards.

Due to categorization-related issues, there is insufficient reflection of IT and IT enabled services, including BPO services, in both the UN CPC and the WTO's W120. Importantly, a reliable data on exports of these services is currently not available. ITC statistics suggest that as of 2014 the industry was estimated to be worth over 3 million USD in export revenues. However, this number appears hardly to capture the reality.

3.3.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Stakeholder reported several supply-side constraints that hamper the development of the sector and reduce its export potential. Key among those is capacity constraints. Stakeholders reported that the academic / vocational training curriculum in Cambodia is outdated and that despite the IT savviness of Cambodian graduates, the level of their training does not match the requirements of the job market. Most companies consulted have their own training and capacity building programs for new staff that range from few weeks to three months.

Market access and regulatory challenges to exports of relevance for this study, as underscored by stakeholders, are local partnering requirements, restricted access to subsidy, grants and tax breaks, challenges in tendering on government procurement tenders and difficulties with obtaining visas.

Local partnering requirement & access to grants, subsidies and tax breaks

Stakeholders reported local partnering requirements for the export of IT and related services in Mode 3 in export markets of interest including Singapore and Malaysia including for purposes of accessing grants, state subsidies or tax breaks.

While in some cases local partnering is a limitation to incorporate a foreign company in certain markets, in others it is a barrier to access to public funding programs or public procurement tenders. Singapore, for instance, offers a support package for ICT startups where three of programs under the package require 30 per cent of local partnering and at least one is subject to 51 per cent local shareholding.⁵⁷

Procurement: Local Preference

Governments are among the biggest consumers of IT services. Government procurement is thus a crucial sales avenue. Cambodian providers when bidding for governmental contracts often face strong local preferences, which often translate into requirements to work with local partners. These partnering exercises can be heavy and risky.

Government procurement is largely not disciplined by the GATS and technically Members do not need the Waiver to grant preferences for LDC providers as explained below.

Box 2: Government Procurement under the GATS and the LDC Waiver

⁵⁷ Singapore, Monetary Authority of Singapore. "Setting up your FinTech Business in Singapore". Available from <http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/Setting-up-your-Business.aspx>

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 proper 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.⁵⁸

It is not clear whether any such preferential treatment is currently extended to LDCs by any 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 and IT and computer-related services (e.g. to provide e-government solutions, a major market), 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.

Physical market access: Visas

IT professionals, while often providing the bulk of their services through remote means, i.e. Mode 1, occasionally, but importantly, do need to travel to meet clients, install software, establish and fine-tune systems, train local staff, etc. They may thus need to cross borders as ICT, CSS or IP, depending on the contractual construction.

Several industry representatives recalled challenges in obtaining the necessary access permits to markets including the United States of America, the United Kingdom of Great Britain and Northern Ireland and others, and to obtain it at the required speed. Delays can be a major problem, as speed is often of the essence in IT service contracts, and delayed travel and unreliable access can have a major impact on delivery and hence contracts more generally.

Possible Preferences

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

- Waive local partnering requirement for Mode 3 LDC IT/BPO service providers.
- Extend national treatment for Mode 3 LDC IT/BPO service providers in accessing grants, subsidies and tax breaks.
- Exempt LDC IT/BPO service providers from local partnering requirements in government procurement of IT/BPO services.
- 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.)
- 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.

⁵⁸ Note, however, that unlike under the LDC Services Waiver, which requires any preferences to be extended to all LDCs on a non-discriminatory basis, preferential treatment for services procured for governmental purposes within the definition of GATS Article XIII may distinguish among LDCs.

- Provide a fast-track procedure for LDC IT professionals (and possibly other service providers) and/or facilitated access to multiple entry visas.

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

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

However, the notifications received from nine WTO Members still overall represent a significantly increased bundle of market access opportunities for IT service providers, at least on paper, as several 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 TPP 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 economic needs tests (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 IP;
- 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 Members sent in this sector still rings clear: There’s a general trend towards broad openness in this sector, something that caters to the needs of LDCs such as Cambodia who will benefit from overall increased markets where it can advance its cost advantage.

No LDC preferences in public procurement. While the LDC Waiver would not be *needed* to cover such preferences because 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, however limited and conditioned, would be of great interest to the Cambodian IT and related services sector.

None of the notifications addresses access to subsidies, grants or tax breaks. India’s notification offers to conduct specially designed courses for around 1000 natural persons from LDC each year in areas such as Management Consulting and Technical Consulting. While the last does not directly related to ICT services, it may be more considered as cross-sectoral capacity building to help all services providers, including providers of ICT services to improve enhance their capacities.

3.4 Banking Services

3.4.1 Definition

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

3.4.2 Banking services in Cambodia

The Cambodian banking system experienced a major restructuring since late 1999, which has resulted in an increase of available financial services that better meet business needs and protects borrowers and lenders rights. According to WEF's Global Competitiveness Report, since 2010, Cambodia has progressively upgraded the availability of financial services (ranking 88 in 2010 and upgrading to 75 in 2017)⁵⁹; however, the cost of financial services has increased (lowering the rank from the 71 to the 75 position)⁶⁰. Likewise since 2013, the country has sum up three points to its score in the legal rights index, ranking fourth in 2017 along with Australia, Rwanda and the United States of America.⁶¹

Today, the sector is highly competitive comprising the country's central bank (National Bank of Cambodia) and a number of private financial institutions. As of 2016, there were 37 commercial banks in the country, 7 of which have local majority ownership, 5 mostly own by foreigners, 14 foreign subsidiary banks and 11 branches of foreign banks. Besides these, there are 15 specialized banks, 7 representative offices of foreign banks and 71 microfinance institutions, of them 7 are eligible to collect customer deposits.⁶²

The banking sector has experienced a steady growth in the past years. Total bank assets has increased at an average of 30 per cent from 2011 to 2016, which in monetary terms accounts for USD 7.9 billion in 2011 to USD 27.8 billion by the end of 2016.⁶³ Credit and deposit also increased 18.3 per cent and 20.7 per cent respectively in the last year accounting for about USD 17.6 billion and USD 15.4 billion. The number of ATMs across the country grew from 588 in 2011 to 1'118 in 2015; likewise debit cards issued increased from 761,876 to 1.4 million during the same period.⁶⁴

The growth of banks and microfinance institutions has also contributed to Cambodia's financial inclusion rate, which although is still below the East Asia and Pacific average of 69 per cent,⁶⁵ has witnessed great growth levels. As of 2016, 59 per cent of the adult population had access to formal financial services, however 42 per cent uses other formal but not commercial bank products and only 17 per cent uses banking services.⁶⁶

Cambodian banks provide various services and products to national and international clients including deposit, loan, currency exchange, international money transfer services and credit cards. Its international services are provided in the four modes of supply.

As of 2017, at least two Cambodian banks export banking services in Mode 3 to regional markets. Aceda Bank was established in 1993 with the assistance of the ILO and UNDP as a national NGO for SMEs' development and credit. In 2003, the bank was licensed as a commercial bank and in 2008 it opened its first subsidiary in Myanmar followed by a second subsidiary in the Lao People's Democratic Republic in 2013. Canadia Bank, established in 1991 and privatized in 1998, opened a subsidiary in the Lao People's Democratic Republic in 2015 and has a representative office in Shanghai.

In addition to banking services, Aceda Bank provides and exports business training and consultancy services in Modes 2 and 4 to several commercial banks, central banks, microfinance institutions, companies, NGOs and universities worldwide, including entities located in Australia, Luxembourg, China, the Lao People's Democratic Republic, Viet Nam, United States of America, Egypt, Peru,

⁵⁹ Klaus Schwab, *The Global Competitiveness Index 2010 – 2011* (Geneva, World Economic Forum, 2010), p. 117; Klaus Schwab, *The Global Competitiveness Index 2017 – 2018*, p. 79

⁶⁰ Ibid.

⁶¹ World Economic Forum, "Legal rights index". Available from <http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=LEGRGHTIDX>

⁶² Cambodia, General Directorate of Banking Supervision, *Annual report 2016* (Phnom Penh, National Bank of Cambodia, 2017) pp. 2 - 3.

⁶³ Ibid.

⁶⁴ Hor Kimsay, "A roadmap of financial growth", *Phom Penh Post*, 16 June 2017. Available from <http://www.phnompenhpost.com/business/roadmap-financial-growth>.

⁶⁵ World Bank, Financial Inclusion, Global Findex. Available from <http://datatopics.worldbank.org/financialinclusion/region/east-asia-and-pacific> (accessed 7 December 2017).

⁶⁶ MAP Cambodia, "FinScope Cambodia 2015 Consumer Survey Highlights", 2016, pp. 13-14. Available from <http://www.finmark.org.za/wp-content/uploads/2016/07/finscope-cambodia-pocket-guide.pdf>.

Tajikistan, Japan, Germany, India, among others.⁶⁷ Through Aceda Institute of Business, the Bank offers (1) short courses for individuals and organizations; (2) tailor-made trainings with simultaneous interpretation to Lao, Mandarin and Vietnamese, and (3) capacity building through study visits.

3.4.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

There are several supply-side constraints that hamper the development of the sector and reduce its export potential. Key among those are capacity and infrastructure constraints. The Financial Sector Development Strategy 2011 -2020 reported that the sector “lacks the infrastructure to engage in all financial operations”,⁶⁸ in addition, it lacks qualified human resources, managerial and supervision capacity, as well as reliable credit information and related infrastructure. One of the consulted Banks has its own training institute and the others offer their staff capacity building training programs.

Banking services are exported primarily through commercial presence (Mode 3) in addition to the cross border supply (Mode 1). Challenges to trade in banking services include classical market access restrictions relating to incorporation in foreign markets.

Key restrictions reported by stakeholders in exporting to neighboring markets including Myanmar include limitations on the types of services provided (limited to micro finance agency), restrictions on currency of loans (local currency), restrictions on interest rate and limitations on amount of loan offered to customers.

Stakeholders further reported restrictions on lending in foreign currency in other neighboring markets including the Lao People’s Democratic Republic.

Possible Preferences

Possible measures that could be devised as preferences for LDCs under the Waiver to address the above challenges encountered should first recognize the prudential rationale behind some of these restrictions while suggesting that less broad-brush regulations could reduce barriers faced by LDC exports. Those could include:

- Reduce / relax incorporation related limitations;
- relax the limitations on the type of service provided;
- extend national treatment to LDC banking institutions in regard to the currency of loans;
- extend national treatment to LDC banking institutions in regard to interest rates;
- extend national treatment to LDC banking institutions in regard to max loan amounts offered to customers.

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

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

- **Six notifications offered specific preferences in the banking sector.** These are Norway, Switzerland, Iceland, Liechtenstein, South Africa and the European Union (Belgium, Germany, Italy, France, Spain, United Kingdom of Great Britain and Northern Ireland, Netherlands and European Union all). While the notifications in fact relax market access and national treatment limitations, restrictions still exist.

⁶⁷ In-country consultations and information available at Aceda Institute of Business’s website, http://www.acleda-aib.edu.kh/tc/eng/am_customer.

⁶⁸ Cambodia and Asian Development Bank, *Financial Sector Development Strategy 2011 – 2020* (Mandaluyong City, Philippines, Asian Development Bank, 2012) p. 3-4. Available from <https://www.adb.org/sites/default/files/publication/30158/financial-sector-development-strategy-2011-2020.pdf>

- The majority of the notifications offer banking services partial liberalization of Mode 3, however in most cases the treatment offered is equal to the DDA offer of the relevant Member. Norway, for instance, raised from 10 to 25 per cent the ceiling for the acquisition or holding of share capital of commercial banks by one single foreign financial institution. This is equal to Norway's DDA offer and the EFTA- Central America trade agreement ('Best PTA'). Likewise, Liechtenstein establishes a foreign equity ceiling of 49 per cent and other licensing requirements, which is equal to its DDA offer.
 - The European Union, Switzerland and South Africa, in turn, offer more than its DDA commitments by relaxing some of the requirements on commercial presence and licensing.
 - Few notifications contain preferences in Mode 1, which remains virtually unbound except for particular financial services, such as the provision of financial information and financial data processing. Switzerland opens Mode 1 with the reservation that foreign investment funds can only be marketed or distributed through a licensed representative agent resident in Switzerland.
- **None of the notifications addresses issues on currency related restrictions.**

3.5 Legal Services

3.5.1 Definition

Legal services are a subset of professional services under the WTO Services Sectoral Classification List – referred to as the 'W/120'⁶⁹ "Professional services" are listed as a sub-sector of "business services." The category of 'professional services', divided into 10 sub-sectors, encompasses the classical professions (lawyers, doctors etc.) and other services offered by professionals with specialized higher education, often these are organized in professional membership groups such as the bar associations or national medical associations which in many cases are endowed with self-regulatory functions and powers.

3.5.2 Legal services in Cambodia

The recent significant economic growth in Cambodia as well as increased inflow of foreign investment has created a growing demand for qualified providers of professional services including legal services.

The provision of legal services in Cambodia is governed by a set of laws approved in 1995: the Law on the Bar, the Internal Rule on the Bar and the Code of Ethics for lawyers amended in 2012. The first of these normative acts established the Bar association of the Kingdom of Cambodia (BAKC), the first regulatory body of the legal profession. BAKC also represents the interest of lawyers, promotes continuing education and protects the professional integrity.

A legal professional may only practice in Cambodia by becoming a BAKC member. As of 2016, there were 1'139 lawyers registered with BAKC, of them 1'045 practice within the country.⁷⁰ 485 attorney offices were registered as of August 2017, which includes 22 law firms, 315 law offices with few independent lawyers, 42 branch offices and 106 independent lawyers.⁷¹

Most of Cambodian law firms provide legal defense and advice in public and private law. Some supply services in Modes 1 and 2 to international clients but the majority of which are foreign investors or potential investors in Cambodia. In this case, consultancy is provided in corporate and investment issues, banking and finance, tax and accounting, dispute resolution, labour law, contract law, as well as assistance in registering IP assets. Some also provide real state advice and due diligence for acquisition of properties. Few have established partnerships with regional or international networks of lawyers to reach global customers.

BNG Legal, for instance, is a Cambodian leading law firm that provides legal services to facilitate investments, business and trade between Cambodia and the rest of the world.⁷² Besides the above-mentioned services, the firm also does civil law advisory by assisting foreign citizens in children inter-

⁶⁹ World Trade Organization, MTN.GNS/W/120. Available from <http://docsonline.wto.org>.

⁷⁰ World Trade Organization, Trade Policy Review Cambodia 2017, p.188.

⁷¹ Bar Association of the Kingdom of Cambodia, Attorney's Office statistics, August 2017. Available from: <http://www.bakc.org.kh/index.php/2017-07-24-08-31-33> (accessed 18 December 2017).

⁷² In country consultations

country adoption, in marriage and divorce legal counselling, as well as in immigration related issues. The firm has a strong international client's base from the United States of America, the United Kingdom of Great Britain and Northern Ireland, Europe, Australia and China. Among some of its clients stands Coca-Cola Company, to which BNG Legal advised in the direct acquisition of a local bottler; a regional agricultural conglomerate that requested counselling in the initial public offering in the Hong Kong Stock Exchange; as well as an United States of America-based radio station which BNG Legal defended in a Cambodian court. The firm has expanded its operations to Myanmar, where it has a branch.

Another example is SokSiphana&associates. It provides legal advice to private and public companies, government agencies, international energy companies and others in a wide spectrum of domestic (IP, banking and finance, dispute resolution and corporate matters) and cross-border deals and transactions. The firm is a member of Zico law, a network of independent leading law firms with presence in 17 cities across Southeast Asia and Australia. As part of Zico, the firm has been able to reach international clients and has represented multinational Asian real estate investors and developers in property development projects in Cambodia.

3.5.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Incorporation and Local Partnering Requirement

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

The sample (consulted firms) might be too narrow and additional research is needed to distill broader conclusions into the types of barriers encounters.

Possible Preferences

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

- Relax incorporation requirements for LDC providers of legal services;
- Relax or waive local partnering requirements for LDC providers of legal services.

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

The Notifications do not address specific preferences suggested above, but some reflect existing challenges.

- Four Members address legal services specifically in their notifications. These are Switzerland, United States of America, Chile, the European Union (particularly Belgium, Germany, France, Italy, Spain, United Kingdom of Great Britain and Northern Ireland and the Netherlands).
 - In the United States of America certain states partially opened Mode 3 for foreign legal consulting services - subject to an in-state office requirement, while in other states, it is subject to the association with an in-state law office requirement. This is however, less than its offers in TPP, where local partnering is required in fewer states.
 - Similarly, in European Union markets several members have local partnership requirements, some with a significant "minimum" of local participation. In France, for instance, at least 75 per cent of the partners holding 75 per cent of the shares shall be lawyers fully admitted to the Bar, if the law firm provides services in respect of French or European Union law. In Austria foreign lawyers' equity participation and shares in a law firm may not exceed 25 per cent. In Hungary, commercial presence should take the form of partnership with a Hungarian barrister or barrister's office. In Poland, foreign lawyers only have access to the legal forms of registered partnership and limited partnership. In Belgium quotas apply for appearing before the "Cour de cassation" in non-criminal cases.

- Other European Union members, such as Croatia and Spain, keep their reservations on nationality requirements for the supply of legal services in Mode 3,
- The reminder notifications relate mainly to Mode 4, where some members (e.g. Chile, India) open it to CSS, specialist and IP. Other members partially liberalize Mode 4 keeping its reservation to bar admission requirements.

3.6 Tourism Services

3.6.1 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 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 travelers, 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/120.⁷³

3.6.2 Tourism Services in Cambodia

Cambodia is a price competitive destination in the Mekong region, ranked 20 in purchasing power parity terms by WEF's Travel and Tourism Competitiveness Report.⁷⁴ Cambodia benefits from being part of the Indochina/Southeast Asia circuit— a route through a set of affordable destinations that usually includes the Lao People’s Democratic Republic, Thailand and Viet Nam. As a result most tourists spend only few days (between 4.6 and 7) in Cambodia to visit as many neighboring countries as possible in a short period of time.

Phnom Penh and Siem Reap are the main tourist hotspots, particularly attracting visitors to the Angkor Wat temple, a UNESCO World Heritage site in Siem Reap. In July 2017, Sambor Prei Kuk, a seventh-century temple in Kampong Thom region, became a World Heritage Site and is expected to attract tourist interest in the upcoming years. The coast area around Preah Sihanouk (Kampong Saom) and the cruises along the Mekong River are also a major tourist attraction.

Tourism and travel is the third largest sector in the country’s economy with a high impact on employment rates. As mentioned above obtaining reliable statistics on tourism services is challenging given the highly aggregated level at which tourism revenues are recorded. According to the World Travel and Tourism Council (WTTC), in 2016 travel and tourism services as per the CPC classification accounted for 12.2 per cent of Cambodia’s GDP and 11.4 per cent of total employment. If indirect and induced impact is also accounted, the sector contributed 28.3 per cent to the GDP and 25.9 per cent to total employment.⁷⁵ In any of both cases the contribution of the sector to Cambodia’s GDP and employment rate stands above the world average.⁷⁶

⁷³ 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.

⁷⁴ World Economic Forum, The Travel and Tourism Competitiveness Report 2017, p. 117.

⁷⁵ World Travel & Tourism Council, “Economic Impact 2017 Cambodia” in *Travel and Tourism Impact 2017 – March 2017* (London, World Travel & Tourism Council, 2017), pp. 3, 4. Available from <https://www.wttc.org/-/media/files/reports/economic-impact-research/countries-2017/cambodia2017.pdf>.

⁷⁶ Ibid, p.8.

Since 1990 the tourist sector has experienced a sustainable growth, as the country started to open up after decades of civil war. Tourist receipts increased from 18.9 per cent of total exports in 2000 to 28.6 in 2014.⁷⁷ In monetary terms, the sector's revenue accounted for USD 347 million in 2003, which grew to USD 1,585 million in 2008 and to USD 3,212 million in 2016.⁷⁸ According to the World Bank, in 2016 tourism accounted for 29 per cent of Cambodia's exports.⁷⁹

As of 2016 Cambodia has 585 travel agencies and tour operators employing over 3000 licensed guides, 89 per cent of whom are based in Siem Reap.⁸⁰ Besides tours and guides most agencies also offer air and land ticketing, hotel reservations and visa services. Some also offer cruise trip services along Kampot, Kep and Battambang, aqua expeditions and golf tourism. The vast majority of tourism and travel related services are traded through Mode 2 with foreign tourist consuming tourism services in Cambodia and organizing international conferences and events for foreign clients, such as the Johnnie Walker Cambodian Open, an Asian tour golf tournament.

Cambodia's tourist visa regime is among the most relaxed worldwide; the country was ranked fifth by WEF's Travel and Tourism Competitiveness Report in terms of entry visa requirements for a tourism visit of a limited duration from worldwide source markets.⁸¹ This contributed to the steady increase in international tourist arrivals from 3,584,307 in 2012 to 5,011,712 in 2016, the majority of them from other Asian countries. In 2016, international tourist from Viet Nam, China, Thailand accounted for 43.6 per cent of all tourist arrivals followed by the Lao People's Democratic Republic, Republic of Korea, United States of America, Japan, Malaysia and France.⁸² The vast majority of travelers go to Cambodia for holidays, leisure and reunion with relatives in the country. As of 2016, the share of international tourism is much greater than that of national tourism (81.6 per cent as opposed to 18.4).⁸³

Accommodation choices range from small family-owned enterprises to five-star internationally branded properties. During 2004–2013, the number of hotels and guesthouses more than doubled, to 2,007.⁸⁴ According to the Ministry of Tourism the hotel occupancy rate is 68.9 per cent.

3.6.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Tourism services are exported in all modes of supply but primarily in Mode 2. The interviewed Cambodian stakeholders stressed primarily supply-side constraints but also mentioned regulatory and market access challenges including those associated with the promotion of the tourism offer from LDCs, travel warnings and visa.

Barriers to the promotion of tourism services from LDCs

One of the challenges facing Cambodian 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

⁷⁷ World Bank, World Development Indicators, Data bank.

⁷⁸ Cambodia, Ministry of Tourism, *Tourism statistics Report in 2016* (Phnom Pehn, 2017). Available from http://www.tourismcambodia.org/images/mot/statistic_reports/tourism_statistics_year_new_2016.pdf.

⁷⁹ World Bank, "Balancing Act", East Asia and Pacific Economic update, October 2017 (Washington D.C., 2017), p. 11.

⁸⁰ Asian Development Bank, Tourism Sector Assessment, Strategy, and Road Map for Cambodia, Lao People's Democratic Republic, Myanmar, and Viet Nam (2016 -2018) (Manila, Philippines, 2017), p.6.

⁸¹ World Economic Forum, "The Travel and Tourism Competitiveness Report 2017:Visa requirements". Available from <http://reports.weforum.org/travel-and-tourism-competitiveness-report-2017/ranking/#series=VISAREQ>.

⁸² Cambodia, Ministry of Tourism, *Tourism statistics Report in 2016*.

⁸³ World Travel & Tourism Council, "Economic Impact 2017 Cambodia", p. 6.

⁸⁴ Asian Development Bank, *Tourism Sector Assessment*, p. 6.

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 because the 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.

An industry representative mentioned that some countries issued travel warnings after the recent arrest of the opposition leader by Cambodian authorities that had an impact on the image of Cambodia as a safe tourism destination.

Physical Market Access: Visas

Another barrier that LDC service providers, including tourist agencies and providers of tourism services, face is the difficulty to obtain entry visas to travel.

One might mistakenly assume that visas are less important for exporters of tourism services as their main service is exported in Mode 2, without them travelling. However, the ability to travel to meet clients (or potential clients), to participate in international fairs and to showcase their services abroad is key to understanding customers' needs and preferences and to concluding contracts.⁸⁵

Possible Preferences

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

- Provide direct support to LDCs and their tourism operators with respect to 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 mechanism 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 of warning;
- Regular review of travel warnings for LDCs;
- Provide space alongside the travel warning for tourism authorities of affected LDCs to comment publicly;
- Create special visa categories for *bona fide* LDC cultural professionals including providers of tourism services, with fewer conditions attached.

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

- **14 Members offered preferences in “Tourism services”.** Australia, Canada, Japan, the Republic of Korea, Norway, Thailand, Mexico, Turkey, India, Chile, Iceland, Brazil, Liechtenstein, Panama and the European Union (Belgium, Germany, Italy, France, Spain, Netherlands and all European Union). Some of these are interesting *vis-a-vis* the challenges underscored by LDC exporters, at least in principle and to some extent.
 - Canada, Iceland and Brazil explicitly open their markets to services provided by travel agencies and tour operators in Mode 3. While these do not address the particular challenges mentioned above, it is the first step in the desired direction that allows LDC providers to establish a commercial presence, get closer to their clientele and promote their services, which is at the root of LDCs concerns.

⁸⁵ 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.

- **Some 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 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) - an interesting unilateral initiative that is worth replicating as directly supports LDCs and their tourism operators in terms of marketing and information. Likewise, China offers to intensify training programs in several services, including tourism.
- **None of the notifications addresses travel warnings or travel advisories problematic.**
- **None of the notifications addresses – in relation to this sector – Mode 4 issues of physical market access (visa).**

4. Concluding Observations: Cambodia, Services Exports and the LDC Waiver

Cambodia is one of the most promising LDC economies in terms of growth, rapid development, services landscape and services export potential. The country's openness, liberal market economy, young and agile population and proximity to important markets promise further development of its services economy especially if supply side constraints such as capacity constraints, weak infrastructure challenges related to governance are duly addressed.

As other LDCs, Cambodia services exports encounter market access, national treatment and regulatory challenges in export markets (including incorporation, local partnering requirements, visas, local content requirements and access to public procurement). Most of these challenges have not yet been addressed by the notifications on preferences by WTO Members partly due to lack of attention to detail in designing preferences and partly due to the fact that most of Cambodia's key trading partners have not responded to the call for preference in the context of the LDC Services Waiver.

Some of these challenges should be addressed at the WTO, especially challenges encountered in global markets such as Europe, Australia, or North America. In its turn, the regional integration process under AFAS - ASEAN Framework Agreement on Services could provide a promising avenue especially for services exports to regional markets such as banking and professional service, and to some extent IT and related and audiovisual services.

B. Nepal

1. Introduction: Services and Services Trade

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 USD 211.3 billion.⁸⁶ 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.⁸⁷

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 urged 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.⁸⁸

⁸⁶ World Bank, World Development Indicators, Data Bank. Available from <http://data.worldbank.org/country/nepal> (accessed 6 February 2018).

⁸⁷ Klaus Schwab, The Global Competitiveness Report 2016- 2017, p. 18, 20.

⁸⁸ UNCTAD, National Services Policy Review: Nepal (Geneva, 2011), p. 2-3. Available at http://unctad.org/en/docs/ditctncd20103_en.pdf; see also South Asia Watch on Trade, Economics and Environment (SAWTEE), "Diagnostic Study of Services Subsectors and their Potential for Development/Expansion of Export Markets", paper prepared for the Ministry of Commerce and Supplies of Nepal, 2014, p. 4.

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 the Table below.

Table 3: Sectoral contribution in Nepal's GDP, 1980–2016 (% of GDP)

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.

Main exports of goods from Nepal are yarn and fibers, in particular knotted carpets, iron and steel, fruit juice, tea and spices.⁸⁹ 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 of America, respectively accounting for 9.7, 3.3, 2.8 and 2 per cent of Nepal's trade.⁹⁰

Figures suggest an overall growth in exports of goods and services from USD 1.533 billion in 2010 to USD 2.488 billion in 2014 and a sharp fall in 2015 and 2016 due to the devastating earthquake in 2015.⁹¹ A closer look at statistics reveals that services exports are driving the current growth. Merchandise exports, which grew from USD 364 million in 1995 to over USD 760 million in 2011,⁹² have decreased to 696 million in 2016,⁹³ while services exports, which initially decreased from USD 679 million to USD 386 million during the same period,⁹⁴ have rapidly recovered to USD 1430 million in 2015.⁹⁵

Despite the overall growth in export, 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 poor 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 weak and 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 1'000 Km from the Nepal-India boarder - is associated with significant shipping costs and delays.⁹⁶ Weak regulatory framework including on intellectual property rights is a major challenge facing the IT and audiovisual 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 4 below.

Box 4: 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 service 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.⁹⁷ 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

⁸⁹ UNCTAD, Trade statistics Database, UNCTADStats.

⁹⁰ European Commission, Directorate-General for Trade, Nepal, Trade with the World. Available from http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113424.pdf (accessed 7 February 2018).

⁹¹ World Bank, World Development Indicators, Data Bank.

⁹² UNCTAD, National Services Policy Review: Nepal, p. 3.

⁹³ UNCTAD, Country Profiles: Nepal, UNCTADSTAT. Available from: <http://unctadstat.unctad.org/CountryProfile/GeneralProfile/en-GB/524/index.html> (accessed 7 February 2018).

⁹⁴ UNCTAD, National Services Policy Review: Nepal, p. 3.

⁹⁵ UNCTAD, Country Profiles: Nepal, UNCTADStats.

⁹⁶ Ibid, p. 4.

⁹⁷ Nepal, the Forex Act, Section1 (2) (1962).

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.⁹⁸ 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.⁹⁹

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.¹⁰⁰ 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.¹⁰¹ This Act applies to all ‘investments’, which definition includes foreign securities, real estate and bank accounts.¹⁰² Subject to exemptions made by the government of Nepal, Nepalese citizens are prohibited from making foreign investments, including holding foreign bank accounts.¹⁰³

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 chilling effect on business, Nepalese citizens take risks and do *invest* abroad but it remains an illegal activity.¹⁰⁴

Both Acts have their roots in history and 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 considers 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.

Services

Trade in services accounted for 69.9 per cent of foreign exchange earnings in Nepal between 2004 and 2011.¹⁰⁵ 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 4 below.

Table 4: Value and Share of Exports for Different Service Subsectors in Nepal, Selected Years (USD million and per cent)

	2000	2005	2010	2015
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⁹⁸ Ibid, section 4(2).

⁹⁹ Ibid, section 5.

¹⁰⁰ Ibid, section 9A(7).

¹⁰¹ Nepal, Investment Abroad Act, Section 1(2) (1964).

¹⁰² Ibid, section 2(a).

¹⁰³ Ibid, section 3(2).

¹⁰⁴ The issue was raised in multiple discussions during the in-country consultations. See also Siromani Dhungana, “Outbound FDI: Can Nepali Businesses Go Global?”, *New Business Age*, July 9. Available from: <http://www.newbusinessage.com/MagazineArticles/view/831>.

¹⁰⁵ World Trade Organization, Trade Policy Review Nepal, WT/TPR/G/257, p.7.

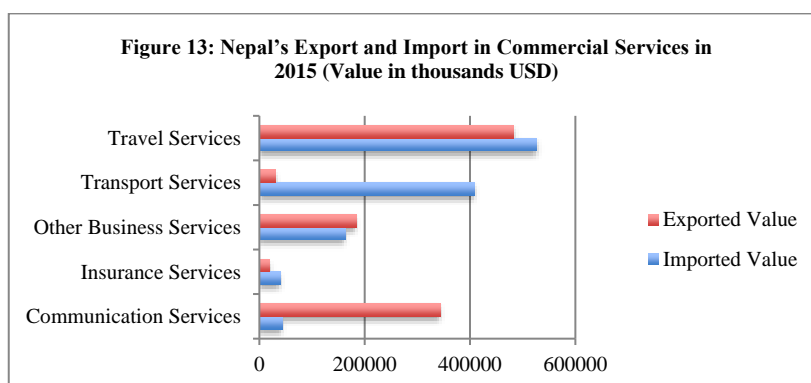
Sector	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)
Commercial Services	696.706	100	487.817	100	871.457	100	1060.299	100
Transport	61.365	8.81	32.617	6.69	39.901	4.58	31.349	2.9
Travel	157.82	22.65	131.308	26.92	344.182	39.50	483.158	45.6
Other commercial services	286.749	41.16	216.422	44.37	287.764	33.02	-	0
Communications	-	0	39.701	8.14	57.901	6.64	343.834	32.5
Construction	-	0	-	0	-	0	-	0
Insurance	-	0	3.862	0.79	0.394	0.05	18.392	1.7
Financial services	-	0	-	0	-	0	-	0
Computer and information	-	0	-	0	-	0	-	0
Royalties and license fees	-	0	-	0	-	0	-	0
Other business services	190.772	27.38	63.907	13.10	141.315	16.22	183.476	17.3
Personal, cultural, and recreational services	-	0	-	0	-	0	-	0

Sources: UNCTAD, UNCTADStat and ITC, Trade Map.

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

As mentioned in Table 4, 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 above, 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, audiovisual services as well as cultural and recreational services in particular music services, as underscored by stakeholders during the in-country consultations.

Figure 13 below 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 the Table above and the Figure below, 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 audiovisual services, which are undoubtedly significant in value and volume, do not appear in the Table above and the Figure below due to the absence of data and statistics. According to Nepal's Investment Board, IT enabled services and BPO services reported approximately US\$ 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 USD 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.¹⁰⁶ However and on the basis of in country consultations including with industry representatives, these figures appear hardly to capture a fraction of the value.



Source: ITC, Trade Map, 2018.

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.¹⁰⁷ The actual figure is arguably less as data on exports of computer

¹⁰⁶ Calculations based on UNCTADStat data.

¹⁰⁷ Pyakuryal, p. 15.

and related services, which is primarily destined to Europe and the United States of America, 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, 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.¹⁰⁸

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).

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) 2016.¹⁰⁹

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”.*¹¹⁰

Sectoral policies and strategies especially for sectors of export interest like ICT were developed by government and relevant agencies over the past years.¹¹¹ 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.

2. Cross-Sectoral: Mode 4

2.1 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. Thus, this section assesses services supplied in Mode 4 by Nepalese

¹⁰⁸ World Bank, Employment in services (% of total employment), Data Bank. Available from <https://data.worldbank.org/indicator/SL.SRV.EMPL.ZS?locations=NP> (11 February 2018).

¹⁰⁹ Nepal, Ministry of Commerce, Nepal Trade Integrated Strategy, p. 2. Available from http://www.moc.gov.np/downloadfile/NTIS%202016_1492763963.pdf.

¹¹⁰ Ibid, p.14

¹¹¹ See Nepal, Ministry of Information and Communication, National Information and Communication Technology Policy (Kathmandu, 2015).

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.

2.2 Mode 4 Services Exports From Nepal: An Overview

- **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 2008/9.¹¹² In 2011, 1.92 million Nepalese lived abroad for more than six months, around 8.3 per cent of the country's total population.¹¹³ 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.¹¹⁴

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 people, 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.¹¹⁵

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 Nepal¹¹⁶ followed by Gulf countries, Malaysia and the Republic of Korea.¹¹⁷

Nepal concluded bilateral labour mobility agreements with Jordan, United Arab Emirates, Republic of Korea, Bahrain, Israel, Qatar and Japan and is negotiating agreements with Saudi Arabia and Malaysia. 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, raking first globally in terms of remittances to GDP.¹¹⁸ This share has doubled from 14.9 per cent in 2005/06.¹¹⁹ 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.¹²⁰

- **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

¹¹² ILO Country Office for Nepal, "Nepal Labour Market Update", ILO decent work (January 2017), p. 3.

¹¹³ Nepal Institute of Development Studies (NIDS) and Swiss National Centre of Competence in Research (NCCR), Nepal Migration Year Book 2011 (Kathmandu, 2012).

¹¹⁴ Nepal, Department of Labour, 2012. Available from <http://dol.gov.np/>.

¹¹⁵ In country consultations with Nepal Association of Foreign Employment Agencies (NAFEA)

¹¹⁶ World Bank, "Large Scale Migration and Remittance in Nepal: Issues, Challenges and Opportunities", Report, No. 55390-NP (n.p., World Bank, 2011).

¹¹⁷ SAWTEE, p. 58.

¹¹⁸ World Bank, Personal remittances, Data Bank. Available from <https://data.worldbank.org/indicator/BX.TRF.PWKR.DT.GD.ZS?locations=NP> (accessed 27 December 2017).

¹¹⁹ ILO Country Office for Nepal, p.2.

¹²⁰ SAWTEE, p. 53.

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.

3. Sectoral Review

3.1 IT and IT related Services

3.1.1 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 UN’s 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 discussion below 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.

3.1.2 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,¹²¹ Nepal’s IT and IT-enabled BPO services are the fastest growing services exports, similar to neighboring 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

¹²¹ ITU, “IDI 2017 Rank: LDC”. Available from <https://www.itu.int/net4/ITU-D/idi/2017/#idi2017byregion-tab>; ITU, *Measuring the Information Society Report 2016*, p.56.

inclusive and sustainable development.¹²² 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.¹²³

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.¹²⁴ The vast majority of them 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.¹²⁵

About 20 per cent of the Nepal's IT enterprises possess quality certification such as ISO or are recognized as proficient under the Capability Maturity Model Integration (CMMI) -¹²⁶ a private standard that often is required, for example, in order to have access to United States of America's 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 off shore operations for Nepalese owned companies abroad including in the United States of America; 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 operations in Kenya, the United Kingdom of Great Britain and Northern Ireland and the United States of America.¹²⁷ 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 of America, Australia, Kenya and is looking into other African markets including Ghana.

With an operation in the United States of America (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

¹²² Nepal, Ministry of Commerce, Nepal Trade Integration Strategy 2016 (Kathmandu, 2016), p.15.

¹²³ Nepal's Invest Board calculates that yearly approximately 5500 Nepalese graduates are employed in the IT sector. See Nepal, Investment Board, ICT Sector Profile (Kathmandu, 2017), p.4.

¹²⁴ Ibid.

¹²⁵ Comparison of company profiles on the basis of company websites listed in the 'Everest 10 Top IT Companies in Nepal 2016'. Available from <http://everestlist.org/top-10-software-companies-of-nepal-2016/>. The Everest ranking is done on the basis of company's number of employees and 10 weeks of comprehensive survey and research work.

¹²⁶ Pukar Thapa, "Assessment of Software Process Improvement Based on Capability Maturity Model Integration in Nepalese Software Enterprises", 2016, p. 13. Available from http://www.academia.edu/31042814/ASSESSMENT_OF_SOFTWARE_PROCESS_IMPROVEMENT_BASED_ON_CAPABILITY_MATURITY_MODEL_INTEGRATION_IN_NEPALESE_SOFTWARE_ENTERPRISES.

¹²⁷ Information generated in discussions with company representatives during the in country consultations.

client base in the healthcare sector in the United States of America and the United Kingdom of Great Britain and Northern Ireland markets.¹²⁸ 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 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.¹²⁹ The company serves clients in United Republic of Tanzania, Republic of Moldova, Indonesia, the United States of America, Canada, United Kingdom of Great Britain and Northern Ireland, 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 of America, the United Kingdom of Great Britain and Northern Ireland, Germany, Canada and Australia.¹³⁰

3.1.3 Barriers encountered, possible preferences, actual preferences notified

Barriers Encountered

Stakeholder reported several challenges to their exports including supply-side challenges such as those related to international payments, data protection and IP 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 the United States of America; Canada; Australia; the United Kingdom of Great Britain and Northern Ireland; Hong Kong, China; Pakistan; Republic of Korea; and Kenya, 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 of America-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 of America for few months. An L-1 visa, enables intra-corporate transferees of an international company with offices in the United States of America and abroad - to relocate to the company's office in United States of America 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 of Great Britain and Northern Ireland 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.

¹²⁸ Information generated in discussions with company representatives during the in country consultations

¹²⁹ Information generated in discussions with company representatives during the in country consultations

¹³⁰ Information generated in discussions with company representatives during the in country consultations

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 involves data transfer in sensitive areas such as health related data or financial data to foreign providers especially those operating in jurisdictions with weak IP 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 Members do not need the Waiver to grant preferences for LDC providers as explained in Box 5.

Box 5: Government Procurement under the GATS and the LDC 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:

- (iii) the services are purchased by governmental agencies; and
- (iv) 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 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.¹³¹

¹³¹ Note, however, that unlike under the LDC Services Waiver, which requires any preferences to be extended to all LDCs on a non-discriminatory basis, preferential treatment for services procured for governmental purposes within the definition of GATS Article XIII may distinguish among LDCs.

It is not clear whether any such preferential treatment is currently extended to LDCs by any 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 above 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 of America-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 of 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.

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

None of the preference notifications directly address the above-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 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 TPP 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 IP.
- 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 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 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.

3.2 Audiovisual Services

3.2.1 Definition

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

The focus of the in-country consultations and thereby in this paper is on audiovisual services. Under the W/120 definition audiovisual 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.

3.2.2 Audiovisual Services in Nepal

The rapid advancement in computer technologies, telecommunication infrastructure and the increase in broadcasting hours by cable, satellite TV 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 USD 244 billion.¹³² The United States of America made the greatest contribution to the industry's output with about a 38 per cent market share. Canada, Japan, China, France, United Kingdom of Great Britain and Northern Ireland, Republic of Korea and Germany followed the United States of America as the major animation markets.

Large multinational studios, TV broadcast companies and cable channel companies influence the global animation industry. They are engaged in all production and distribution activities, as well as in DVD sales and intellectual property licensing.¹³³ 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. Coproduction has particularly become the most common strategy. Some countries subsidize their national film industries, including animation, increasing multinational studios' interest to partner with local studios and benefit from production subsidies. China and India have become popular co-production partners of studios in the United States of America, Canada and Europe.¹³⁴

The digital character of the animation industry makes it feasible for multinational studios to reduce costs by outsourcing parts of the production process. North American and European film and television producers lead the outsourced digital animation production market. Asia has particularly become an attractive destination. China, Taiwan Province of China, Japan and the Republic of Korea used to be the main outsourcing destination; but over the past decade India, the Philippines, Indonesia, Thailand and Viet Nam have emerged as new outsourcing locations. Today about 90 per cent of all American television animation is produced in Asia.¹³⁵

The South Asian outsourced digital animation production market is mainly led by India, followed by Nepal despite the industry's infancy stage in the country.¹³⁶ Official data on the current number of animation studios in Nepal is not available. However most of them specialize in 2D and 3D animation, as well as in digital filming and visual effects. These include 2D and 3D animation for feature films, television, commercials and public service announcements.¹³⁷

¹³² Research and Markets, "Press release of the Global Animation Industry Strategies Trends & Opportunities Report 2017", 25 October 2017. Available from <https://globenewswire.com/news-release/2017/10/25/1153106/0/en/Global-Animation-Industry-Strategies-Trends-Opportunities-Report-2017.html>.

¹³³ *Ibid.*

¹³⁴ *Ibid.*

¹³⁵ 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>.

¹³⁶ John A. Lent, "Animation in South Asia", South Asia Film and Media, vol. 1, No. 1 (September 2009), p. 113.

¹³⁷ Comparison of companies' profiles in their websites.

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 of America including Disney studios, the United Kingdom of Great Britain and Northern Ireland and Japan.¹³⁸ 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, TV content, RD 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 Singapore, France, Pakistan and the United States of America.¹³⁹ 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 PC, CGI animation, commercials and content creation for virtual reality.

3.2.3 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 IP 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) audiovisual 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

¹³⁸ In country consultations.

¹³⁹ In country consultations.

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.¹⁴⁰ 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 IP 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 above challenges encountered would thus include the following:

- Create special visa categories for *bona fide* LDC cultural professionals, with less 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).
- Reduce local content requirements to allow for greater shares of inputs from LDCs (e.g. by allowing for X% LDC inputs to qualify as local content for purposes of screen quotas or subsidies).
- 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% for LDCs, while maintaining 20% minimum for all others).
- 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.

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

While many of the above-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 Members – Taiwan Province of China and the United States of America – offer preferences in the audiovisual sector.** The United States of America in particular underscores its strong commitment to open markets for audiovisual by providing for near-full market opening, especially in motion picture and video-related subsectors, complementing its existing GATS offer. The United States of America, 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 of America 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).**

3.3 Music Services

3.3.1 Definition

¹⁴⁰ 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.

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

As for entertainment services, these include theatre, live bands 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.

3.3.2 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.¹⁴¹

Among the most popular musicians from Nepal are Sur Sudha and Sukarma, two bands that combine traditional instruments such as flute, tabla 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 live performance tours in the United States of America and in Europe, Trikaal, and Ani Choying Drolma; a UNICEF Goodwill Ambassador.¹⁴²

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 audiovisual 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 of America, 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 figures 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 of America on a P3 visa. In mid-2013 the United States of America 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 2016.¹⁴³

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.¹⁴⁴

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

¹⁴¹ Outcome of authors' interviews and web-search on CD sales, track sales and festival and tour performances.

¹⁴² Ibid.

¹⁴³ United States of America 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>.

¹⁴⁴ In-country consultations and review of the company's profile. Available from <http://www.nepalmusiccenter.com/>.

International Federation of Phonographic Industries and a strong lobbyist for the protection of intellectual property rights in Nepal.

3.3.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Stakeholder reported various supply side constraints including piracy (weak IP 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 IP 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 required from each member of a music or dance group individually (something reportedly practiced by some Schengen countries, for example) 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 Labor 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 (...)".¹⁴⁵ 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.

Social security deductions in the export market

Stakeholders further reported that musicians providing their services in mode 4 are subjected to deductions of social security or related charges ('payroll taxes') in countries where they perform including France and Italy. These charges are often not linked to any entitlements due to the temporary nature of the mode 4 activity. As a result the charge operates as a (lost) tax burden.

Withholding taxes: Income tax deductions

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

¹⁴⁵ 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.

countries the procedures to reclaim tax deductions is cumbersome and LDC musicians do not succeed reclaiming their payments.

IP protection

Industry representatives of the music-recording sector underscored challenges related to piracy and lack of IP 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.

Preferences 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 Waiver.

- **Eight Members offer preferences in “Entertainment Services”, the main sector for cultural performers. These are Hong Kong, China; Japan; Republic of Korea, Taiwan Province of China; Mexico; India; Chile and Iceland.** Some of these are interesting, at least in principle and to some extent.
 - The Republic of Korea, Mexico, India, Chile and Iceland 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 (IPs) and Contractual Service Suppliers (CSS) – most musicians professionals do not have masters 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.**

3.4 Tourism Services

3.4.1 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/120.¹⁴⁶

3.4.2 Tourism Services in Nepal

Nepal’s price competitiveness, astonishing natural landscape and relaxed visa requirements makes it an attractive destination for adventurous travelers. 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.¹⁴⁷ Moreover, it is above the South Asian average in terms of safety and security, health and hygiene, human resources and labour market.¹⁴⁸

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 a particular 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.¹⁴⁹ 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 2015¹⁵⁰. 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.¹⁵¹ In 2015, Nepal’s tourism sector accounted for over 45 per cent of all commercial services exports.¹⁵²

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.

¹⁴⁶ 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.

¹⁴⁷ World Economic Forum, *Travel and Tourism Competitiveness Index*, p.41, 46, 255.

¹⁴⁸ *Ibid.*, p.22.

¹⁴⁹ Compilation on the basis of World Travel and Tourism Council (WTTC) statistics for tourism, excluding other travel.

¹⁵⁰ Nepal, Ministry of Culture, Tourism & Civil Aviation, *Nepal Tourism Statistics 2016* (Kathmandu, 2016), p. 7 -11.

¹⁵¹ UNCTAD, *National Services Policy Review Nepal*, p. 57.

¹⁵² World Bank, *World Development Indicators*, Data Bank. Available from <http://databank.worldbank.org/data/reports.aspx?source=world-development-indicators..>

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.¹⁵³

All sectors grew rapidly over the period between 2005 and 2011, though rafting and air adventure services emerged only recently with significant growth since 2010.¹⁵⁴

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.¹⁵⁵ In 2017, hotel's occupancy rate reached 60 per cent, the highest since April 2015.¹⁵⁶

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 2016.¹⁵⁷ The share of domestic tourism was much greater than that of international tourism (65.6 per cent as opposed to 34.4 per cent).¹⁵⁸

These statistics, however, go beyond the services provided by hotels, restaurants, travel agencies and tour guides, as explained above. At a more disaggregated level the Nepal Rastra Bank reports that travel agency exports accounted for 381 million NPR in 2011 (USD 4 million) while trekking and rafting agency services exports amounted to NPR 1'587 million (USD 16.8 million).¹⁵⁹ 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 2016.¹⁶⁰ The majority of travelers 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.¹⁶¹ 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 of America and the United Kingdom of Great Britain and Northern.¹⁶² In 2016, the share of tourist arrivals from these countries accounted for more than 50 per cent of the total number of tourist arrivals.¹⁶³ These top countries also include the countries responsible for the greatest share of travel spending at a global scale.

3.4.3 Barriers encountered, possible preferences, actual preferences

¹⁵³ Nepal, Ministry of Finance, *Economic Survey: Fiscal Year 2016/17* (Kathmandu, 2017), paras. 9.63–9.65.

¹⁵⁴ *Ibid.*

¹⁵⁵ Federation of Nepalese Chambers of Commerce and Industry (FNCCI), "Tourism: Sector Overview". Available from <http://www.fncci.org/tourism-154.html>.

¹⁵⁶ "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/>.

¹⁵⁷ 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>.

¹⁵⁸ *Ibid.*, p.6.

¹⁵⁹ SAWTEE, p. 69.

¹⁶⁰ In country consultations with Nepal Tourism Board. See also Nepal, Ministry of Finance, para. 9.56.

¹⁶¹ *Ibid.*

¹⁶² *Ibid.*

¹⁶³ Nepal, Ministry of Finance, para. 9.54.

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 USD 40 million; the latter does not apply to domestic tour operators and travel agencies.¹⁶⁴

Possible Preferences

Possible measures that could be devised as preferences for LDCs under the Waiver to address the above 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;

¹⁶⁴ Ibid.

- Red telephone' consultation mechanism 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.

Preferences 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.

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

4. Concluding Observations: Nepal, Services Exports and the LDC Waiver

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. The task is 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.

While traditional services, such as tourism, are primarily focused on attracting tourist arrivals from neighboring countries, other services including IT/BPO and animation services are reaching out to a remote clientele in Europe and the United States of America. Depending on the market and the sector, Nepal’s services face various challenges in export markets. Some of these can be addressed by multilateral instruments such as the Waiver while others would benefit from regional integration processes and initiatives.

C. Senegal

1. Introduction: Services and Services Trade

Senegal is a West African country bordered by The Gambia, Guinea, Guinea Bissau, Mali, Mauritania and the Atlantic Ocean. With a population of around 15.4 million, Senegal is a key political and economic hub in the region. It is a member of the Economic Community of West African States (ECOWAS), The West African Economic and Monetary Union (UEMOA/WAEMU), the African Caribbean and Pacific Group of States (ACP), the African Union (AU) and the African Development Bank Group (AfDB), among others. Services matter greatly for Senegal. It has multiple vibrant services sectors, an outward-looking, mobile population, and a strong impetus towards modernization, including of infrastructure and policies relevant to services. The country's overall flagship strategy "*Plan Sénégal Emergent*" (PSE) refers prominently to services, and the Ministry of Trade¹⁶⁵ and its *Direction du Commerce Extérieur* (DCE) makes every effort to engage development partners, including UNCTAD, the WTO and other multilateral agencies, in its efforts to develop policies relevant to services trade and services exports in particular.

The Economy – A Snapshot

After a period of modest economic growth, the Senegalese economy has experienced an accelerated growth in the past two years, reaching 6.5 per cent. An increased in agricultural and industrial exports volumes is the main contributor to this growth.¹⁶⁶

Agriculture contributes around 17 per cent to the GDP. The sector is primarily dominated by food farming, which in 2016 grew 12.8 per cent with respect to the previous year. However, this marks a deceleration in the sub-sector's growth, as in 2015 it grew 35.4 per cent. Likewise, industrial agriculture grew 10.6 per cent in 2016, a sharp decrease compared to the 2015 growth of 20.9 per cent. The livestock sub-sector, in turn, rose by 5.7 per cent in 2016, compared to 4.8 per cent in 2015, mainly due to the improved performance of poultry and milk production.¹⁶⁷ Senegal's primarily agricultural exports include soups and broths, cigars, raw ground-nuts, rice and malt extract. Mali is the main export market (17 per cent), followed by the European Union (15 per cent), Switzerland (10.2 per cent), India (7.9) and Ivory Coast (5.1 per cent).¹⁶⁸ It is worth noting that despite the economic contribution of agriculture, the production base still narrow, making the economy vulnerable to shocks, especially to climate hazards, as the sector is mainly dependent on rainfall.

Industry contributes 23.2 per cent to the GDP. The sector is primarily focused on phosphoric acid and fertilizers production. Extractive industries share 2.6 per of the GDP and are mostly export-oriented. Thus, the country's main industrial exports are gold, petroleum oils other than crude, cements and phosphate. In the past years, there has been an increased development of the manufacturing sector, marked by rising exports products in textile and clothing, footwear and machinery.¹⁶⁹ Despite the overall growth of the industrial sector, its potential is been drawn-back by the lack of energy management in the country.

Services and Services Trade

As illustrated in Table 5, services are the main contributor to the GDP, however its share has remained largely unchanged for the past two decades. Transport, financial services, hotel and restaurants, and real estate activities are the main services sub-sectors. In recent years, transport has been the main contributor to the modest growth of services. The sub-sector grew by 12 per cent in 2016 and 9.5 per cent in 2015, mainly due to investments in ports, expansion of road network and renewal of the public transport fleet. Commercial activities, in turn, increased by 5 per cent in 2015, compared to 4.4 per cent in 2014.¹⁷⁰

¹⁶⁵ Ministère du commerce, du secteur informel, de la consommation, de la promotion des produits locaux et des PME.

¹⁶⁶ World Bank, "Senegal: Country Overview", 10 October 2017. Available from <http://www.worldbank.org/en/country/senegal/overview>.

¹⁶⁷ Toussaint Houeninvo, Khadiatou Gassama, Isiyaka Sabo, African Development Outlook: Sénégal (n.p., AfDB, OECD, UNDP, 2017), p.4.

¹⁶⁸ World Trade Organization, Senegal: Trade Profile. Available from <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Country=SN&Language=F> (accessed 9 February 2018).

¹⁶⁹ International Monetary Fund, "Senegal: Selected Issues", IMF Country Report, No. 17/2 (Washington D.C., 2017). p.23.

¹⁷⁰ Toussaint Houeninvo, Khadiatou Gassama, Isiyaka Sabo, African Development Outlook: Sénégal, p.4.

Table 5: Sectoral contribution in Senegal's GDP, 1980–2016 (% of GDP)

Sector	1980	1990	1995	2000	2005	2010	2015	2016
Agriculture	20.09	19.9	21	19.14	16.81	17.46	16.9	17.46
Industry	20.07	22.1	23.7	23.23	23.63	23.36	23.8	23.2
Services	59.83	57.9	55.2	57.6	59.56	59.17	59.26	59.25

Source: World Bank, World Development Indicators.

The economic importance of services has arguably not translated fully into Senegal's export portfolio and export performance. The country is a net importer of services. According to the IMF the main reasons for it is that the sector is mainly composed of "non-tradables" and that the scope for services with high productivity to grow is limited by the predominance of informality.¹⁷¹

Despite services trade statistics generally and in LDCs in particular are notoriously incomplete, unreliable and sometimes misleading (see Box 1), some observations may nonetheless be helpful in illustrating Senegal's situation for purposes of this paper.

Trade in services accounted for 18.1 per cent of the GDP in 2014, which is higher than the Sub-Saharan regional average of 10.6 per cent in the same year¹⁷². As mentioned before, Senegal remains a net importer of services, but with exports of commercial services slowly increasing in an average of 3.4 from 2009 to 2014¹⁷³ (from USD 904'748'842.5 in 2009 to USD 1'162'231'616.7 in 2014 – latest data available¹⁷⁴). While the overall services trade balance is increasing negatively, the trade balance of some sectors is positive, including travel, telecommunications, business, construction and personal, cultural and recreation services.¹⁷⁵

The main sub-sectors for exportation of commercial services, as illustrated in Table 6 – other than travel or communication, by far the biggest contributors in terms of recorded statistical value – are transport, business, construction and computer information services. It is worth noting that data set in Table 6 does not capture informal transactions in services ranging from housekeeping to telemedicine and construction, and thus, figures may be inflated.

Table 6: Value and Share of Exports for Different Commercial Service Subsectors in Senegal, Selected Years (USD million and percent)

Sector	2012		2014	
	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)
Commercial Services	1080.134	100	1162.232	100
Transport	126.062	11.67	148.388	12.77
Travel	407.057	37.69	422.964	36.33
Other commercial services	-	0	-	0
Communications	224.039	20.74	274.490	23.62
Construction	68.510	6.34	57.514	4.95
Insurance	16.697	1.55	14.436	1.242
Financial services	11.277	1.04	12.779	1.10
Computer and information	23.559	2.18	21.727	1.87
Royalties and license fees	3.389	0.31	3.865	0.33
Other business services	185.507	17.17	188.237	16.19
Personal, cultural & recreational services	0.161	0.01	1.555	0.134

¹⁷¹ International Monetary Fund, p.7.

¹⁷² World Bank, Trade in services (%of GDP), World Development Indicators. Available from <https://data.worldbank.org/indicator/BG.GSR.NFSV.GD.ZS?end=2014&locations=ZG&start=1977> (accessed 12 February 2018).

¹⁷³ UNCTAD, *Statistical Tables on Least Developed Countries* (n.p., 2016), p.19. Available from http://unctad.org/en/PublicationsLibrary/lcd2016_Stats_en.pdf.

¹⁷⁴ World Bank, Commercial services exports (current US\$), Data Bank. Available from <http://databank.worldbank.org/data/reports.aspx?source=2&country=SEN> (accessed 9 February 2018).

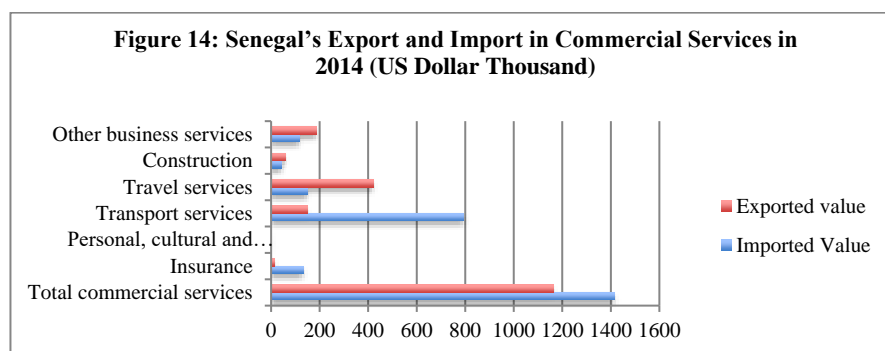
¹⁷⁵ ITC, Trade Map. Available from [https://www.trademap.org/\(X\(1\)S\(jg5crf55u5ulyk3a1opdhny\)\)/lci/Service_SelCountry_TS.aspx?nvpm=1686||||S00|1|3|1|3|2|1|5|1|1](https://www.trademap.org/(X(1)S(jg5crf55u5ulyk3a1opdhny))/lci/Service_SelCountry_TS.aspx?nvpm=1686||||S00|1|3|1|3|2|1|5|1|1) (accessed 9 February 2018).

Source: ITC, Trade Map.

Note: The shares in the above table have been calculated after excluding “Government services n.i.e.”

Senegal also exports services in other sectors such as education, IT, professional services (mainly health related) or audiovisual services. The limited representation of these sectors in Table 6 does not reflect the absence of current exports, but rather the lack of statistics and data able to capture the flows, and to disaggregate what is recorded.

With the same general caveat in mind Figure 14 provides an impression of the relative weight values of export and import in the some services sectors and sub-sectors.



Source: ITC, Trade Map.

Available data suggests that France is Senegal’s main services trading partner, followed by Japan, Sweden, Belgium, the United States of America, Finland and India. If counting bilateral flows of services (export and import), France is particularly the main partner for trade in insurance, financial, computer and information, and other business services.¹⁷⁶ It is worth noting that this list is indicative and may not fully reflect the real trade flows, as statistics only capture trade in selected services,¹⁷⁷ but do not include other sectors of importance to Senegal, such as education, audiovisual or entertainment. Likewise, this data does not capture trade flows with other African countries (except for South Africa).

With regards to employment, 51.4 per cent of the labour force works in the agriculture sector. However, services are the second largest employer, reaching 27.9 per cent in 2017.¹⁷⁸ Services’ share of total employment is recovering in the past years after falling dramatically in 2010. While from 1991 to 2006 services contribution to employment grew steadily reaching 43.1 per cent in 2006, it experienced a sustain decrease in the following four years accounting for only 23.5 per cent of total employment in 2010. Since then, services contribution to employment and job creation has been growing, reaching the aforementioned share of 27.9 per cent in 2017.¹⁷⁹

2. Mode 4 and temporary business migration: A key concern for Senegal

¹⁷⁶ Information provided during the in-country consultations based on OECD-WTO Balanced Trade in Services Dataset (Ba Tis).

¹⁷⁷ Namely construction, insurance, banking, computer and information, royalties and fees and other business services.

¹⁷⁸ World Bank, Employment in Services (% of total employment), Data Bank. Available from <https://data.worldbank.org/indicator/SL.SRV.EMPL.ZS?locations=SN> (accessed 9 February 2018).

¹⁷⁹ World Bank, Employment in Services (% of total employment), Data Bank. Available from <https://data.worldbank.org/indicator/SL.SRV.EMPL.ZS?locations=SN> (accessed 9 February 2018).

2.1 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’. It is worth recalling, for good order, that 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.

This section ultimately focuses on trade in services, and hence services supplied in Mode 4 by Senegalese providers, as a subset of the broader group of (temporary) economic migrants from Senegal. This should be kept in mind when considering this section—particularly where reference is made to data on economic migration, which encompasses (much) more than Mode 4 exports.

2.2 Mode 4 Services Exports from Senegal: An Overview

Senegal is known as a vibrant exporter of people. Most economic migrants from Senegal seek employment abroad, often in agriculture and manufacturing, and those engaged in services industries (from hospitality to retail to health services) would often not fall under the definition of Mode 4 as local employers in the host countries employ them. However, others qualify as intra-corporate transferees (e.g. communication, call center management and staff, staff of education institutes’ foreign branches), contractual service suppliers working for Senegal-based service companies supplying services abroad (e.g. dance troupes, film crews) or independent professionals (e.g. veterinarians), hence Mode 4 suppliers. These supplies in Mode 4, therefore, should be seen both as an integral element of the bigger picture of Senegalese labour mobility and as a distinct feature meriting special attention under trade in services arrangements – including the WTO LDC Services Waiver.

Overall Migration Data

According to the latest demographic census, from 2008 to 2013 around 164,901 Senegalese were living abroad for at least six months, which accounted for 1.2 per cent of the population in 2013. However, a study from the International Centre for Migration Policy Development (ICMPD) and International Organization for Migration (IOM) estimates that if comparing the census with diplomatic and consular posts data, as of 2013, 3 to 4 million of Senegalese have migrated. This number may be even larger given the importance of irregular migration.¹⁸⁰

The majority of Senegalese living abroad were young males aged between 20 and 34 years. There is some disagreement as to the main destinations. The census reported that the main destinations were Europe (44.5 per cent), particularly France, Italy and Spain, followed by West Africa (27.5 per cent) and Central Africa (11.5 per cent). ICMPD and the IOM, on the other hand, reported that the majority migrated to other African countries and only 195’990 moved to Europe. The data does not include statistics of Senegalese migrating to the United States of America, estimated to have been around 60’000 in 2010.¹⁸¹

Migration Management and Bilateral Agreements

The demographic census also reported that 73.4 per cent of the above-mentioned population temporarily migrated for work purposes.¹⁸² Some of this migration was channelled through several initiatives and projects implemented by the Government. In 2008, the National Commission of Job Offers was established with the responsibility of receiving and circulating job offers from partner countries, those with which Senegal has bilateral labour agreements, such as France or Spain.¹⁸³

¹⁸⁰Alexandre Devillard, Alessia Bacchi and Marion Noack, “Country Chapters - Senegal” in *A Survey on Migration Policies in West Africa*, Alexandre Devillard, Alessia Bacchi and Marion Noack, eds. (Vienna, ICMPD; Dakar, IOM, 2015), p. 276. Available from http://www.un.org/en/development/desa/population/migration/events/other/workshop/2015/docs/Workshop2015_Senegal_Migration_Fact_Sheet.pdf.

¹⁸¹Ibid.

¹⁸²Senegal, Agence Nationale de la Statistique et de la Démographie, “Migration et Urbanisation” in *Rapport definitive RGPFAE 2013* (Dakar, Ministère de l’Economie, des Finance et du Plan, 2014), p.248.

¹⁸³Alexandre Devillard, Alessia Bacchi and Marion Noack, “Country Chapters - Senegal”, p.283.

In 2006 Senegal and France concluded the Pact on concerted management of migration, which entered into force in 2008. It facilitated labour and student mobility between both countries. The pact eased visa procedures for businessmen, intellectuals, academics, scientists, traders, lawyers, high level sportsmen and artists, who actively participate in economic, trade, professional, scientific, academic, cultural and sports relations between both countries.¹⁸⁴ In addition, the pact established a quota of 1000 persons per year for young professionals from both countries applying for temporary work permits of less than 12 months, with the possibility of a six-month extension.¹⁸⁵

Two agreements on seasonal labour migration were also concluded with Spain in 2006 and 2007 respectively. Pursuant to the agreement, the Spanish Embassy in Dakar disseminated job offers to Senegalese authorities. Initially, the National Agency for the Promotion of Youth Employment pre-selected the candidates, who were finally selected and recruited by Spanish employers, but later, the National Commission of Job Offers followed up on the process. The agreement granted a quota of 2700 job places in the fishery and agricultural sectors.¹⁸⁶ As of 2014, several Spanish companies and multinationals have conducted recruitment missions in Senegal under this agreement. Around 4,000 Senegalese have been employed per year on temporary one-year visas.¹⁸⁷ Furthermore, Spanish trade unions and the National Confederation of Workers of Senegal concluded an agreement to provide vocational training. With the assistance of the ILO several workers in the fields of hospitality and agriculture were trained under this program.

Senegal has also signed similar agreements with Morocco (1964) and Mauritania (1972) facilitating workers' mobility between both countries. An agreement was concluded with Gabon (1982) dealing with Senegalese education workers placement. Gabon has not ratified yet the agreement, however cooperation mechanisms have been implemented. Two additional agreements were concluded with Saudi Arabia (1988) and Kuwait (1992) organizing the placement of Senegalese migrant workers in the construction sector.¹⁸⁸

Skilled and Unskilled Migration: Mode 4

While the bigger share of economic migration from Senegal seems to be taken by low-skilled young people seeking employment abroad, there is also a significant migration of higher-skilled labour, not least in the health sector. According to the National Agency of Statistics and Demography, 24.1 per cent of total migrants in 2010 were skilled workers.¹⁸⁹ As of 2000, 43 per cent of all Senegalese medical specialists and 26.9 per cent of nurses born in the country were working in OECD countries.¹⁹⁰ Despite the fact that the latest comprehensive data available is almost twenty years old, the phenomenon appears to continue to be relevant.¹⁹¹

3. Sectoral Review

3.1 Creative Industries: Entertainment and Audiovisual Services

3.1.1 Definition

“Creative industries” is an emerging concept without a single definition. It involves a group of activities that “are intensive in creative skills and can generate income through trade and intellectual property

¹⁸⁴ France, Accord relatif à la gestion concertée des flux migratoires entre le Gouvernement de la République Française et le Gouvernement de la République du Sénégal (2009), arts. 2 and 3.32.

¹⁸⁵ Ibid, Avenant, art.2.1.

¹⁸⁶ Workpermit.com, “Spain to issue 2,700 work permits for Senegal migrants”, 11 December 2007. Available from <http://workpermit.com/news/spain-issue-2700-work-permits-senegal-migrants-20071112>.

¹⁸⁷ Sorana Toma, “Policy and Institutional Frameworks - Senegal Country Report”, INTERACT RR, 2014/16, (n.p., European University Institute, 2014), p.9. Available from http://cadmus.eui.eu/bitstream/handle/1814/33213/INTERACT_RR_2014%2016_.pdf;sequence=1.

¹⁸⁸ Alexandre Devillard, Alessia Bacchi and Marion Noack, “Country Chapters - Senegal”, p.284.

¹⁸⁹ Senegal, Agence Nationale de la Statistique et de la Demographie, “Migration Internationale” in *Situation Economique et Sociale du Senegal en 2011* (Dakar, Ministère de L'économie et des Finances, 2013), p.50.

¹⁹⁰ Data from Circa 2000 in Jean-Christophe Dumong and Pascal Zurn, “Immigrant health workers in OECD countries in the broader context of highly skilled migration” in *International Migration Outlook*, Sopemi eds. (n.p., OECD, 2007), p.214. Available from: http://www.who.int/hrh/migration/2007_annual_report_international_migration.pdf?ua=1.

¹⁹¹ See Lisa Schelin, “Senegal worried about growing ‘Brain Drain’”, *VOA*, 2 April 2010. Available from <https://www.voanews.com/a/senegal-worried-about-growing-brain-drain--89835807/153977.html>.

rights”.¹⁹² Thus, it comprises a range of services from arts performance (music, dance and theater) film production, broadcasting, digital animation, video games to architectural and advertising services.

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

The sub-categorization under “Entertainment services” has seen some significant evolution since the provisional CPC was drawn up in 1991, still acting as the reference document for the WTO’s W/120 list. There the relevant services are subdivided into in particular “Theatrical producer, singer group, band and orchestra entertainment services” and “Services provided by authors, composers, sculptors, entertainers and other individual artists”. (Later versions of the CPC go into significantly more detail and would appear to more accurately reflect the reality of the various services involved.) In the case of Senegal Mode 4 supply through the live performance of music artists is particularly relevant.

3.1.2 Creative industries in Senegal: Entertainment and Audiovisual Services

Senegal has a dynamic cultural sector enriched by its vast heritage. In 2012, the country exported US 6.31 million worth of cultural goods. 42 per cent of which was exported to other African countries, while 41 per cent to Oceania and 16 per cent to Europe.¹⁹³ Between 2003 and 2012 “Audio Visuals” were the creative goods exports that grew the most after “Art Crafts”,¹⁹⁴ which in turn gives an indication that the supply of audiovisual services also increased during the same period. Unfortunately, recent data on creative services exports are not available. (The apparently latest available figures report that as of 2003 exports of cultural services were worth US 2.14 million.)¹⁹⁵

Entertainment services in Senegal

Entertainment services in Senegal have traditionally been focused on Senegal’s music industry. According to the Senegal’s copyrights office, 8,920 albums in physical format were produced as of 2015.¹⁹⁶ Commercial music production is dominated by the combination of traits of Jamaican reggae, hip-hop, jazz and Afro-Cuban bits with Senegalese folk music that attract local and international audiences’ attention.¹⁹⁷

Senegal has an ever-increasing crop of talents, some of which have made international headlines. Youssou N’Dour, for instance, has broken into global markets. He is the recipient of a number of international awards, including a Grammy, and has collaborated with worldwide known artists. His music is a fusion of traditional mbalax sounds with modern rhythms such as hip-hop, jazz and soul.¹⁹⁸ Orchestra Baobab, is one of the most famous Senegalese bands. Its music mixes Cuban-Caribbean rhythms with Casamance harmonies and drumming and Wolof sounds. In 2003, the group was granted the Best African Artist Award by the BBC Radio World Music Awards.¹⁹⁹ Coumba Gawla is the second best selling Senegalese singer in the country. Her creative music combinations of traditional griot structures and modern rhythms have acquired wide international recognition, mainly in Belgium and France.²⁰⁰ Other well-known local artists include the acoustic band Isamel Lo, the singer and song-writer Baaba Mal, the mellow group Touré Kunda, the band Xalam, the young stars Pape Diouf and Titi, to name only a few.

¹⁹² UNCTAD and UNDP, “The Challenge of Assessing the Creative Economy: towards Informed Policy-making”, Creative Economy Report, 2008 (Geneva and New York, United Nations, 2008), p. iv.

¹⁹³ UNCTAD, *Creative Economy Outlook and Country Profiles: Trends in international trade in creative industries* (n.p., United Nations 2015), p. 128. Available from http://unctad.org/en/PublicationsLibrary/webditcted2016d5_en.pdf.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid.

¹⁹⁶ Senegal, Ministère de la Culture Du Sénégal, 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expression: Quadrennial Periodic Report (Dakar, 2016), p. 66.

¹⁹⁷ Fallou Ngom, “Popular Culture in Senegal: Blending the Secular and the Religious” in *Music, Performance an African identities*, Toyin Falola and Tyler Fleming, eds. (New York, Routledge African Studies, 2012), pp. 103 -107.

¹⁹⁸ Compilation of data based on online search.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

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. Comprehensive data on Senegalese artists' performance in foreign markets is not available, however, an overview on visa applications in popular destinations, gives an indication of demand and supply. In the United States of America, one major destination for foreign artists, 611 P3 entry visa for artistic life performances were granted to Senegalese artists between 1998 and 2016. During the first four years the figure did not have a pattern as the number fluctuated between 1 and 30. In 2001, applications rose to 48 visas granted that year. Until 2008 this figure varied slightly between 30 and 48 per annum, with the exception of 2006, when only 15 visas were granted. In 2009 the number dropped drastically to 4. However, in 2011 the figure picked up to 60, the largest number of United States of America visas ever granted to Senegalese artists.²⁰¹

Despite the large niche of Senegalese musicians, the sector remains underdeveloped with little access to professional promotion services. Heavy taxes, artists' fees and high organizational costs discourage managers, agents and event support service providers to operate in the country.²⁰² As a consequence, many artists are promoted by foreign private agents or international support programs, which end up exporting Senegalese musicians to other markets, mainly France.²⁰³

Radio France International (RFI), for instance, have played an important role in the promotion of African artists, including Senegalese musicians.²⁰⁴ Since 1981, the radio station in partnership with the *Institut français, l'Organisation Internationale de la Francophonie*, Sacem, Deezer and Ubiznew organize the RFI Discovery prize. It awards the best emerging talent in Francophone and Lusophone Africa, the Indian Ocean and Caribbean. The prize includes 10'000 euros, a live performance tour in several African countries and a concert in Paris.²⁰⁵ From 1994 to 2016, five Senegalese artists have won the competition, among them the famous rapper Didier Awadi. In 2017, two were selected in the list of 10 finalists.²⁰⁶

Audiovisual services in Senegal

Senegal has a dynamic film industry originating back in the 1950s that flourished in the late 60s when it became a pioneer of the African cinema.²⁰⁷ Today Senegal is one of West-Africa's leading nations in film production with a niche of talented and professional writers, cinematographers and directors.

In 1955, the Senegalese-Beninese filmmaker Paulin Vieyra became the first African to direct a movie with the French production "L'Afrique Sur Seine". In 1966, Ousame Sembene, the most renowned Senegalese filmmaker produced and directed "La Noire" (internationally known as "Black Girl"), the first film ever released by a sub-Saharan filmmaker and awarded the Jean Vigo prize of the Cinema of France.²⁰⁸ In the following decade, the industry stood out in Africa with a number of productions distributed in international markets, such as "Kaddu Beykat" by Safi Faye, "Samaba Tali" by Ben Diogaye Bèye,²⁰⁹ "Xala" by Ousame Sembene and Badou Boy by Djibril Diop Mambéty. However, the economic crisis of the 80s marked a slow decline of Senegalese film production as the public funding almost ceased. Since then, most of the Senegalese cinematic production is internationally funded, despite the efforts of the Ministry of Culture to revive public funding by launching in 2002 FOPICA, a film production support program.

²⁰¹ United States, Bureau of Consular Affairs, Nonimmigrant visa statistics, TravelStats. Available from <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>.

²⁰² Amadour Dieng Bator, "Recording, performing and royalties in Senegal", *Music Africa*, 17 February 2015. Available from <https://www.musicinafrica.net/magazine/recording-performing-and-royalties-senegal>.

²⁰³ Andy C. Pratt, "The music industry and its potential role in local economic development: the case of Senegal" in *Creative Industries in Developing countries: Voice, Choice and Economic Growth*, Diana Barrowclough and Zeljka Kozul-Wright, eds. (New York, Routledge, 2008), p.134.

²⁰⁴ Ibid.

²⁰⁵ RFI website, available from <http://en.rfi.fr/culture/20170511-soul-bangs-RFI-discovery-prize-winner>.

²⁰⁶ Author's compilation of data based on Internet research.

²⁰⁷ Colours of the Nile, "Spotlight on the African Nation: CNIFF Tribute to Senegal_ The Pioneer of African Cinema", 24 March 2014. Available from: <http://www.coloursofthenile.net/about/14-site-functional-page/34-spotlight-on-the-african-nation>.

²⁰⁸ Bilge Ebiri, "The Story of *Sembene!*: How Ousmane Sembene Invented African Cinema", *Vulture*, 5 November 2015. Available from <http://www.vulture.com/2015/02/how-ousmane-sem-bene-invented-african-cinema.html>.

²⁰⁹ The film is internationally known as "News from My Village" or "Letter from my Village". It was awarded FIPRESCI Prize in Belgium and the OCIC Award. "Samaba Tali" received the Best Short Film Prize at the Festival International du Film de l'Ensemble Francophone in Geneva in 1975.

Senegal has a shortage of cinema theaters, as the majority closed in the aftermath of the economic crisis and the rest are only able to screen inexpensive repertory. Consequently, most of the cinema is exhibited at international film festivals and distributed in international markets rather than in the country.

Since 1972, at least 14 films have been awarded with prizes and recognitions at the bi-annual Pan-African film and television festival FESPACO. From 2010 to 2016, 16 films were screened at Carthage film festival.²¹⁰ Since 1961, 11 productions and co-productions have been selected at Cannes Film Festival. Two of them participated in the competition as feature films, five were part of the *Un Certain Regard* section and 4 were screened at Cannes classics.²¹¹ Likewise, around 15 Senegalese productions and co-productions have been screened at Berlin's renowned annual film festival, the Berlinale. Several have won prizes, with "Félicité" by Alain Gomis the most recent to be awarded the Silver Bear Grand Jury Prize in 2017.²¹² The film was also nominated to the 90th Academy Awards (Oscars) for Best Foreign Language Film.

3.1.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Physical market access: Visa and work permits

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.

Bonds and guarantees, for example, are frequently required to obtain visa, and foreign event organizers and agents are often not willing to take on that responsibility. Similarly, bank account balance requirements can be a major challenge, especially for younger performers; when required from each member of a music or dance group individually (something reportedly practiced by some Schengen countries, for example) often means that the band/troupe as a whole will not be able to perform, and hence will not travel. The requirements are more stringent for artists who seek to go abroad to promote their album (organize several concerts) than for those invited by producers. Many music groups and their gigs in Senegal (and the region) are organized in an informal way and as a result performers have difficulties showing their professional track record.

The same issue affects professionals in the film industry, albeit less so in Senegal since the *Direction de la Cinématographie* began to issue film professionals with professional ID cards, which foreign consulates now often accept as proof of being a good faith cultural professional. There is no comparable system yet for musicians and other performers, so individual confirmations ad hoc must be obtained. One might mistakenly assume that visa are less important for filmmakers and actors as their main service – the movie – can be transmitted to foreign clients in Mode 1, without them travelling. That however would mean to miss a key element. For filmmakers and actors, and with them the entire exporting film industry they represent, physical presence at film festivals, special screenings, award ceremonies and workshops/'marketplaces' for filmmakers (often organized in the context of festivals) is of crucial importance.²¹³ Their profile for visa purposes is often not dissimilar to that of live performer (young, unmarried, no visa record), and they encounter similar difficulties – perhaps with the difference that at least major film festivals such as Cannes or Berlin reportedly often have some access to their country's consular services.

The costs of visas are a deterrent (the cost of a Schengen visa, for example – EUR 40.00 – may not appear much to the casual observer, but corresponds to the legal monthly minimum salary in Senegal), and so is the non-refundability of visa fees in case of rejection. (However, as many countries have consulates or consular sections in Dakar, there are at least no additional costs for most Senegalese artists,

²¹⁰ Compilation of data based on the information available at Carthage film festival website, <https://www.jcctunisie.org/eng/jccArchives.php>.

²¹¹ Compilation of data based on the information available at Cannes film festival website, <http://www.festival-cannes.com/en/>.

²¹² Compilation of data based on the information available at Berlinale's website, <https://www.berlinale.de/en/HomePage.html>.

²¹³ 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.

unlike for their colleagues from countries such as neighboring The Gambia who have to travel e.g. to Dakar, sometimes twice, to obtain the same visa.)

Documentation requirements can be rather burdensome. For example, for some English-speaking countries (the United Kingdom of Great Britain and Northern Ireland was mentioned), applicants are routinely expected to have relevant documents (marriage documents, bank accounts, proof of accommodation / hotels, etc.) translated into English by expensive certified translators.

Film distribution through local distributors

Stakeholders from the film industry indicate that in some export markets the distribution of audiovisual content, notable films, is required by law to pass through local distributors, which they believe is negatively affecting their distribution. This appears to be the case, for example, for movies distributed in France. Direct access to the user (cinema operator) would enhance their opportunities.

Screen / air quotas and co-production

The Senegalese cultural industries, especially the movie industry, are affected by nationality/local content requirements in their export markets, including in the form of screen quotas and requirements imposed under or through co-production agreements.

Local content requirements applied by many countries to film productions as a precondition for (1) access to financial support (film financing, tax relief etc.), (2) access to screen quotas (qualification as national production of the importing country) and (3) tax relief often significantly limit the marketplace not only for LDC movies but also input services that are, or could be, provided by Senegalese and other LDC service providers to international productions. These 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. Senegalese) audiovisual service inputs even where movies are in fact shot in Senegal.

Withholding taxes and social security contributions

Senegalese 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, an important market for Senegalese artists, 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 Labor 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 (...)".²¹⁴ 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.

Local partnering and hiring requirements (for film productions)

Stakeholders suggest that some countries impose local partnering and/or local hiring requirements on audiovisual productions shooting/recording on their territory. Kenya, for example, appears to require the inclusion of a local executive producer (production company), others require the hiring of a certain number of local technicians.

²¹⁴ 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.

Possible Preferences

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

- 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 season);
- Waive or reduce withholding taxes and social security contributions for performing artists and other visiting cultural professionals.
- Allow for the direct distribution of audiovisual content by LDC service suppliers and sellers, where applicable in derogation from otherwise applicable mandatory distribution through designated local channels or other restrictions;
- Reduce local content requirements to allow for greater shares of inputs from LDCs (e.g. by allowing for X% LDC inputs to qualify as local content for purposes of screen quotas or subsidies);
- 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% for LDCs, while maintaining 20% minimum for all others);
- 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.

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

While many of the above-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 Members –Taiwan Province of China and the United States of America – offer preferences in the audiovisual sector.** The United States of America in particular underscores its strong commitment to open markets for audiovisual by providing for near-full market opening, especially in motion picture and video-related subsectors, complementing its existing GATS offer. The United States of America 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 of America 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.**
- **Eight Members offer preferences in “Entertainment Services”, the main sector for cultural performers. These are Hong Kong, China; Japan; Republic of Korea; Taiwan Province of China; Mexico; India; Chile; and Iceland.** Some of these are potentially interesting for Senegalese performers, at least in principle and to some extent.
 - The Republic of Korea, Mexico; India; Chile; and Iceland explicitly extend their horizontal commitments on Mode 4 to this subsector, with (potentially) small differences in coverage (India’s and Chile’s notification remains partly ambiguous on the sectoral coverage). While this does not solve an important issue in the classical Mode 4 categories, namely (where reserved) education requirements for Independent Professionals (IPs) and Contractual Service Suppliers (CSS) – most musicians, dancers and movie professionals do not have master’s degrees – it is a step in the desired

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- direction, and may indeed help in practice, depending on implementation (including visa/work permit practice).
 - Importantly, Chile’s definition of CSS does not insist on such educational requirements, but rather states in general and open terms that “They must also have the necessary qualifications, expertise and proven work experience.(...) in conformity with Chile’s domestic legislation on the activity in which the service supplier wishes to engage in Chile.” This would appear to normally exclude education requirements not suited to the sector.
 - The situation is similar for Taiwan Province of China, which includes a subset of entertainment services in a list of CSS openings, with no onerous formal education requirements attached.
 - The remainder of the preferences offered is mostly full market access commitments in Modes 1, 2 and 3, some with small caveats.
 - **None of the notifications addresses – in relation to this sector – withholding taxes, social security contributions, nor Mode 4 issues of physical market access (visa, work permit-related).** This is an important omission.

3.2 Health and medical services: Hospitals, doctors, nurses and veterinarians

Senegal sees itself as a place of excellence when it comes to health-related training and services. The country’s medical, nursing and veterinary schools enjoy a very good reputation in the region. Senegalese doctors and nurses are sought-after professionals in foreign markets, and professionals and institutions in the wider sector, from hospitals to veterinarians, service *inter alia* foreign patients and clients, i.e., export services, in all modes of supply.

That said, the country remains heavily under-served, with one of the lowest doctors/population ratios in the world according to the WHO numbers, while longer-term ambitions are certainly high: The *Plan Sénégal Emergeant* speaks about developing medical tourism and sketches out the idea of a ‘Dakar Medical City’, a platform for *inter alia* three private hospitals.²¹⁵ Dakar Medical City, however, so far seems to exist only on paper, and as an idea rather than an actual project.

3.2.1 Definitions

Under the WTO Services Sectoral Classification List – casually referred to as ‘W/120’²¹⁶ – medical (doctors’) services, services provided by nurses and veterinary services are classified as “professional services”, which are listed as a sub-sector of “business services.” The category of ‘professional services’, divided into 10 sub-sectors, encompasses the classical professions (lawyers, doctors etc.) and other services offered by professionals with specialized higher education. Often these are organized in professional membership groups such as the bar associations or national medical associations, which in many cases are endowed with self-regulatory functions and powers.

Health services are classified separately and include in particular services provided by hospitals, i.e., institutions rather than professionals. In economic reality the health, medical and related services sectors are so closely linked that they in fact overlap.

This section thus focuses on a selection of a sample subsectors, and samples from subsectors, namely medical services, services provided by nurses, hospital services and veterinary services. It bears recalling that this study does not aspire to covering subsectors and their challenges in a comprehensive way, but rather explores instructive examples of exports, challenges and potential solutions.

3.2.2 Professional Services in Senegal

- **Medical and health services**

²¹⁵ Plan Sénégal Emergeant, paragraphs 328-332.

²¹⁶ Services Sectoral Classification List, WTO Doc. MTN.GNS/W/120, 10 July 1991, commonly referred to as ‘W/120.’

The University of Cheikh Anta Diop of Dakar, the *Ecole Militaire de Santé* and six private institutions are authorized to provide medical qualification in Senegal. While the annual number of medical school graduates is not available, 75 per cent of the health workforce is trained in private schools.²¹⁷

A medical professional may practice only upon registration at the National Order of Physicians of Senegal (*Ordre National des Médecins du Sénégal* (O.N.M.S.)), for which one should have completed the medical residency training. As of 2016 there were 1007 physicians registered at the O.N.M.S. 228 of these were general doctors, 90 gynecologists, 59 pediatricians, 30 ophthalmologists, 37 cardiologists, 21 general surgeons. The rest were specialists in a wide variety of medical specializations, including, urology, orthopedics, radiology, rheumatology, tropical medicine and infectious diseases, psychiatry, pneumonology, otorhinolaryngology, gastroenterology and aeronautical medicine.²¹⁸ These figures – which put Senegal very close to the bottom of the WHO’s tables for density of physicians²¹⁹ – are far from capturing the reality, as according to the O.N.M.S. only 50 to 60 per cent of the physicians practicing in Senegal are legally registered.²²⁰ But even double the official number would still be very low – one doctor for 7500 people, still close to the bottom of the table.

Mode 4 supply of medical services provided by physicians employed abroad is particularly relevant to Senegal. A 2002 WHO study suggests that 37.9 per cent of health workers intended to migrate²²¹ and over the last two decades many medical school graduates have migrated for work purposes. The main destinations are OECD countries, particularly France, United States of America, Canada and Spain. While the annual number of Senegalese doctors emigrating abroad is not available, M.A. Clemens and G. Petterson found that in 2000 678 physicians were residing and working abroad accounting for 51.4 per cent of the staff trained in the country.²²² An OECD study showed that in the same year 449 physicians were working in OECD countries, accounting for 43 per cent of all Senegalese medical specialists of the time.²²³

There is also anecdotal evidence of Mode 4 supply of medical services by physicians employed by Senegalese health service institutions who are sent abroad to serve in their institution’s foreign establishments (Mode 3). Dakar’s *Hôpital Principal*, for instance, is a military hospital founded in 1982, which not only regularly treats foreign patients in Dakar, including UN peacekeepers stationed in Malia and ECOWAS forces stationed in Guinea Bissau (Mode 2), but also provides its services through affiliates in the region (e.g., again, Guinea Bissau) in Mode 3, with doctors and other staff being transferred there (Mode 4).²²⁴ Senegal has reportedly 20 hospitals, 19 of which are in Dakar.

- **Services provided by nurses**

Senegalese nurses are classified in two categories: state-certified nurses and licensed nurses. The first acquire the certification upon completion of a three years program. They may be appointed Chief nurse (or ICP) of the *Poste de Santé*- first level medical attention point in urban, semi-urban and rural areas. State-certified nurse acts as head of the *Poste de Santé*, supervisor of health services provided at the center and in certain cases may also diagnose and prescribe. Licensed nurses are trained in a two years program and assist state-certified nurses.

²¹⁷ Bettina Brunner, et al., *Senegal Private Health Sector Assessment: Selected Health Products and Services* (Bethesda, Maryland, Strengthening Health Outcomes through the Private Sector Project, Abt Associates, 2016), p.12. Available from: https://www.shopsplusproject.org/sites/default/files/resources/Senegal%20Private%20Health%20Sector%20Assessment_Selecte%20Products%20and%20Services.pdf

²¹⁸ Senegal, Ordre National des Médecins du Sénégal O.N.M.S., *Tableau de L'Ordre National des Médecins du Sénégal 2016*. Available from: <http://www.ordremedecins.sn/tableau/>

²¹⁹ Cf. WHO, Global Health Observatory, available from <http://www.who.int/gho/en/> (accessed 13 February 2018).

²²⁰ Sud Quotidien, “Tableau des praticiens inscrits à l’ordre des médecins: Seuls 1007 médecins sur la liste”, *Dakar.com*, 29 December 2016. Available from <http://news.adakar.com/h/82847.html>.

²²¹ M. Awases et al., *Migration of health professionals in six countries: A synthesis report* (Brazzaville, Congo, World Health Organization, 2004), p.38.

²²² Michael A. Clemens and Gunilla Pettersson, “Medical Leave: Database of Health Professional Emigration from Africa”, Working Paper, No. 95 (n.p., Center for Global Development, 2006), pp.10-13. Available from https://www.cgdev.org/files/9267_file_WP95.pdf (accessed 24 January 2018). See also World Bank, *Migration and Remittances Factbook 2011 Second Edition* (Washington D.C., World Bank, 2011), p.217.

²²³ Data from Circa 2000 in Jean-Christophe Dumong and Pascal Zurn, “Immigrant health workers in OECD countries in the broader context of highly skilled migration” in *International Migration Outlook*, Sopemi eds., (n.p., OECD, 2007), p.214.

²²⁴ Information available on Hôpital Principal’s website, <http://www.hopitalprincipal.sn/hopital.htm>

As of 2010, there were 64 nursing schools, of which 56 were private and 8 were public.²²⁵ While there is an increasing number of admittances to nursing education, there is also a large number of dropouts. From 2006 to 2009, 1349 students registered to nursing school and during the same period 959 left without completing studies. Nevertheless, according to the Ministry of Health in 2009, there were 2789 nurses and 930 midwives, which in relation to the population density accounted for 0.4 nurses per 1000 people.²²⁶

Similarly to services provided by physicians, exports of nursing/midwifery services are highly relevant to Senegal. As of 2000, 695 nurses were working abroad accounting for 26.9 per cent of nurses born in the country.²²⁷ 256 of them were working in OECD countries.²²⁸

- **Veterinary services**

Senegalese veterinary education is highly reputed, and so are Senegalese veterinarians in the region and beyond.

As of 2017 there are three institutions providing veterinary-related training courses, however only the Inter-State School of Veterinary Sciences and Medicine of Dakar (EISMV) has a full developed curriculum on veterinary medicine. Funded in 1968 as the first veterinary faculty for all African francophone countries, the school offers courses at different training levels. Over 1000 students from 15 African countries have studied at EISMV.²²⁹

Besides training, EISMV also conducts research and provide solutions for priority concerns of its members. The School has four highly qualified control laboratories for endocrinology and biochemistry analysis, food control, analysis of veterinary drugs and animal nutrition. With international private and public partners in Central and West Africa and Europe, EISMV provides consultancy services, technical assistance, audit and inter-laboratory tests for its partners (Modes 1, 2 and possibly 4).²³⁰

The practice of veterinary medicine in Senegal is comprehensively regulated. Law N° 2008-07 organizing the veterinary profession and pharmacy establishes that services in the sector may be provided by veterinary doctors, livestock engineers, breeding technical agents and livestock technicians.²³¹ Private veterinary practice is subject to authorization of the Minister of Livestock and Animal Production upon consultation with the Order of Veterinary Doctors of Senegal.²³² Most veterinarians operate their own, individual clinics and practices. Partnerships and associations among professionals are virtually non-existent.

Both education and home-country regulation appear to underpin relative export success. Apart from EISMV, as just discussed, which exports its services across the region and beyond, there are reportedly various independent veterinary doctors who supply services to clients abroad. This happens partly in Mode 4, but in large part in Mode 1, as local livestock technicians service act as local anchors and direct interfaces with clients, but operating under the remote guidance and direction of Senegalese veterinary doctors. This model is also practiced with/in some European countries, including France.

The above means that at least three modes of supply are used by Senegalese veterinary service providers: Mode 1 for the cross-border advisory services and research provided by independent veterinarians and institutions, Mode 2 for the provision of laboratory analysis to foreigners in Senegal and Mode 4 operating as officials from Senegalese institutions that may visit their partners abroad and provide technical assistance.

²²⁵ Senegal, Direction des Ressources Humaines, *Plan National de Développement des Ressources Humaines en Santé (PNDRHS)* (n.p., Ministère de la Santé et de la Prévention, 2010). Available from <http://www.sante.gouv.sn/ckfinder/userfiles/files/41.pndrh.pdf>.

²²⁶ World Bank Data, Nurses and Midwives, World Development Indicators. Available from <https://data.worldbank.org/indicator/SH.MED.NUMW.P3?locations=SN> (accessed 24 January 2018).

²²⁷ Michael A. Clemens and Gunilla Pettershon, "Medical Leave: Database of Health Professional Emigration from Africa", pp.10-13. See also World Bank, *Migration and Remittances Factbook 2011 Second Edition*, p.217.

²²⁸ Data from Circa 2000 in Jean-Christophe Dumong and Pascal Zurn, "Immigrant health workers in OECD countries in the broader context of highly skilled migration", p.214.

²²⁹ Information available at EISMV's website, <http://www.eismv.org/?p=13807>

²³⁰ Information available at EISMV's website, <http://www.eismv.org/?p=13807>

²³¹ Senegal, Loi N° 2008-07 du 24 Janvier 2008 organisant la profession et la pharmacie vétérinaires au Sénégal, arts. 1-3

²³² Ibid, arts. 9,12- 14.

3.2.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Insurance portability

As for all Mode 2 providers of health and medical services a classical challenge for Senegal's hospitals and health professionals is their patients' funding. While major suppliers such as the *Hôpital Principal* may have succeeded in signing agreements on coverage with some major insurances covering (many) French, Belgian, Gambian and other citizens, the coverage of actual and potential clients, not only tourists and soldiers but also the Senegalese diaspora, for Senegalese health and medical services is otherwise far from automatic and complete, affecting the realization of further export potentials.

Even where reimbursement (as opposed to: direct charge) coverage exists (this is reportedly now the case for all French citizens), the cash outlay required from the patients sometimes precludes them from accepting some of the services they would and should normally receive.

Recognition

Senegalese health professionals, including veterinarians, face general challenges regarding the recognition of their qualifications abroad, but are relatively well-positioned to meet them, as their educations enjoy good reputation. Not least because their schools have for a long time served as some of the primary education institutions for the region and its professionals, the recognition of Senegalese qualifications in the region, in turn, is reportedly usually not a major problem, at least within Francophone Africa. Veterinary qualifications from the Dakar school are widely recognized across sub-Saharan Africa.

That said, some recognition issues persist, not least in third countries (including Europe) but also in the region, and facilitated recognition processes, and ideally comprehensive arrangements (mutual recognition agreements) are highly desirable to underpin Senegalese services exports.

Nationality requirement for veterinarians

Some countries maintain nationality requirements for veterinary doctors. This includes France (and several other European Union Members), but also most countries in the region, including Senegal itself, which however maintains an exception for WAMEU citizens.

While Senegalese veterinary doctors sometimes do practice in (Mode 4) and into (Mode 1) France and regional neighbours in violation of the nationality requirement, exploiting a relatively broad *de facto* tolerance, the requirement nonetheless operates as a significant obstacle to legitimate, *bona fide* business models of highly qualified, highly respected Senegalese veterinarians.

Possible Preferences

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

- Provide automatic or facilitated portability of medical insurance to cover medical and health services in or from LDCs; provide the facilitated possibility of direct charge (as opposed to reimbursement requiring cash outlay);
- Systematically facilitate the recognition of LDC professional qualifications, unilaterally and/or through the advancement of mutual recognition agreements with relevant LDCs (promotion of MRAs between professional associations/supervisory bodies in LDCs and the recipient country, following the example set by the European Union-CARIFORUM EPA, e.g. through incentives, support and administrative tools);
- Waive nationality requirements for LDC veterinary practitioners.

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

None of the specific preferences suggested above are addressed in the notifications. There are, however, some gradual openings of interest for doctors, nurses and veterinarians, including in the European Union.

- **Medical Services**

- **Only three Members – Japan, Mexico and the European Union (Belgium, Germany, Italy, Spain, Netherlands and European Union all) – offer specific openings relating to medical services.**
 - o Mexico shows itself fully open to the supply of medical services from LDCs providers in Modes 2 and 3, while Mode 4 remains unbound except for business visitors, investors, intra-company transferees and professionals with an offer of paid employment in Mexico.
 - o Japan opens its market to Mode 2. It also eliminates limitations on the participation of foreign capital in Mode 3, although it remains (otherwise) unbound.
- **Perhaps most remarkably, a range of 16 European Union Members (including Belgium, but not including France) offer a new opening in Mode 4, namely for Contractual Service Suppliers (CSS), albeit for 15 of them subject to an ENT.** This obviously reduces the legal and hence economic value, but the general possibility of access remains important. Note that Independent Professionals are not covered by this preference, which corresponds to the European Union's offer in the European Union-CARIFORUM EPA.
- **Notable is also what is not offered – for example: Remaining limitations on telemedicine.** 21 (out of 28) European Union Member States keep Mode 1 for medical, psychologists' and dental services unbound, which means telemedicine is not covered for them, while one (Hungary) explicitly allows telemedicine.

- **Services provided by Nurses and Midwives**

- **Only three notifying Members made specific promises of preferences relating to services provided by nurses and midwives:** Japan, Chile and the European Union (several Member States). None of them offer much inspiration for creative preferences.
 - o Japan relaxes Mode 3 (nurses) by eliminating limitations on foreign capital participation, but keeps the sector otherwise unbound.
 - o Chile opens Modes 1-3 for nurses' services (Mode 4: horizontal commitments), matching its TPP commitments.
- Similarly to the preferences offered for medical services, **some European Union Members (not including France and the United Kingdom of Great Britain and Northern Ireland) are offering some cautious additional openness in Mode 4 for midwives and nurses as Contractual Service Suppliers (not: Independent Professionals),** albeit mostly subject to ENTs. It bears repeating that while an ENT denies legal guarantees, it may be a way to provide an opening in an otherwise closed sector, and hence can be a tool for good.

- **Veterinary Services**

- **Seven WTO Members grant specific preferences relating to veterinary services.** These are Japan, New Zealand, Canada, Chile, Iceland, Brazil and the European Union (several Member States). In most cases these are straightforward market opening promises, covering all or most modes of supply.
- **Again, as for medical services and the services provided by nurses and midwives, many European Union Member States are granting access to veterinary service providers from LDCs who come as Contractual Service Suppliers (CSS).** This stands in most cases under the caveat of an ENT, however, and it does not cover France nor the United Kingdom of Great Britain and Northern Ireland, who remain 'unbound.'

- **Health (Hospital) Services**

- **A single Member, namely the European Union, provides LDC preferences in this sector.** These are not noteworthy for purposes of Senegal's exports.

3.3 Education Services

Senegal is a regional education hub. Its universities and training centers enjoy a good reputation overall, and several institutes are pioneers and standard-setters in the region. Senegal is thus a long-standing exporter of education services, and it aspires to further growth in this sector.

3.3.1 Definitions

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

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

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

3.3.2 Education Services in Senegal

The WEF's 2017-2018 Global Competitiveness Report ranks Senegal as the 27nd country worldwide in "local availability of specialized training services,"²³³ the 40th in quality of management schools and 51st in "innovation"²³⁴, being the fifth in Sub-Sahara Africa after Kenya, South Africa, Rwanda and Guinea.²³⁵ The excellent reputation of its higher education has made the country a regional educational hub. The variety and quality of its training programs, some of which are not offered anywhere else in Africa and are equivalent to those offered by universities in France and the United States of America, attract international students to Senegalese public and private institutions. The recognition of Senegalese diplomas in foreign jurisdictions and the affordable cost of education are also factors of interest to foreign students.

As of 2016, there were over 10,000 international students pursuing qualifications and degrees in Senegalese public and private institutions.²³⁶ The majority of them engaged in medicine and management studies, followed by finance, communication and journalism. Students come mainly from francophone countries including Mali, Côte d'Ivoire, Cameroon, Gabon, Morocco, Mauritania and even Haiti. There is also an increasing representation of African Anglophone countries, mainly from Ghana and Nigeria, as some courses are now taught in English. In addition, partnership agreements between Senegalese public and private universities with North American and European institutions have increased the presence of Spanish, French and American students coming under exchange programmes.²³⁷

The *Institut Africain du Management (IAM)*, for instance, is one of the top business schools in Africa and as such attracts foreign students to Senegal. It is a member of the Global Business Network program initiated by the International Finance Corporation. Founded in 1995 under the management of the University Cheikh Anta Diop, the university became an independent private institution in 1997 offering a bachelor program in business administration and management information systems. In 2003, the

²³³ Klaus Schwab, *Global Competitiveness Report 2017-2018* (Geneva, World Economic Forum, 2017) p. 255.

²³⁴ Klaus Schwab, *Global Competitiveness Report 2017-2018* (Geneva, World Economic Forum, 2017) p. 255.

²³⁵ World Economic Forum, "Global Competitiveness Index 2017 -2018". Available from <http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=GCI.C.12>

²³⁶ Senegal, Ministère de L'enseignement Supérieur, de la recherche et de l'innovation, "Entretien du Ministre avec la rédaction de l'APS: Le Sénégal compte plus de 10 000 étudiants étrangers", 22 September 2016. Available from <http://www.mesr.gouv.sn/entretien-du-ministre-avec-la-redaction-de-laps-le-senegal-compte-plus-de-10-000-etudiants-etrangers/>.

²³⁷ Matteo Maillard and Amadou Ndiaye, "Les étudiants africains doivent pouvoir obtenir un bon master sur le continent", *Le Monde Africa*, 8 March 2016. Available from http://www.lemonde.fr/afrique/article/2016/03/08/nous-voulons-que-les-etudiants-africains-n-aient-plus-besoin-d-aller-a-paris-pour-un-bon-master_4878639_3212.html.

university launched its e-learning platform, which was approved by the African Virtual University in the following year. In 2004, opened a branch in Mali and started a Japanese program course.²³⁸

Currently IAM offers eleven bachelors in French, one bachelor in English, two master programs including an MBA, 15 post-graduate courses and immersion programs in Guinea and The Gambia. It also offers language courses, preparation for foreign language tests and distance learning courses. The university has partnership agreements with universities in France, Canada and the United States of America, which include the mutual recognition of diplomas and exchange programs for students and professors. There are around 1700 students enrolled and 300 trainees in continuing education programs of seventeen different nationalities. Only 23 per cent of the attendees are Senegalese, the rest come from other African countries, mainly Gabon, Cameroon, Guinea and Chad.²³⁹

SUPdeCo is another Senegalese group of five higher education institutions which has gained international recognition for the quality of its training. Founded in 1993, it is the first business school in Senegal and the first to have joined the Global Compact and the Principles for Responsible Management Education. SUPdeCo is a member of international organizations including the European Foundation for Management Development and *L'Agence universitaire de la Francophonie*. It has also been recognized as a UEMOA Center of Excellence by the Statutory Council of Ministers of the West African Economic and Monetary Union.²⁴⁰

The Group offers eight bachelors degrees and five master programs recognized by the African and Malagasy Center for Higher Education (CAMES) and around a hundred courses in its e-learning platform covering all areas of management, transport and ICT. In addition, the Group has partnerships with universities and business schools in Europe, United States of America, Canada and China that includes exchange programs for professors and students. Over a hundred students from 25 African countries enroll yearly in the Group's institutions.²⁴¹

Cheikh Anda Diop University is the oldest and largest tertiary institution in Senegal. It offers training programs at different educational levels in law, medicine, ICT, economics and management, arts and humanities, among others. Founded in 1957 as medicine school, its training courses in the field have acquired international recognition in Africa. It has over 130 agreements with universities in 10 European countries, 14 African Countries, as well as universities located in Turkey, Guadalupe, the United States of America, Canada, and Brazil. Over 60,000 students are enrolled in the University from several African countries, the majority of them coming from Morocco, Gabon, Côte d'Ivoire, among others.²⁴²

UCAO – UUZ is the faculty of the Catholic University of West Africa located in Senegal. The University was founded in 2000 and has presence in seven countries. In Senegal, UCAO opened its first faculty in 2009 – *L'Institut des sciences du management*. It offers seven bachelors and two masters programs. Currently there are 12 or 13 nationalities represented among the student population.²⁴³

Senegal thus exports education services in significant quantities, and in all four modes of supply.

3.3.3 Barriers encountered, possible preferences, actual preferences

Traditional exports of education services in Mode 2, i.e. through visiting students, usually encounter few barriers, as governments rarely aim to limit their citizens' access to foreign education. However, even in this mode subtle challenges do intervene and may have a significant impact on export success, such as difficulties in obtaining accreditation/recognition for curricula and diplomas, and lack of scholarship portability.

Exports in Modes 1, 3 and 4 however encounter the relatively significant regulatory environment in which education usually operates. Education services are normally highly regulated to monitor quality and delivery, to secure access to education, to ensure the relevance of the qualifications obtained to fulfill

²³⁸ In-country consultations and compilation of data based on information available at the IAM's website, <http://www.groupeiam.com/>.

²³⁹ Ibid.

²⁴⁰ In-country consultations and compilation of data based on information available at SUPdeCo's group website, <http://www.supdeco.sn/>.

²⁴¹ Ibid.

²⁴² Compilation of data based on information available at University's website, <https://www.ucad.sn/>

²⁴³ In-country consultations.

the competence requirements set by the regulatory authority, and to protect the integrity of the education system more generally.

Classical measures to achieve the above objectives include licensing and registration requirements and procedure, accreditation requirements and procedures, and the recognition of qualifications. These measures can have an impact on trade in education services, in addition of course to visa and work permit requirements and procedures which can heavily affect the ability of providers and consumers of education services to deliver or consume the service abroad.

Barriers Encountered

Senegalese stakeholders overall do not complain about excessive challenges posed by measures of foreign governments. Their concerns, if any, focus primarily on the domestic front.

That said, there are challenges, and measures to facilitate and further strengthen the export of Senegal's famed education services issues are possible.

Recognition of qualifications, accreditation of programmes

The recognition of qualifications generated by Senegalese universities and institutions is, as indicated, thankfully often not a primary concern, as Senegal has historically acted as a first mover and standard-setter in the region. However, recognition remains an issue in foreign markets further afield, and measures to facilitate it useful.

Portability of scholarships and student funding

Whether or not government funding is available, in the form of scholarships or otherwise, is often a decisive factor in decisions for or against an institution. A scholarship that is not 'portable' across the border will often make it difficult or impossible for a student to go abroad. Senegal's universities' exports will thus benefit from the extension of benefits to studies in Senegal.

Possible Preferences

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

- Fast track and facilitate the recognition of qualifications including technical/professional (non-academic) qualifications obtained in LDCs;
- Recognize the registration of LDC educational/training institutions, facilitate the accreditation of academic and non-academic programmes;
- Facilitate the registration of LDC educational/training institutions with national professional bodies /national authorities in target markets;
- Reduce the registration fees for LDC educational/training institutions with national professional bodies or national authorities;
- Extend the eligibility for scholarships, grants and student loans to studies at LDC educational institutions;
- Facilitate the granting of visas for LDC providers of training services, including teaching personnel and management.

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

- **Primary target markets are not represented among the notifying Members, and specific engagements on education services are very limited.** Only four Members, namely Norway, the United States of America, Thailand and the European Union have made any specific preferences available in this sector.
- **Some limited inspiration** can be drawn from existing notifications, such as from the United States of America' promise of full market access in Modes 1-3 for higher education institutions. This, however, does not address accreditation and recognition.

- **No WTO Member addresses key regulatory aspects such as accreditation and recognition.** While it is challenging to imagine and craft ‘hard’ preferences, Members could well consider systematically engaging with suitable LDC education service provider to facilitate the accreditation of programmes etc., possibly supporting their design and compliance efforts.
- **No Member has responded to the suggestion, in the LDCs’ Collective Request, to grant scholarship portability allowing students to study in LDCs.**

3.4 IT and IT related Services

3.4.1 Definitions

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 UN’s 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 the purposes of this study, the discussion below 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.

3.4.2 IT and IT-Related Services in Senegal

Senegal has positioned itself as the leading sub-Saharan French-speaking country in the IT and ITES sector.²⁴⁴ The ICT Development Index ranks Senegal 15th in Africa²⁴⁵ and 10th among LDCs.²⁴⁶ Senegal ranks 48 in “firm-level technology absorption” and 59 in “availability of latest technology” in WEF’s Global Competitiveness Index; positioning itself as the first and second respectively *vis-à-vis* other LDCs.²⁴⁷ This has been mainly driven by a series of legal reforms in the telecommunication sector over the last twenty years. In 1997, the country took the first step of this journey by allowing the gradual liberalization of the telecoms sector, which included the privatization of the state-owned telecoms provider - *Société nationale des télécommunications* (SONATEL). Later, three regulating and monitoring bodies were created: the Ministry in charge of information and communication technologies, the Telecommunication and Post Service Regulation Agency and the Agency for the Development of State Automation. Several laws regulating the sector were also adopted, including Law N° 2008-08 on electronic transactions, Law N° 2008-11 on cybercrime, Law N° 2008-12 on the protection of personal data, and a new Telecommunication Code in 2011.

²⁴⁴ International Trade Centre, “Senegal: Export development of IT and IT enabled services”. Available from <http://www.intracen.org/NTF4/IT-Senegal/>

²⁴⁵ ITU, Measuring the Information Society Report 2016, p. 48.

²⁴⁶ ITU, “IDI 2017: LDC Rank”. Available from <https://www.itu.int/net4/ITU-D/idi/2017/#idi2017byregion-tab>.

²⁴⁷ World Economic Forum, “Availability of latest technologies”. Available from <http://reports.weforum.org/global-competitiveness-index-2017-2018/competitiveness-rankings/#series=EOSQ067>

Besides the reform of the institutional and legal framework, Senegal has made efforts in building quality telecoms infrastructure, in which Sonatel's participation has been core. Over the past years the company has built a modern ICT network, fully digitized by transmission loops and international high-speed optical fiber submarine links. Currently Sonatel provides fixed line telephony services, mobile telephony, internet services, television and corporate telecommunications. The company is the first Senegalese business exporting telecommunication services in Mode 3 and Mode 4. It has become a sub-regional reference operator through its operations in Mali, Guinea and Guinea Bissau. In addition to Sonatel there are other four telecoms service providers that to a lesser extent have also contributed to the infrastructure development.

The above-mentioned efforts resulted in the rapid development of telecoms sector, which in turn helped to reduce the digital divide. In 2015, telecoms generated a turnover of CFAF 764 billion compared with CFAF 598 billion in 2008.²⁴⁸ The last is notably through the expansion of mobile telephony and internet. In 2016, Senegal's mobile telephony penetration rate reached 102.6 percent, while internet penetration – primarily mobile – stood at 58.9 percent.²⁴⁹

The growth of the telecoms sector has allowed Senegal to explore wider opportunities in the ICT industry. The last is one of the fastest growing sectors of the economy with an annual average growth of 10 percent. Its contribution to the GDP increased from 3.5 per cent in 1995 to 6.7 per cent in 2013.²⁵⁰ This growth is not only due to the expansion of telephony and internet, but also is largely driven by exports of IT-related services, including BPO and tele-services.

Senegal is one of the first countries in Africa to enter the outsourcing industry by launching tele-services in 1995. Due to the low internet bandwidth, companies initially focused on off-line services, such as data entry. With the technological development and internet penetration, the sector moved into the call center business. Taking advantage of its high skilled labour at lower wages, Senegal became a call center outsourcing location of international companies, the majority of which were (initially) based in France. Other tele-services were offered later such as voice servers and telemarketing.

As of 2017 a wide variety of outsourcing services are exported, which go beyond the traditional tele-services. A recent USAID study suggests that 70 percent of the local IT and ITES industry is export-oriented.²⁵¹ According to the Export Promotion Agency (Asepex), there are over 300 companies providing IT -related services, some with international presence, where they generate more than 80 percent of their revenues. The services exported by these companies include software engineering services in various fields (health, banking, electronic banking, e-government, monitoring-evaluation), web services (Internet, Intranet, Extranet, B2B / B2C portals, digital transformation), mobile services (mobile applications, mobile banking, SMS platforms) and information system advice and strategy.²⁵² The main export markets are other African countries, mainly of the economic communities ECOWAS and WAEMU, as well as France. Recently North America, particularly Canada is growing as an export market for Senegalese IT companies. Importantly, language operates less and less as a constraint, in stark contrast to the past. Senegalese providers now often operate in English and engage increasingly effortlessly with Anglophone markets in Africa.

There are numerous success stories that underline the potential for further growth in Senegal's IT and ITES sector. *Call me*, for instance, was reportedly the first call center in Africa when it opened shop in 2002. It specializes in telemarketing and telesales, but also offers telephone-based customer services and technical assistance. The company has presences in four countries through its fully controlled subsidiaries in Mauretania, Mali, Guinea and Côte d'Ivoire. It also has clients in Burkina Faso, Benin, Central African Republic and Cameroon. The company is one of six business units of the Chaka group, a conglomerate of the outsourcing industry that provides various offshoring services such as software engineering services and tele-services.

²⁴⁸ World Trade Organization, document WT/TPR/S/362, Annex 7 – Senegal, p. 458, para. 4.82. Available from <http://docsonline.wto.org>.

²⁴⁹ Ibid.

²⁵⁰ E. Philip English, "Senegal – a service economy in need of an export boost", WIDER working paper 2016/150 (Helsinki, UNU-WIDER, 2016), p.13. Available from <https://www.wider.unu.edu/sites/default/files/wp2016-150.pdf>.

²⁵¹ Ibid

²⁵² Senegal, Agence Sénégalaise de promotion des exportations, "TIC et Téléservices", 2016. Available from <http://www.senegalexport.com/fr/secteurs-d%27activit%C3%A9/tic-et-t%C3%A9l%C3%A9services>

Another technology success story is Gainde, the company behind Senegal's "Single Window" trade facilitation operations. Originally established as a public-private partnership to develop a solution for Senegal it has grown into a sought-after international provider of solutions (e.g. for Kenya – "Simba" and Burkina Faso) and training and advice (e.g. for several Central Asian countries).

A third story is that of a call center provider who employs 80 people who serve Swedish clients, entirely in Swedish. None of the employees has ever been to Sweden, but they trained for eight months to be able to serve clients in Swedish. The project, reportedly, is a major success.

The Senegalese industry is organized primarily through OPTIC, the IT and telecoms professionals organization.

3.4.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Procurement: Local Preferences

Governments are among the biggest consumers of IT services. Government procurement is thus a crucial sales avenue. Senegalese providers when bidding for governmental contracts often face strong local preferences, which often translate into requirements to work with local partners. These partnering exercises can be heavy and risky.

Physical and legal market access: Visa and work permits

IT professionals often provide the bulk of their services through remote means, i.e. Mode 1. However, occasionally they need to travel to meet clients, install software, establish and fine-tune systems, train local staff, etc. They may, therefore, need to cross borders as ICT, CSS or IP, depending on the contractual construction.

Senegalese IT professionals recall often persistent challenges in obtaining the necessary access permits, and to obtain it at the required speed. Access to Europe and the Schengen space, for example, can be a formidable obstacle, even – as happened recently – for a company invited to participate in a trade fair in Belgium focused on Senegal. Delays can be a major problem, as speed is often of the essence in IT service contracts, and delayed travel and unreliable access can have a major impact on delivery and hence contracts more generally.

Local staffing requirement

BPO providers in particular who often need to establish a commercial presence to serve clients in their local language are sometimes faced with requirements to hire a certain percentage of locals to staff its management and/or its rank and file. This applies, or applied, for example in Mauretania.

Maximum share limitation

Stakeholders also report on equity caps for Mode 3 call center operations, such as the cap of 30 per cent or 40 per cent which currently applies, or may soon apply, in Mauretania. Similar maximum equity caps have been experienced elsewhere.

Data protection/data localization

BPO suppliers providing offshoring services sometimes see themselves confronted with highly onerous data protection requirements, for instance while serving certain clients in France.

Possible Preferences

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

- Exempt LDC IT/BPO service providers from local partnering requirements in government procurement of IT/BPO services
- 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.)
- Facilitate visa/work permits (see general Mode 2 suggestions). 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;
 - Provide a fast-track procedure for LDC IT professionals (and possibly other service providers) and/or facilitated access to multiple entry visas.
- Exempt LDC IT/BPO operators, or a larger category of LDC service providers, from maximum equity caps (Mode 3).
- Exempt LDC IT/BPO operators, or a larger group of LDC service providers, from local hiring requirements and the requirement to include a certain number of locals in management bodies / on the board (Modes 3, 4)

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

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

However, the notifications received from nine WTO Members still overall represent a significantly increased bundle of market access opportunities for IT service providers, at least on paper, as several 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 TPP 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 IP;
- 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, finally, 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 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 Senegal who will benefit from overall increased markets where it can advance its cost advantage.

4. Concluding Observations: Senegal as a Services Champion, the Waiver as a tool

Senegal is embracing the services challenge. Several sectors offer both a mature export practice and vibrant, forward-looking players driving progressive development. Senegal’s services sectors’ reach is no longer limited to the francophone world, and many clients in anglophone Africa appear to have noticed.

Senegal's main focus when it comes to services trade is regional integration agenda, from the advanced WAEMU process via the slower ECOWAS process to the African Continental Free Trade Area (AfCFTA). Its main services markets are in the region.

The Waiver, however, should be used actively to complement the picture, both in the region and especially when it comes to accessing non-African, especially European and North American markets in particular. While there will likely be EPA services cover at some point in the future, Senegal need not wait: it should advance a progressive and demanding market access strategy under the Waiver, engaging its Western and Northern Partners to advance Waiver preferences and to be even more generous and creative. The flexibilities offered by the Waiver, as opposed to FTAs, may not yet have been sufficiently embraced and exploited by Senegal and its partners.

In all this a key interest lies in integrating Mode 4 into the country's overall migration policy and management. It will be important to ensure that bona fide Mode 4 trade in progressively interesting services industries is proactively included on the joint agenda of Senegal and its trading/migration counterparts.

D. Zambia: Landlocked Land of Opportunity

1. Introduction: Services and Services Trade

Zambia is a Southern African landlocked country sharing borders with Angola, Botswana, the Democratic Republic of the Congo, Malawi, Mozambique, Namibia and Zimbabwe. It is a member of both the Southern African Development Community (SADC) with 15 members and the Common Market for Eastern and Southern Africa (COMESA) with 19 members. The Zambian capital, Lusaka, is the seat of the COMESA Secretariat.

Zambia's economy is growing, and although primarily known for its mineral extraction industry and its rather physical products, it has its eyes on services. Even though GDP growth in real terms was around 3 per cent in 2015, a figure lower than in the preceding five years, Zambia's economic growth is still above the regional average.²⁵³ Growth has mainly been supported by large infrastructure development, the recovering mining sector with exploration investment flowing into resources other than copper, and the agriculture sector. Much of the economic activity around this growth relates to services, including construction, engineering and transportation, but also professional services more broadly, other infrastructure services including insurance and other financial services, and many others – not least retail and business tourism.

Many of these developments suggest export potential. Zambia's charming slogan "Landlocked Land of Opportunity", proudly associated with the highest FDI influx among the 16 landlocked countries in Africa, in fact also reflects opportunities for services exports, whether directly, embedded in other products, or both.

Mining, Agriculture, etc.

The mining industry is one of the most important economic sectors in the country; it accounts for 13.4 per cent of the GDP (2015). As the world's seventh largest copper producer, Zambia exports copper and cobalt products, which account for about 70 per cent of its exports²⁵⁴ and about 6 per cent of global copper supply.²⁵⁵ Other mineral deposits include nickel, manganese and non-metal resources such as coal and uranium.²⁵⁶ In addition, following Angola, the Democratic Republic of the Congo and South Africa, Zambia attracts the greatest foreign direct investment (FDI) inflows in the SADC region, most of which related to the mining sector.²⁵⁷

Other economic sectors have also been growing in the last years. Construction, for instance, contributed 10.6 per cent of the GDP in 2015. This figure marked a modest increase from the 2011 rate of 9.7;²⁵⁸ but it also reported a stark decrease in relation to 2007 levels, when the sector accounted for about 15 percent of the GDP.²⁵⁹ Finance, real state and business services share 11.6 per cent of the GDP, while communication accounts for 7.3 per cent of the GDP and manufacturing, transport and storage for 7.9 per cent. Agriculture, forestry and fishing, in turn, contributed 6.53 per cent to the country's GDP in 2016, marking a steadily decline since 2011, when it accounted for 10.2 per cent of the GDP. Although the sector's economic importance in relation to other industries seems to wane over the years, it remains the largest employer. Around 50 per cent of the labour force works in agriculture and related industries.²⁶⁰ The majority of them are small-scale farmers or family members engaged in subsistence farming of row crops, cattle and other livestock for local consumption.²⁶¹

Services

²⁵³ Peter Engbo Ramussen, Collen Zamba, Elda Chriwa, *African Economic Outlook 2017: Zambia 2017* (n.p., AfDB, OECD, UNDP, 2017), p.3.

²⁵⁴ UNCTADStat.

²⁵⁵ The International Copper Study Group (ICSG), *World Copper Factbook* (n.p.,2013), p. 2.

²⁵⁶ AfDB, OECD and UNDP, *African Economic Outlook 2014* (n.p., 2014).

²⁵⁷ Ibid.

²⁵⁸ Peter Engbo Ramussen, Collen Zamba, Elda Chriwa, *African Economic Outlook 2017: Zambia 2017*, p.5.

²⁵⁹ Ibid.

²⁶⁰ Ibid, p.4.

²⁶¹ AfDB, OECD and UNDP, *African Economic Outlook 2014*.

Services contributed above 56 per cent of Zambia’s GDP in 2016, marking a recovery from the 2005 level of 47.96 per cent, while, as mentioned, agriculture and industry contributed 6.53 and 36.6 per cent respectively in the same year. In addition, as illustrated in the Table below services have steadily contributed to the economy - with the exception of the decline in the 1990s and in 2005.

Table 7: Sectoral contribution in Zambia’s GDP, 1980–2016 (% of GDP)

Sector	1980	1990	1995	2000	2005	2010	2015	2016
Agriculture	15.07	17.42	16	18.27	16.13	9.973	5.25	6.53
Industry	42.14	51.27	38.9	26.83	29.7	34.12	35.31	36.6
Services	42.79	28.12	45.03	54.15	47.96	55.9	59.4	56.8

Source: World Bank, World Development Indicators.

Table 8 highlights the growth of the services sector from USD 3.473 million in 1980 to USD 15.172 million in 2016, with a major upturn in the last 10 years.

Table 8: Trends in Zambia’s GDP and its sectoral Composition, 1980–2012 (constant 2010 USD billion)

Sector	1980	1990	1995	2000	2005	2010	2015	2016
Total GDP	7.563	8.388	8.274	9.882	13.351	20.266	25.319	26.99
Agriculture	1.433	1.823	2.318	2.347	2.186	1.909	1.907	1.978
Industry	2.434	2.798	2.304	2.424	4.172	6.533	7.91	8.351
Services	3.473	3.218	3.04	4.423	6.24	10.702	14.758	15.172

Source: World Bank, World Development Indicators.

As to the contribution of service sectors to the Zambian economy, available data suggests that construction, transport and communication, travel, business and education services are among the key contributors to the country’s GDP. In particular, in comparison to other SADC countries and other LDCs, education services and business services are of relative importance with 8.8 and 8.6 per cent GDP value addition while hotel and restaurant services play a relatively marginal role with only 2.9 per cent sectoral GDP share, compared to 10.9 per cent in the United Republic of Tanzania and 20.5 per cent in the Seychelles.²⁶²

Box 6: Services Trade Statistics: Zambia as a High Achiever

While services trade statistics generally and in LDCs in particular are notoriously incomplete, unreliable and often somewhat misleading (see Box 1), this applies to Zambia much less than for others, thanks to its statistical agencies’ advanced approach and performance.

The Bank of Zambia not only migrated to the BPM6 standard some years ago²⁶³ – a step that even some middle income countries’ central banks have not yet completed –, it also applies the recommendations of the MSITS (2010). The business surveys conducted on a quarterly basis include several questions on services, and the country’s Balance of Payments Statistical Committee publishes inward FATS – Foreign Affiliates Trade in Services statistics, an approximation of ‘Mode 3’ services trade.²⁶⁴

With the general caveat on services data in mind, some observations will nonetheless be helpful in illustrating Zambia’s situation for purposes of this study.

Figure 14, reflecting trade statistics for the period 2000–2013, illustrates a relatively low importance of Zambian services trade compared with trade in merchandise – but an immediate caveat applies: if ‘Mode 3’ were included, the correlations would look rather different. Note in this context that inward ‘FATS’ (Mode 3 imports) for 2015 accounted for a turnover of 4.3 billion USD, with a net operating surplus of 560 million USD.

With that caveat in mind, services trade’s value addition relative to GDP (imports and exports/GDP) amounts to only about 8 per cent.²⁶⁵ This is below the average of other neighbouring small economies

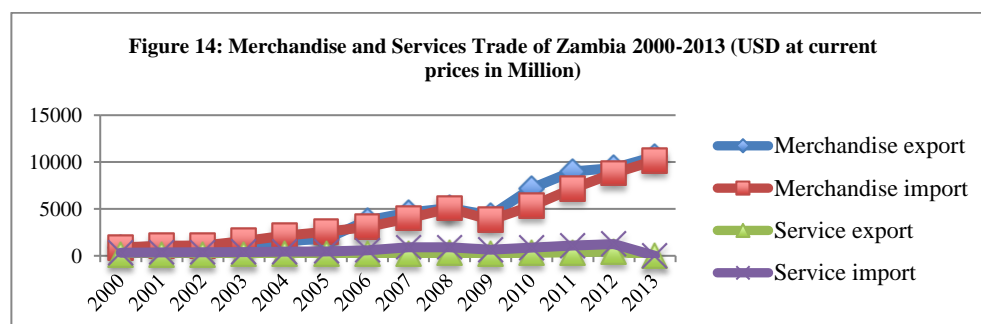
²⁶² South African Institute of International Affairs (SAIIA), *SADC Trade in Services* (2011), p. 8. Calculations by DNA based on country central banks and statistics offices and African Development Bank.

²⁶³ The Bank’s own “Revision Notes on Balance of Payments BPM6” state: “Since 2010, the BoP unit has been obtaining financial account data for private sector on BPM6 basis. The services surveys were implemented over the period 2012 - 2014. The inclusion of services survey data made a notable contribution to the BoP series.” See <http://www.boz.zm/balance-of-payments-statistics.htm>.

²⁶⁴ Bank of Zambia (BOZ), Central Statistical Office (CSO), Zambia Development Agency (ZDA) and Private Sector Development Programme (PSD), *Foreign Private Investment and Investor Perceptions in Zambia* (2016), Section 7.0 (Foreign Affiliates Statistics) and Annex XV (Inward Pure Services Categories Affiliates Statistics, compiled by industry and country).

²⁶⁵ SAIIA, *SADC Trade in Services*, p. 11.

and LDCs such as the neighbouring Swaziland (27 percent), Madagascar (23 percent), United Republic of Tanzania (18 percent) and Mozambique (18 percent).²⁶⁶ But again: these low figures might well in part be a result of weak or inaccurate services data and statistics, as explained in Box 1 above.



Source: UNCTADStats.

The Bank of Zambia in its (for 2016: preliminary) Balance of Payments exercise records exports of commercial services (including transportation and travel) of USD 885.5 million in 2016, up from USD 861.5 million in 2015 and USD 850.9 million in 2014.²⁶⁷ Overall Zambia remains a net importer of commercial services, but with both overall imports and the negative balance now progressively declining. The services trade balance was USD -508.2 million in 2016, down from USD -570.9 million in 2015 and USD -793.5 million in 2014.²⁶⁸ This appears to be a reversal of the trend over the preceding decade until 2013, which had seen a widening gap²⁶⁹ reaching a peak of almost USD -1.1 billion in 2013.²⁷⁰ This, however, appears to have been at least in part due to significant imports of services that related to investment, such as management consulting services, which shot up by around USD 300 million that year, and as such symptoms of healthy developments.

The main sub-sectors for exportation of commercial services – other than transport or travel, by far the biggest contributors in terms of recorded statistical value – are communication, cultural, business and insurance services. Especially business and cultural services exports are above the regional average. These data sets, as presented in Table 9, however, do not include information on construction services and computer and information services and may thus be inflated.²⁷¹

Table 9: Value and Share of Exports for Different Commercial Service Subsectors in Zambia, Selected Years (USD million and percent)

Sector	2000		2005		2010		2015	
	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)	Value (USD mio)	Share (%)
Commercial Services	120.16	100	296.3	100	345.3	100	861.512	100
Transport	42.6	35.45	85.9	28.99	151.9	43.99	43.655	5.06
Travel	66.5	55.34	98.4	33.21	124.6	36.08	660.15	76.6
Other commercial services	5.91	4.92	89	30.04	34.4	9.96	-	0
Communications	0.06	0.05	12	4.05	23.1	6.69	32.947	3.82
Construction	-	0	-	0	-	0	-	0
Insurance	5.09	4.24	8	2.70	7.3	2.11	84.052	9.8
Financial services	-	0	-	0	-	0	-	0
Computer and information	-	0	-	0	-	0	-	0
Royalties and license fees	-	0	-	0	-	0	-	0
Other business services	-	0	3	1.01	4	1.16	5.211	0.60

²⁶⁶ Ibid.

²⁶⁷ See Zambia, Bank of Zambia, *Annual Report 2016* (Lusaka, 2016) p. 19. Available from <http://www.boz.zm/BOZANNUALREPORT2016.pdf>. See also ITC, Trade Map. Available from [https://www.trademap.org/\(X\(1\)S\(jg5crf55u5ulyk3a1opdhnyy\)\)/lci/Index.aspx](https://www.trademap.org/(X(1)S(jg5crf55u5ulyk3a1opdhnyy))/lci/Index.aspx). (accessed 7 February 2017).

²⁶⁸ Ibid.

²⁶⁹ Graphically reflected in UNCTAD, Trade Policy Framework for Zambia: Harnessing the Potential for Trade and Sustainable Growth in Zambia (Geneva, United Nations, 2016), p. 19, Figure 2.12.

²⁷⁰ ITC, Trade Map. Available from [https://www.trademap.org/\(X\(1\)S\(jg5crf55u5ulyk3a1opdhnyy\)\)/lci/Index.aspx](https://www.trademap.org/(X(1)S(jg5crf55u5ulyk3a1opdhnyy))/lci/Index.aspx). (accessed 7 February 2017).

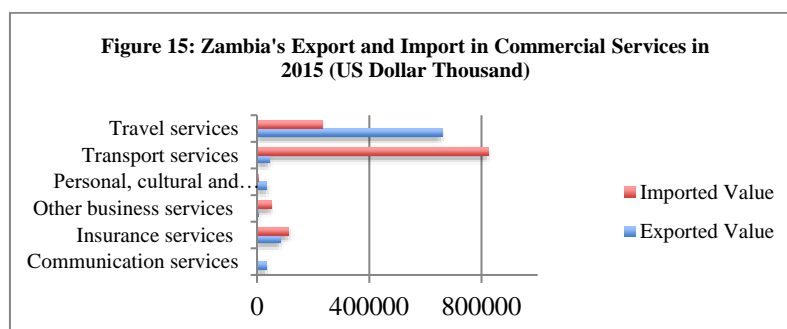
²⁷¹ UNCTADStat.

Personal, cultural & recreational services	-	0	-	0	-	0	35.500	4.1
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Source: UNCTADStat and ITC, Trade Map.

Note: The shares in the above table have been calculated after excluding “Government services n.i.e.” The export value for Total Commercial services is estimated by UNCTAD, WTO and ITC.

Extending the contemplated matter to Zambia’s service imports, Figure 2 provides an impression of the relative weight values of export and import in the some services sectors and sub-sectors.



Source: ITC, Trade Map.

It is important to keep in mind the limitations of the above numbers. Professional services, including classical professions – not least successful Zambian export in terms of medical (doctors, nurses, midwives) services and accounting services IT-related services, appear to be underrepresented, at least in the export numbers. The same would apply to education and health services, including those provided to citizens of neighbouring countries in localized cross-border transactions.

A 2017 study commissioned by the Commonwealth Secretariat and the COMESA Secretariats identifies four broad sectors as reflecting export (growth) potential, namely: transport; personal culture and recreation services; insurance and pension services; and computer and information services; without, however, excluding others.²⁷²

In relation to employment, services not only create more jobs in the formal sector than other economic sectors, but also contribute to SMEs job creation. From 2000 to 2013, services contributed an average of 69 per cent to total employment. As of 2013, 713,000 workers were employed in the services sector.²⁷³

2. Context: Services Trade Policy in Zambia

Zambia’s policy makers and stakeholders have cultivated a healthy focus on services and services trade. The country’s Commercial Trade and Industrial (CTI) Policy of 2009 emphasized the importance of services trade, and identified supporting the development of “services exports particularly in the tourism sector as well as other potential sectors” as one of the policy objectives, alongside the development of a vibrant domestic services sector and an enabling regulatory environment to support further investments.²⁷⁴ The CTI also emphasizes the need to examine the export potential beyond tourism.

Services figured prominently on Zambia’s agenda when it chaired the LDC Group in the WTO. As indicated, the country’s statistical agencies’ work on services trade data is in some ways exemplary, although some observers indicate that better communication between statistical agencies and policy makers could help in putting unpublished and raw data to good use, including in the context of regional negotiations on services. Zambia is an active participant in four regional fora engaged in pushing forward services trade integration through negotiations, namely SADC, COMESA, the Tripartite Agreement and the AfCFTA.

A renewed focus on services exports is emerging, although some industry stakeholders indicate the need for more and more sustained consultation of stakeholders, including with regard to the ongoing regional

²⁷² Caesar Cheelo, “Assessing the Potential of the WTO LDC Services Waiver to Expand Services Trade – Zambia”, paper prepared for the Commonwealth and COMESA, supported by GIZ, 2017, page 33. Not published, on file with the author.

²⁷³ Manenga Ndulo and Josephine Chanda, “Services and Sustainable growth in Zambia”. Discussion Paper, 2016/02 (Saipar, 2016), p.4.

²⁷⁴ Insert reference – Box 2.1 of the CTI.

negotiations. The Zambia Development Agency (ZDA), has recently upgraded its attention to services exports, and is working on enhancing services export promotion. A draft national export strategy is in the making which, reportedly, will contain important elements relating to services exports, based not least on SWOT analysis/es. Earlier governmental strategy documents already reflected reasonably prominently the ambition to develop exports (see the CTI 2009 above) but have so far been short on specifics.

3. A Look at Selected Sectors, Activities and Players: Services Exports, Challenges Encountered, and Potential Responses

This section explores services of interest, related exports or export potentials, and obstacles encountered in export markets. It juxtaposes these obstacles with possible solutions that could be imagined to be implemented by importing countries, whether under the WTO Services Waiver or otherwise, and with the preferences actually notified by the 24 WTO Members that have come forward under the Waiver. This is done here on a selective, sometimes anecdotal basis, and hence remains illustrative, but is nonetheless already rather instructive.

A comprehensive, systematic, and periodic stakeholder-based if not stakeholder-led review, as recommended in Section 0, would be optimal, and would ideally be conducted periodically for each LDC. Short of that, a selective approach, like the one taken here, is instructive and useful as it will already generate interesting and relevant results, suggesting specific solutions for some issues and stimulating an overall targeted search for solutions for others.

3.1 Insurance Services

3.1.1 Definition

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

3.1.2 Insurance Services in Zambia

Insurance services in Zambia are mainly provided through small local insurance companies or subsidiaries of large South African banks, with the former taking the greater share. Insurance brokers are equally present in the market with local suppliers dominating the operations.

As of August 2016 there were three reinsurance companies, two reinsurance brokers, 22 general insurance companies, twelve long-term insurance companies, 45 insurance brokers and 223 insurance agents registered with the Pensions and Insurance Authority (PIA).²⁷⁵ The vast majority of these actors are Zambian nationals.

In accordance with a 2005 law, insurance companies in Zambia are sub-divided into long-term and short-term insurers, with long-term insurance being classified as those that insure human life while short-term insurances cover any other good.²⁷⁶ As a consequence of this regulation, a number of larger companies split their businesses, resulting in a fairly large number of new life insurance companies. Insurance brokers may provide services on both.²⁷⁷

²⁷⁵ Data compilation on the basis of PIA’s website records available from www.pia.org.zm/content/overview-insurance-industry-zambia.

²⁷⁶ Zambia, The Insurance Act (1997), as amended in 2005.

²⁷⁷ PIA information provided online and comparison of new registries available from www.pia.org.zm/content/overview-insurance-industry-zambia.

The national insurance companies and brokers offer most standard long-term and short-term and private and commercial service. While life insurance companies dominate the market in numbers²⁷⁸, having increased considerably since 2006 as a consequence of the new regulation (from six to twelve), general insurance products are more widely used. Vehicle and property insurances take the greatest share while agriculture and goods in transit insurances are also increasing.²⁷⁹

Business insurance packages such as comprehensive engineering insurance or financial bond covers, however, are mainly offered through foreign companies' local subsidiaries.²⁸⁰

Zambia has one of the lowest levels of financial inclusion world wide. In 2009 only 13.6 per cent of the population had access to insurance and only 4 per cent was actually insured²⁸¹. These numbers have slightly increased in the past years. As of 2015, only 14.2 per cent of Zambians had access to insurance and 5.5 per cent of them were actually insured.²⁸² For comparison, in Lesotho 61 per cent of the population uses insurance products, and more than 60 per cent of them (37 per cent of the total population) use formal insurance services.²⁸³ According to FinScope, lack of information is the major barrier to insurance services; about 88.3 per cent of Zambian adults have never heard of insurance.²⁸⁴

On the other hand the sector has witnessed great growth levels of above 20 per cent per annum in assets over the past few years. In 2015, the industry recorded an overall increase of 18 per cent in terms of gross written premiums (GWP), which in monetary terms accounts for K1.38billion (208 million USD approx.).²⁸⁵ Most of the expansion, however, is due to increasing premiums by existing clients, rather than new clients and new products.²⁸⁶ Nonetheless the client numbers are also increasing. The above-mentioned low awareness and overall limited coverage of the population alone suggests significant growth potential.

Reliable data on insurances exports are available since 2000, when it was estimated to be 5 million USD, accounting for nearly 4.5 per cent of total services exports.²⁸⁷ In 2015, insurance exports accounted for 9.8 per cent of total commercial services exports recorded as such in the country's Balance of Payments, with around 90 per cent of those being re-insurance services.²⁸⁸ (These data, it bears repeating, do not account for exports in Mode 3, by far the most common for insurances other than re-insurance, which often operates on a cross-border basis.)

Zambia exports insurance services in Modes 1 and 3 primarily to regional markets. One of the major exporters is Madison General (MGen), which as of 2014 shared 16 percent of the general insurance market in Zambia. The company is a subsidiary of Madison Financial Services Company Limited and underwrites all classes of short term or general insurance business. It has been exporting short term insurance services to the United Republic of Tanzania since 2006 through its branch there – MGEN United Republic of Tanzania, is now also present in Rwanda, and is considering branching into other regional markets including Zimbabwe and the Democratic Republic of the Congo.²⁸⁹

Another exporter of insurance services is Prima Reinsurance Plc (Prima Re) – the first Zambian reinsurance company certified with the highest rate (A) by Global Credit Rating Co. (GCR), an international rating standard, and the only Zambian-owned reinsurer in the country. The company, just a decade after its establishment, considers all of Africa its target market (except Egypt and South Africa, for business reasons) and by now exports reinsurance services to around 20 African markets, primarily

²⁷⁸ 39.9 percent of the insured population uses long-term (life) insurances, while 39.2 percent have general insurance products such as motor and vehicle insurance. 32.7 percent of the insured population purchase funeral insurance.

²⁷⁹ Data compilation on the basis of a comparison of individual company figures provided on their websites compared with 2011 PIA statistics.

²⁸⁰ Comparison of different company portfolios on the basis of individual company websites.

²⁸¹ World Bank, "Diagnostic Trade Integration Study (DTIS) Zambia", paper prepared for the Enhanced Integrated Framework (n.p., 2014), p.198. Available from www.enhancedif.org/pt/system/files/uploads/zambia_dtis_report_june_10_2014.pdf.

²⁸² Zambia, Financial Sector Deepening Zambia (FSDZ), *FinScope Zambia 2015. Top line findings* (Lusaka, 2015), p.53. Available from www.fsdzambia.org/wp-content/uploads/2016/05/FINSCOPE-REPORT-2015.pdf.

²⁸³ Data from FinScope in UNCTAD, *Services Policy Review Lesotho* (Geneva, United Nations, 2013), p. 21.

²⁸⁴ Zambia, FSDZ, *FinScope Zambia 2015*, p.28.

²⁸⁵ Data compilation on the basis of PIA's website records available from www.pia.org.zm/content/overview-insurance-industry-zambia.

²⁸⁶ Ibid.

²⁸⁷ World Bank, World Development Indicators, Data Bank. Available from <http://databank.worldbank.org/data/>.

²⁸⁸ Ibid.

²⁸⁹ In country consultations. See also company's profile available at www.madisonzambia.com.

SADC and COMESA countries, but recently also West Africa. The company explores markets primarily through insurance brokers operating locally in these markets (Mode 1).²⁹⁰

3.1.3 Barriers encountered, possible preferences, and actual preferences notified

Barriers Encountered

Insurance services, like other financial services, are subject to heavy regulation and oversight in most countries, the primary objectives being to ensure the stability of the sector and to avoid market failures – both risks can entail far reaching implications for the entire economy.

WTO Members therefore reserved themselves significant regulatory flexibility under the GATS – the so-called ‘prudential carve-out’ in Section 2 a of the Annex on Financial services – to regulate the sector for prudential reasons even where such regulations have an impact on market access or are even discriminatory. While WTO Members will not be willing to grant exceptions from measures deemed necessary for prudential reasons, even within prudential regulations there may sometimes be spaces for flexibilities in favour of LDCs and other preferred trading partners (such as FTA partners) as long as such flexibilities do not affect the prudential function of the regulation.

Classically, barriers to trade in insurance services include entry requirements (*e.g.* in the form of licensing requirements), minimum capital requirements, actuarial and auditing requirements (*e.g.* financial reporting), and requirements pertaining to the investments of insurance companies.

Reinsurance: National and regional quotas

Some countries impose additional restrictions on international trade in long term insurance and/or reinsurance to reduce the outflow of premiums for reinsurance from the country. This includes many African countries (hence export markets for Zambian insurers and reinsurers), some of which apply combinations of restrictions.

This is uncontroversial for the share reserved for the African Reinsurance Corporation – Africa Re – which was established in 1976 by African states to preserve reinsurance premiums and reduce the outflow of foreign exchange from the continent. The currently 41 African members of Africa-Re require national insurance or reinsurance institutions to place a minimum of five percent of their re-insurance cessions with Africa-Re. In addition, many African countries including Kenya, Rwanda, Uganda, Ethiopia, Ghana and Zimbabwe require national insurers to place a mandatory share of reinsurance premiums with national re-insurance institutions. Such national quotas may be combined with regional quotas, *e.g.* for re-insurance companies from COMESA members.

There appears to be a significant trend across the region towards tightening (increasing) such restrictions, which industry players perceive – at least in part – as strongly protectionist rather than prudential in nature. Zambia itself has so far resisted this trend, and remains entirely open to foreign re-insurers. All the more remarkable, then, that Zambia maintains a slightly positive trade balance in reinsurance services (around USD 4.1 million USD in 2015, with around 74 million in exports and around 70 million in imports).²⁹¹

In GATS legal terms these national/regional quotas represent a market access restriction as they place limitations on the total value of service transactions (on Modes 1 and 3). The requirement to place the reinsurance premiums with national reinsurance institutions is also a national treatment limitation, the regional preferences an MFN limitation.

Withholding tax on reinsurance premiums

Some countries, such as Zimbabwe or Ghana, reportedly apply a withholding tax on reinsurance outflows, in an effort to keep premiums in the country. This functions as a national treatment limitation, in particular in some cases where there’s no corresponding local tax.

²⁹⁰ In-country consultations. See also company’s profile available at www.prima-re.com.

²⁹¹ ITC TradeMap, available from <https://www.trademap.org> (accessed on 10 February 2018).

Local partner requirements and equity limitations

Stakeholders further reported market access limitations on Mode 3 in the form of local partner requirement and participation of foreign equity in some regional markets, such as Kenya and the United Republic of Tanzania.

Restrictions on Mode 2 for life insurances (China)

In earlier consultations stakeholders had reported market access restrictions on purchasing life insurance for Chinese nationals from foreign insurance companies (market access restriction on Mode 2). Given the magnitude of China's investments in Zambia in construction and infrastructure development projects, the involvement of Chinese workers in these projects and the risks associated with the construction industry more generally, relaxing these restrictions would potentially offer opportunities for Zambian providers of life insurance services. Recent consultations do not confirm that the problem – the lack of Chinese workers taking out local life insurance – is in fact a regulatory one imposed by China. It may be a reflection of an arguably bigger challenge, namely that Chinese-financed projects in Zambia, many of them of major importance, usually “come fully insured” and hence provide very limited opportunities for local insurers.

Employment of foreign managers and specialists (Mode 3, Mode 4)

Stakeholders also report market access restrictions in regional markets, such as the United Republic of Tanzania, in the form of limitations on the total number of foreign natural persons that may be employed (market access restriction on Mode 4 in connection with Mode 3), and/or in the form of refusals to grant work visas/work permits. This also – and in some cases apparently: particularly – applies to managers, board members and even general managers. This poses significant challenges for companies working through Mode 3 establishments in their target markets. Stakeholders also reported that these limitations are sometimes imposed in an *ad hoc* manner – including through the refusal to extend existing work permits – thereby creating difficulties for the foreign insurance companies to react and properly plan their human resources especially in markets where local competencies might require training before undertaking the tasks of the foreign staff.

Domestication of certain insurances, such as “marine” (transport) insurance

Some countries in the region – an example mentioned is Kenya – have begun to make the local insurance of imports and exports compulsory. This creates *de facto* exclusive, but in any case captive, markets for national insurers in these countries, hence a national treatment challenge.

Other local insurance requirements

Similarly some countries appear not to allow, *de facto* or *de jure*, the insurance of Zambian assets abroad by Zambian insurance providers (something they would be allowed under Zambian law to do, which as a rule restricts their operation to local assets). This would amount to a market access limitation.

Possible Preferences

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

- Provide national treatment for LDC providers of re-insurance services for purposes of receiving mandatory reinsurance premiums;
- Provide preferential treatment for LDC providers of reinsurance services for purposes of receiving mandatory reinsurance premiums;
- Create an LDC quota for LDC providers of reinsurance services for purposes of receiving mandatory reinsurance premiums;
- Exempt LDC reinsurance and life insurance providers from otherwise applicable withholding tax on their products;
- Remove local partner requirement for LDC providers of insurance services;
- Remove or relax market access limitations for LDC providers of insurance services, especially those related to the form of the legal entity and the participation of foreign capital;
- Remove or relax market access restrictions on the consumption abroad of life insurance services provided by LDC insurances, generally or for cases of personnel temporarily stationed in the respective LDC market;
- Relax market access limitations on the total number of (foreign) natural persons employed by LDC providers of insurance companies;
- Facilitate the granting of work permits and the renewal of work permits for natural persons employed by LDC insurance companies, including specifically managers and specialists;
- Allow LDC insurance service providers, including of marine insurance products, to cover risks otherwise subject to domestication or other national preferences (preferential market access, national treatment).

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

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

- **Relevant African regional markets not covered by Waiver notifications.** The target exports markets of the Zambian insurance and re-insurance industry are mainly African countries, with the exception of special cases such as life insurance for foreign workers. This appears to remain the primary model for the foreseeable future. With the exception of South Africa no African country, DC or LDC, has offered preferences under the LDC Waiver so far. While many of the relevant challenges identified may be equally or better covered under existing or future regional integration agreements, there may still be space for useful LDC-only, unilateral and more easily revocable preferences under the WTO Waiver to address issues that are not resolved under regional arrangements. This may be interesting, for example, in the case of national or regional reserved quotas for reinsurance contracts. There the objective of the measure in some cases may be to stem the otherwise massive outflow of reinsurance premiums to powerful, more developed regional players such as South Africa, an objective that would not be jeopardized by opening up national quotas to much weaker LDC players. As the Waiver would allow for this to be done on a more flexible basis than under regional treaty arrangements, the tool offers additional flexibility that could encourage countries to apply preferences even on a ‘trial basis’.
- **China equally has not notified any preferences for insurance services.**
- **Six notifications do address insurance services.** These are the four EFTA states - Iceland, Liechtenstein, Norway and Switzerland -, as well as Brazil and the European Union (for seven Members, namely Belgium, Germany, Italy, France, the Netherlands, Spain and the United Kingdom of Great Britain and Northern Ireland).
 - **None address problematic restrictions on reinsurance (such as national preferences),** possibly because these restrictions do not apply in the respective markets.
 - **A few commitments making residency requirements of directors more flexibly are explored in Norway’s and Iceland’s notification.** Norway usually reserves the right to require half of all directors of mutual insurance companies to reside within Norway or the EEA. The notification foresees the possibility of ad hoc exemptions for this requirement, granted by a ministry concerned. The usefulness of this model is arguably very limited, not least because most LDC exporting insurances would not be mutual insurances. However, the small flexibility – the possibility of an ad hoc exemption – may still be of interest as a ‘better than nothing’ approach. While its

usefulness in any given case presupposes that there's sufficient administrative/political will to apply flexibilities (i.e., grant Zambian/LDC insurance companies the exemption from residency requirements), there may be cases where to apply flexibilities in an LDC-only basis, perhaps under conditions, while keeping it in place for insurances from bigger, more developed countries. Iceland's notification contains a similar flexibility: insurance intermediaries must normally be resident in Iceland, but the Minister of Economic Affairs may grant exemptions from this requirement.²⁹²

- **The European Union's notification contains, for seven Member States, an opening for direct insurance provided in Modes 1 and 2 for "maritime shipping", covering the goods shipped as well as vessels, as an exception to other direct insurance products which are usually "unbound" in Modes 1 and 2 (hence no market access/national treatment promised).** Such an opening, if offered by Zambia's neighbours, especially those through which goods are delivered to and from the landlocked country, would operate as an exception to the otherwise emerging trend of domestication of shipping insurances, as suggested.
- **Some notifications cover improved "Mode 4" access for managers and specialists on a horizontal basis, hence usually applicable also to insurance services.** This includes, for example, Norway's notification. While this does not address any specific limitations in terms of number or percentage of foreigners on the board of directors or similar, it would relate to general policies restricting work permits for foreign executives, managers and specialists, which appear to be at the root of some of the issues mentioned by Zambian stakeholders. It bears repeating in this context that those issues would equally well be addressed by horizontal commitments applied on an MFN basis, which many WTO Members have indeed undertaken for executives, managers and/or specialists as subcategories of intra-corporate transferees.

There are, thus, no immediate benefits emanating from the notified preferences for this sector, both because relevant export markets are not offering preferences under the Waiver so far and because most sectoral preferences notified do not address the types of issues raised by stakeholders. Some, however, could serve at least as an example (Norway, Iceland, European Union). Effective horizontal measures could help solve some of the "Mode 4" issues around work permits for executives, managers and specialists.

3.2 Selected Professional Services

3.2.1 Definition

Under the WTO Services Sectoral Classification List – referred to as the 'W/120'²⁹³ "Professional services" are listed as a sub-sector of "business services." The category of 'professional services', divided into ten sub-sectors, encompasses the classical professions (lawyers, doctors etc.) and other services offered by professionals with specialized higher education. Often these are organized in professional membership groups such as the bar associations or national medical associations which in many cases are endowed with self-regulatory functions and powers.

This section focuses on a selection of a sample subsectors including accounting and auditing services, architectural services, integrated engineering services, and services provided by nurses.

3.2.2 Professional Services in Zambia

For the 2014 Diagnostics Trade Integration Study (DTIS) conducted by the Enhanced Integrated Framework (EIF),²⁹⁴ the World Bank engaged in a series of surveys on professional services in Zambia. 90 per cent of the surveyed enterprises reported that they already use professional services, with 70 per cent of them using accounting and related services, and 50 per cent using engineering and legal

²⁹² Note that both flexibilities may in fact be applied on a horizontal basis, so may not in fact be preferences. That, however, does not detract from the fact that they provide useful examples of small openings that could help address some real-life issues experienced by LDC providers, whether granted on a preferential or non-preferential basis.

²⁹³ Services Sectoral Classification List adopted on 10 July 1991, commonly referred to as 'W/120.' In World Trade Organization, document WTO Doc.MTN.GNS/W/120. Available from <http://docsonline.wto.org>.

²⁹⁴ World Bank, *DTIS Zambia 2014*.

services.²⁹⁵ In comparison, the COMESA wide average of use of professional services is only 78 per cent.²⁹⁶ While large companies make a higher use of professional services, the survey reveals that 70 per cent of the surveyed small companies also use professional services.²⁹⁷

The result is a high local demand for professional services that translates into a fairly developed professional services industry with many local players who dominate the market. This is further matched with good educational facilities and regionally competitive wages in most sectors.

The fairly competitive nature of Zambian professional services is reflected in the sector's export records. In 2011 Zambia's recorded exports of professional services amounted to 4 million USD, marking a steady increase from 3 million USD since 2006.²⁹⁸ While this accounts for only 1.1 per cent of exports, it remains above the regional average in terms of real value.²⁹⁹ These numbers likely do not include Mode 3 exports – which often are the preferred mode, with engineers and others operating through local establishments, often in combination with local partners. They are also likely to exclude a significant amount of informal trade, and some payments for professional services may not appear in the BoP for other reasons.

Imports, on the other hand, amounted to above 100 million USD in 2011, marking a rapid rise from 62 million USD in 2010 and 40 million in 2009.³⁰⁰

According to the EIF study, 18 per cent of all professional service providers export their services, with an average of 34 per cent of firms' revenue being generated through foreign trade.³⁰¹ The COMESA average is 16 per cent and 20 per cent respectively.³⁰²

All of the exporting companies rely on Mode 1 as their main means of export delivery. A much smaller yet still significant number of exporters supply services through the temporary movement of professionals (Mode 4), and an equally small number of exporters export via Mode 2 when foreign clients are visiting while only six surveyed companies reported that they maintain branches abroad.³⁰³

The average COMESA country's main export markets are Sub-Saharan Africa, mainly other COMESA countries (82 per cent), and Europe. For Zambia, however, the share of exports to Europe ranges much higher than that of other COMESA countries with 45 per cent as opposed to 18.5 per cent average (28 per cent for accountancy services alone). Other significant export markets include North and South America (27 per cent, COMESA average), Australia and New Zealand (9 per cent, above COMESA average) and the Russian Federation, India and China (9 per cent, below COMESA average).³⁰⁴

Accounting Services

Accounting services are among the most sought after professional services in growing economies. In Zambia today only 1.2 accountants operate per 100,000 people while in neighbouring LDC United Republic of Tanzania 7.7 accountants operate per the same share of population. The demand for accountancy services in Zambia will continue to rise as more than 70 per cent of enterprises outsource their accounting to providers of accounting services.³⁰⁵

Chartered accountants in Zambia need to be registered with the Zambian Institute of Chartered Accountants (ZICA). ZICA is the regulator of the accountancy profession in Zambia and as such is the agency that licenses accountants in the country. ZICA also provides professional education and training in accountancy in Zambia and the region. ZICA registered 89 chartered accountant firms performing

²⁹⁵ Ibid, pp. 165, 166.

²⁹⁶ Ibid.

²⁹⁷ Ibid.

²⁹⁸ Note: Beyond legal, accounting, auditing, bookkeeping, architectural and engineering services, these statistics also include business and management, advertising, market research and public opinion polling services, research and development, waste treatment and depollution, as well as agricultural, mining and other on-site processing services.

²⁹⁹ UNCTAD, Data Center, UNCTADStat, 2017. Available from <http://unctadstat.unctad.org/EN/> (accessed 8 December 2017).

³⁰⁰ Ibid.

³⁰¹ World Bank, *DTIS Zambia 2014*, p. 169.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid.

audits and 27 chartered accountant firms not performing audits for the year 2016.³⁰⁶ Among the 116 firms are the four main international accounting firms PwC, KPMG, Deloitte and Ernst & Young.

Major local companies include Newton Lungu and Associates, AMG Global Zambia and Reeds Business Solutions. AMG Global Zambia is among the few locally registered accounting firms that operate offices in various countries in the region, namely Botswana, Malawi, Mozambique, South Africa, Zambia and Zimbabwe.³⁰⁷ Newton Lungu and Associates, on the other hand, with over 60 clients is only registered in Zambia, but lists a number of international companies and organizations as past clients.³⁰⁸ AMG Global Zambia has around 50 employees, Newton Lungu and Associates and Reeds Business Solutions employ between five and fifteen professionals in the Zambia offices and offer a wide range of services that go beyond narrow accounting services.³⁰⁹ Abacus 360 is another important player with foreign operations and foreign clients.

The EIF study provides some general export data on professional services from Zambia as illustrated above, but data on accounting services exports is scarce save for few anecdotal reports. That said, stakeholders suggest that a good part of the real export potential for Zambian accountancy services is still untapped, partly due to issues of recognition of qualifications and partly due to regulatory and other constraints as described below.

In fact, South Africa faces acute shortages of accounting and auditing skills,³¹⁰ however 80 per cent of the skills needed were of individuals with lower levels of education than the Chartered Accountant South Africa (CA(SA)) designation.³¹¹

Architectural Services and Engineering Services

The Zambian Institute of Architects (ZIA) regulates the architecture profession in Zambia. The Engineering Institute of Zambia (EIZ) regulates the engineering profession in the country. According to the EIZ, there are 4108 engineering professionals and 832 engineering organizations³¹². Data on the number of registered architects with ZIA is not available, but company profiles for Zambian firms underline an impressive record of export in engineering and architecture services to the region.

Ng'andu Consulting Engineers, African Mining Consultants (AMC Group) and Green Code Architects are examples for Zambian firms that have been engaged in major multi-million (sometimes -billion) dollar projects providing architectural and engineering services to regional markets. That said, often larger projects are given to foreign architecture firms, including South African firms.³¹³

African Mining Consultants, headquartered in Lusaka, has developed projects in Côte d'Ivoire, Republic of Congo, Mauritania, Mozambique, South Africa, Sudan, Uganda, Zambia and Zimbabwe. It offers services on environmental baseline studies, impact assessments and auditing, on various aspects of exploration and on a very large number of actual mining engineering. Around half of all operations occur outside of Zambia resulting in major exports. The company employs over 30 engineers.

Ng'andu Consulting has lead several projects in Zambia and Rwanda, including the construction of the award-winning Pontoon Bridge project in Zambia and a large soccer stadium in Kigali, currently under

³⁰⁶ Zambia Institute of Chartered Accountants, Professional Accounting firms registered with Zica for the year 2016. Available from <http://www.zica.co.zm/wp-content/uploads/2017/01/Registered-firms-as-at-22-December-2016.pdf>.

³⁰⁷ Company profile of AMG Global Chartered Accountants Zambia. Available from <http://www.amgglobal.co.zm/>.

³⁰⁸ Company profile of Newton Lungu & Associates. Available from <http://www.newtonlungu.com/>.

³⁰⁹ Comparison of companies' profiles available online.

³¹⁰ Ian Gillson and others, *Harnessing Regional Integration for Trade and Growth in Southern Africa* (n.p., World Bank, 2011), p. 7. Available from http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1239120299171/5998577-1254498644362/6461208-1300202947570/SA_Regional_Integration.pdf.

³¹¹ D.P. van der Nest and Me. E van Zyl, "Financial Management, Accounting and Auditing Skills Shortage, a South African Reality", paper prepared for the South African Institute for Chartered Accountants, Pretoria, South Africa, 2008, p. 47. Available from https://www.cass.city.ac.uk/_data/assets/pdf_file/0006/37329/D-P-Van-der-Nest.pdf.

³¹² The number of engineering professionals includes engineers, technologists, technicians and craftpersons in the fields of agriculture, civil engineering, chemical engineering, electronic engineering, geology, hydro-geology engineering, land surveying, mechanical engineering, medical engineering, mining engineering, production management, computer engineering, and geomatic engineering. See Engineering Institution of Zambia, 2017 Gazette. Available from <http://www.eiz.org.zm/practice/gazette-notice/>.

³¹³ See also Dixon Bwalya, "Zambia: New ZIA Council Assigned to Bring Back Profession On Course", *The Times of Zambia*, 21 December 2012. Available from <http://allafrica.com/stories/201212210997.html?viewall=1>.

construction. The company specializes in design and supervision of road and bridge infrastructure and transportation engineering.³¹⁴

Green Code Architects, a smaller size enterprise, has lead project in South Africa, Zambia and Ghana.

The dominant export market for architecture and engineering services is by far the sub-Saharan African region with nearly 70 and 80 per cent, respectively.³¹⁵ Export takes place primarily in Modes 1 and 4 and increasingly in Modes 2 and 3.³¹⁶

Services Provided by Nurses

The General Nursing Council of Zambia (GNC) registers nurses and midwives operating in the country. According to GNC data, in 2011 there were less than 3,000 midwives (and nurses with midwifery training) and around 7,500 nurses were working in Zambia. The Health Professions Council of Zambia on the other hand, estimated that from 2011 to 2015, 10389 health professionals were registered in the country.

In terms of exports, 9.2 per cent of Zambian nurses (or 1,110 nurses) export their services (in Mode 4) to markets in sub-Saharan Africa, the United States of America, Canada, the United Kingdom of Great Britain and Northern Ireland, Australia and New Zealand according to 2010 data.³¹⁷ The numbers, however, remain comparably low due to high ratio of nurse wages to per capita income in Zambia, which stands at nearly ten USD (ratio) compared to one USD in the United States of America.³¹⁸ Possibly as a result of this Zambia does not appear to absorb all of its nurse graduates in the local job market, making export of nursing/midwifery services a desirable and important for the health sector, its professionals and its development.³¹⁹ That does not detract from the fact that there is a significant shortage of nurses – or perhaps rather: effectively funded nursing jobs – in Zambia.³²⁰ Brain drain has been suspected as one of the causes, but arguably more to ‘push’ factors (low wages, poor working conditions).³²¹ Both export opportunities and local needs suggest a significant growth potential of the sector.

3.2.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Professional services include in particular services provided by accredited professions such as medical services, engineering services, legal services and accountancy services. These are usually reserved to professionals who meet certain qualification and licensing requirements, and subject to more restrictive regulations than other business services such as management consulting services. These regulations, primarily in the form of qualification and licensing requirements and procedures, can translate into barriers to trade in such services, sometimes in combination with certain preferences for local professionals, e.g. in the form of requirements to be locally qualified.

Challenges related to recognition of qualifications, accreditation, procedural and/or substantive licensing requirements and possibly membership in professional associations or guilds are classical barriers to trade in professional services.

³¹⁴ Company profile of Ng’andu Consulting. Available from: <http://nganduconsultzm.geniusworks.jp/>.

³¹⁵ World Bank, *DTIS Zambia 2014*, p. 167.

³¹⁶ Ibid.

³¹⁷ World Bank, *Migration and Remittances Fact Book 2011* (Washington D.C., 2011), p. 261.

³¹⁸ Values converted to USD by the World Health Organization using PPP converters for 2005 the World Development Indicators in Christopher Lane, Adélio Fernandes Antunes and Mireille Kingma, “The nursing community, macroeconomic and public finance policies: towards a better understanding”, Discussion Paper N° 2 (Geneva, World Health Organization and International Council of Nurses, 2009). Available from http://www.who.int/health_financing/documents/dp_e_09_02-nursing_macro_economics.pdf.

³¹⁹ Ibid, p 9, 11.

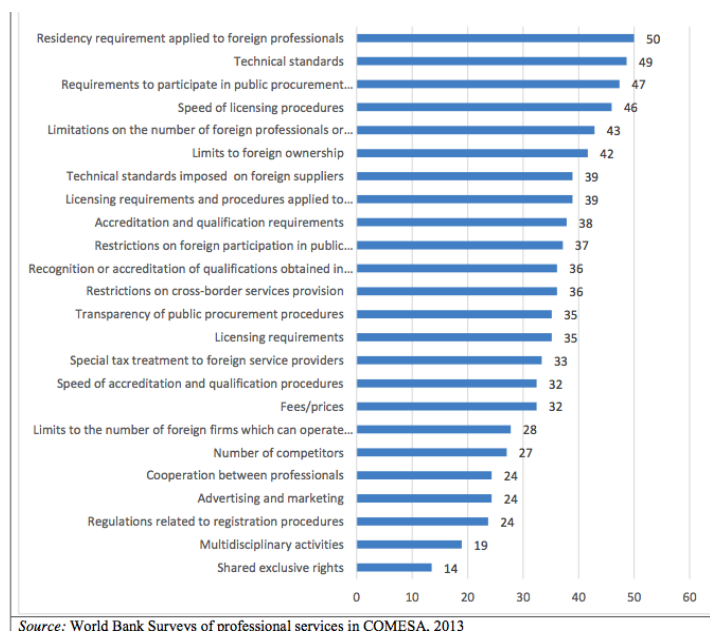
³²⁰ See “Zambia has a ratio of 0.8 Nurse to a 1,000 population – Health Minister”, *Lusakatimes.com*, 27 September 2015. Available from <https://www.lusakatimes.com/2015/09/27/zambia-has-a-ratio-of-0-8-nurse-to-a-1000-population-health-minister/>. See also Association of Chartered Certified Accounts, *Ker health challenges for Zambia* (n.p., 2013) <http://www.accaglobal.com/content/dam/acca/global/PDF-technical/health-sector/tech-tp-khcz.pdf>.

³²¹ Emmanuel Makasa, “The Human Resource crisis in the Zambian Health Sector – a discussion paper” in *Medical Journal of Zambia*, Volume 35, No. 3, pp. 81 – 87. Available from <http://graphics8.nytimes.com/packages/pdf/magazine/2012/0311doctors/Makasa.pdf>.

Furthermore, many professional services including nursing and engineering services are mostly traded in Mode 4. Horizontal barriers to trade in Mode 4 such as those related to visa, work permits and recognition of qualifications are therefore of great relevance to trade in professional services.

The EIF Study highlights the key regulatory constraints faced by Zambian providers of professional services in export markets as depicted in Figure 3 below.³²² Not surprisingly, residency requirements, technical standards and licensing procedures are among the top regulatory barriers.

Figure 3: Top Regulatory Challenges Facing Zambian Exports of Professional Services in Export Markets



The section below provides anecdotal evidence of barriers to exports of selected professional services from Zambia as underscored by stakeholders during consultations.

- **Accountancy Services**

Classically, barriers on trade in accountancy services include restrictions related to market entry regulations and professional conduct. The accountancy profession, like the legal and medical profession, is largely self-regulated. The accountancy guild or association in most countries is the main regulator of the accountancy profession. Access to membership and obtaining licensing from such guilds or associations can in law or in fact raise barriers to foreign providers of accountancy services. It is worth recalling that taking on the accountancy sector as a ‘pilot,’ WTO Members in an effort to ensure that the regulation of the accountancy profession does not lead to unnecessary barriers to trade in accountancy services in 1998 negotiated a set of ‘Disciplines on Domestic Regulation in the Accountancy Sector’. These disciplines underscore the need to ensure that measures relating to licensing are prepared, adopted or applied in a manner that does not create unnecessary barriers to trade.

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

National treatment and market access limitations: Recognition of qualifications, quantitative restrictions and work permits

³²² World Bank, *DTIS Zambia 2014*, p.176, figure 8.13.

In terms of challenges to Zambia's export of (chartered) accountancy and auditing services the stakeholders reported national treatment limitations, regulatory restrictions related to recognition of qualifications, market access limitations in the form of quantitative restrictions and difficulties in obtaining work permits in South Africa.

Providing chartered accountancy services in South Africa requires the service provider to be registered with the South Africa Institute of Chartered Accountants (SAICA). Auditors have to be registered with the Independent Regulatory Board for Auditors (IRBA)³²³, established under the Auditing Professions Act, 2005 (APA). Section 37 of which requires *inter alia* auditors to complete the prescribed education, training and competency for a registered auditor, to be a fit and proper person to practice the profession, and to reside in South Africa.³²⁴ This latter residency requirement obviously operates as a **national treatment limitation** on exports of auditing services in Mode 4 from any country including Zambia.

Further, stakeholders reported challenges related to **recognition of qualifications** in South Africa. Interestingly, while the South African Qualification Authority (SAQA) recognises the academic chartered accounting and auditing qualifications from a number of South African tertiary institutions, SAICA does not recognise South African professional (non-academic) qualifications of the same services. There further appears to be some inconsistency regarding the assessment of equivalency and recognition of such qualifications by SAQA.

Stakeholders also highlighted that IRBA only recognizes chartered accountants who hold the CA(SA) designation granted by the SAICA.³²⁵ Chartered accountants trained in Zambia do not qualify for the CA(SA) designation as SAICA does not have a mutual recognition agreement (MRA) with ZICA. Within Africa, SAICA concluded so far MRAs with its counterparts in Namibia, Swaziland and Zimbabwe.

Consequently, chartered accountants licensed in Zambia, who wish to gain the designation of CA(SA) must have their qualifications evaluated, complete a specialist course, pass exams and meet the three-year training requirement (referred to as articles).³²⁶

The net result is that South African chartered accountants and auditors have to perform their services in Zambia under the direction, control and supervision of a registered chartered accountant/auditor who assumes responsibility for the unregistered chartered accountant/auditor. This of course has professional and financial implications on the South African accountants and auditors.

South Africa further maintains quotas on foreign-trained auditors, which operates as a **market access restriction** for exported auditing services. The quota changes from time to time based on labour market and ENTs.

South African providers of auditing services may establish a presence in Zambia – export in Mode 3. However, all partners or shareholders of an auditing firm must be auditors registered in Zambia (which requires being resident in the country) and the auditing firm must be incorporated and registered under Zambia's Companies Act, 2008.³²⁷ Further, registered auditing firms cannot share fees with a person who is not registered in Zambia, therefore limiting the ability of auditing firms to repatriate or share profits made in Zambia.³²⁸

Another challenge in exporting accountancy services in Mode 4 to South Africa is related to obtaining **work permits** as elaborated in Box 7 below.

Box 7: Work Permits in South Africa

Obtaining work permits in South Africa has long been criticised as burdensome, prompting changes as part of the new 2014 Immigration Regulations to the Immigrations Act 2002.

³²³ IRBA also accredits institutions that register auditors. At present SAICA is the only professional body that is so accredited.

³²⁴ SAICA website, <https://www.saica.co.za/Technical/Assurance/IRBA/tabid/540/language/en-ZA/Default.aspx>.

³²⁵ This was confirmed by the author in a phone conversation with an IRBA official.

³²⁶ World Bank, *Harnessing Regional Integration for Trade and Growth in Southern Africa* (n.p.,2011), p. 154, Available from http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1239120299171/5998577-1254498644362/6461208-1300202947570/SA_Regional_Integration.pdf.

³²⁷ Section 38 of the APA.

³²⁸ World Bank, *Harnessing Regional Integration for Trade and Growth in Southern Africa* (n.p.,2011), p.154.

Prior to the 2014 Regulations three main types of permits were available for professionals seeking to provide their services in South Africa: General work permits, quota work permits and exceptional work permits. In accordance with the Regulations quota and exceptional work permits have now been merged under the category of 'critical skills permits', though existing quota and exceptional skills permits remain valid.

General work permits are issued upon the joint application of an employer and employee for a specific position. The position must have been advertised sufficiently prior to the application and the employer must show that no equally qualified South African candidate applied. The process is generally regarded as difficult with uncertain outcomes, resulting in a situation where most jobs are advertised for applicants with 'valid work permits only'. General work permits are only valid for the specific position they have been issued for, which can result in a zeroing of promotions, as promotions even within the same company and department would qualify as a new position.

Quota work permits, on the other hand, were meant to respond to a skills shortage in South Africa. They would be available for specific areas of work and specific positions identified by the Department of Home Affairs (DHA), though they did not require an applicant to have a job offer prior to obtaining the work permit. According to the DHA the 2013 list for quota work permits identified 35,000 positions in 53 different sub-sectors.³²⁹ Quota work permits remain valid for as long as the holder was employed "within the area of expertise and permit holders are required to report to the Department of Home Affairs on an annual basis in order to confirm that they continue to be employed in their designated professions".³³⁰ For that reason they continue to exist.

Finally, **exceptional skills work permits** were available for professionals with exceptional skills, provided that they were supported by government authorities in their home country or in South Africa, endorsed by established academic or business institutions, and were found to be to the benefit of South Africa in the area of work that the applicant applied for. The applicant is not required to have a job offer prior to obtaining the work permit, but he or she had one year to obtain work. The permits are valid for five years subject to the person remaining employed.

Under the new Regulations these latter two categories have been merged, now only allowing applications in specified fields. Regulation No. 459 on the Immigrations Act 2002, gazetted on 3 June 2014, sets out nearly 200 skills in ten categories which are deemed critical. Most skills related to environmental sciences, engineering, certain professional services, ICT and BPO services, senior business and management skills and academic research. Critical skills permits remain valid for five years and may be applied for even absent a concrete job offer. Proof of application for a certificate of registration with the professional body, council or board recognised by South African Qualification Authority (SAQA) is essential for the application. The fees differ but can be as high as 255 USD per person, non-refundable.

- **Architecture Services, Engineering Services and (relevant) Services related to Mining**

Exports of engineering services take place primarily in Modes 3 and 4 and thus barriers encountered by exporters are often those pertinent to the said modes of supply more generally.

Industry representatives in Zambia report various examples of barriers to their exports including barriers related to recognition of qualifications, licensing and work permits in South Africa, barriers related to work permits in Rwanda in addition to difficulties in tendering on government procurement projects in multiple countries. It is worth recalling that like others this selection of course represents merely a snapshot sample emanating from discussions with stakeholders and does not imply that similar or other barriers are not encountered by the same or other stakeholders in other markets.

Recognition of qualifications and licensing in South Africa

Stakeholders reported that South Africa does not recognize Zambian architecture licenses, obtained from the Engineers Registration Board of the Engineering Institution of Zambia. To obtain a license in South Africa, foreign architects have to have their qualifications recognized as equivalent to the corresponding South African qualifications and have to demonstrate a number of years of professional practical experience.

In regard to recognition of academic qualifications, stakeholders reported difficulties in obtaining recognition of qualifications for engineers and architects by the South African Qualifications Authority (SAQA) citing reasons related to unclear or inconsistent criteria on the basis of which SAQA grants equivalency of qualifications. Stakeholders further reported that qualifications recognized by SAQA as equivalent to the South African qualifications do not seem to suffice for purposes of registration with the

³²⁹ DHA website, <http://www.dha.gov.za/index.php/immigration-services/scarce-skills-work-permits>.

³³⁰ Ibid.

Engineering Council of South African (ECSA), which undertakes another, separate assessment of the foreign qualifications.³³¹

In fact, ECSA confirmed that they do not recognize Zambian engineering qualifications per se, and that Zambian engineers must submit their academic and professional qualifications for an evaluation, pay the applicable processing fees and may be invited for an interview to determine if their qualifications are recognized in South Africa. This is done on a case-by-case basis for each engineer, and the recognition of qualifications is at ECSA's discretion.³³²

Stakeholders further reported that ECSA accounts for part of the years of professional experience gained in Zambia as relevant professional experience.

Work permits

Stakeholders also reported that obtaining **work permits** in South Africa is challenging both for the delivery for engineering and architectural services in Mode 4 (including in connection with Mode 3). This challenge, also reported by several providers of other services, is described in detail in Box 7 above.

Stakeholders mentioned difficulties in renewing work permits for Zambian engineers and architects in Rwanda working on implementing a government tender although the Zambian bidder won the tender with the profiles of the said engineers and architects.

Restriction in bidding on government procurement tenders

Stakeholders further reported challenges in bidding on government procurement tenders. These are largely not disciplined by the GATS and Members therefore, as a technical matter, do not need the Waiver to grant preferences for LDC providers as explained in Box 8 below.

Box 8: Government Procurement under the GATS and the LDC 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:

1. the services are purchased by governmental agencies; and
2. 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 proper 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.³³³

It is not clear whether any such preferential treatment is currently extended to LDCs by any 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 and IT and computer-related services (e.g. to provide e-government solutions, a major market), 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.

³³¹ The need for what seems like a “double” assessment of foreign engineering qualifications in South Africa was verified by the author in phone interviews with SAQA and ECSA.

³³² Phone interview with ECSA.

³³³ Note, however, that unlike under the LDC Services Waiver, which requires any preferences to be extended to all LDCs on a non-discriminatory basis, preferential treatment for services procured for governmental purposes within the definition of GATS Article XIII may distinguish among LDCs.

Stakeholders reported **national treatment** limitations and **regulatory limitations** when bidding on government tenders for engineering projects in South Africa, Botswana and the European Union (in European Union funded infrastructure projects in Zambia and the region).

In South Africa stakeholders mentioned (1) *de jure* or *de facto* nationality requirements in government procurement projects - (In line with the Preferential Procurement Policy Framework Act and its implementing regulations, tenderers attaining a B-BBEE status level of contribution are granted up to 20 preference points.³³⁴ While in principle open to all, in most cases only South African companies can effectively obtain B-BBEE status.); and (2) a local content requirement in the form of employment of local staff, with legislation requiring 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 who would like to use their own (foreign) workers.

These national treatment limitations encountered in the context of bidding on government engineering tenders in South Africa are described in Box 4 below.

Box 9: Government Procurement in South Africa in the context of the Broad-Based Black Economic Empowerment Policy

The Broad-Based Black Economic Empowerment (B-BBEE) is a government policy that aims to advance economic transformation and enhance the economic participation of Black people in the South African economy. Black people are defined as Africans, Coloureds and Indians who are citizens of the Republic of South Africa.³³⁵

In line with the B-BBEE, public entities are required to implement a preferential procurement policy granting preferences to Black suppliers, referred to as suppliers with a B-BBEE Status Level. Acquiring a B-BBEE Status Level requires the supplier to (1) be incorporated in South Africa or be registered as an “external company” with the Companies and Intellectual Property Commission (CIPC), and (2) fulfil certain criteria such as have “Black” ownership, “Black” management control, “Black” skills development, “Black” enterprise and supplier development and “Black” socio-economic development.³³⁶ Each of these criteria is matched with a pre defined score point and a B-BBEE Verification Agency 337 assesses, verifies and validates disclosed and undisclosed B-BBEE-related information on measured entities and grants the B-BBEE Status Level accordingly.

Tenders for construction works issued by the department of public works, for example, are scored in a way that accords bidders with B-BBEE Status Level with up to 20 additional points over bidders without the B-BBEE Status Level.

Stakeholders further reported national treatment challenges facing Zambian engineering companies registered in Botswana (Mode 3) in bidding on government tenders in Botswana.

Interestingly, stakeholders mentioned restrictive nationality requirements in donor funded infrastructure projects in Zambia including European Union-funded projects. These donor-funded projects reportedly often contain a requirement for the bidder to demonstrate experience in undertaking similar projects in the country/region of origin of the funds (*e.g.*: in the European Union, in the context of European Union funded projects) rather than the region where the project is to be implemented (*e.g.*: Zambia, COMESA or Southern African countries for example). This requirement automatically excludes Zambian engineers and architects from the bidding process as most if not all Zambian engineers and architects can demonstrate experience in Zambia and/or the region but not outside the region.

Regulatory challenges: Financial capacity requirements

Also in the context of government procurement, stakeholders further underscored regulatory challenges in South Africa, Botswana (and in donor-funded infrastructure projects) in the form of excessive requirements related to the financial capacity of bidders.

³³⁴ Zambia, Preferential Procurement Policy Framework Act 2000, articles (5) and 6(2).

³³⁵ South Africa, Codes of Good Practice issued under section 9(1) of the Broad-Based Black Economic Empowerment Act, Schedule 1, Part 2 (2013).

³³⁶ *Ibid*, section 8(1).

³³⁷ The department Trade and Industry appointed the South African National Accreditation System (SANAS) to conduct the accreditation of Verification Agencies. A list of all accredited agencies can be found at: http://www.sanas.co.za/af-directory/bbbee_list.php.

Box 10: Medical Doctors: Going to America, Going to South Africa

Many Zambian doctors have emigrated, and many more aspire to emigrating to the United States of America, or South Africa. Barriers include **cumbersome and costly licensing procedures** and challenges related to **visa** in the United States of America and challenges related to market access, national treatment and recognition in South Africa.

Licensing procedures in the United States of America

Practicing medicine in the United States of America requires physicians with an M.D degree to (1) have attended a school listed in the International Medical Education Directory (IMED) - The University of Zambia School of Medicine is among the listed institutions in IMED and (2) pass the United States Medical Licensing Examination (USMLE). The USMLE is a multi-part (3-steps) examination for medical licensure in the United States of America.

United States of America medical students take step 1 and 2 as part of their medical training. Applicants from outside the United States of America can take step 1 and 2 of the USMLE examination in designated examination centers outside the United States of America. Stakeholders reported that the closest of such centres to Zambia is a Prometric Centre in South Africa. Step 3 has to be undertaken in the United States of America – this of course is linked to obtaining the necessary visa. Stakeholders reported that the costs for undertaking the USMLE are high for Zambian standards.³³⁸ In addition, applicants have to cover travel and associated costs for undertaking the exams in South Africa and the United States of America. These high costs, stakeholders reported, act as a deterrent for many Zambian doctors to make the initial steps necessary to export their services to the United States of America.

Visa requirements and procedures in the United States of America

As to challenges related to obtaining **visas** to the United States of America, stakeholders mentioned that there are two categories of visas that they could apply for. The first is a J-1 visa which is issued by the United States of America to exchange visitors participating in programs that promote cultural exchange and to obtain medical or business training within the United States of America upon the end of the cultural or training program, the visa holder has to return and stay in home country for a period of at least 2 years. The second is the H-1B visa issued to allow United States of America companies to hire or seek the services of foreigners in specialty occupations including in medicine.³³⁹

Important to note that the number of H-1B visas issued is capped every fiscal year. It currently stands at 65,000. Exempted from these numerical caps are (1) up to 20,000 foreign nationals holding a master's or higher degree from U.S. universities, (2) all H-1B non-immigrants who work at universities, non-profit research facilities associated with universities or government research facilities, (3) 1,400 visas for Chilean nationals and 5,400 visas for Singaporean nationals as part of the United States of America free trade agreements with Chile and Singapore.

The two categories of visas described above have their challenges and limitations. While the J-1 visa with its mandatory home residency requirement allows foreign M.Ds to undertake step 3 of the USMLE examination, it does not allow the export of medical services in Mode 4 to the United States of America market. The H-1B visa is linked to concluding contractual arrangements in the United States of America which presupposes that the foreign M.D is accredited to practice medicine in the United States of America thereby implying that he/she managed in the past to get a visa to the United States of America to undertake step 3 of the USMLE.

Market access and national treatment restrictions in South Africa

Stakeholders reported difficulties for general practitioners (non-specialized medical doctors) trained in Zambia to provide their services in South Africa. This difficulty appears to be linked to **market access** restrictions, **national treatment** restrictions and possibly issues related to **recognition and equivalency of qualifications**.

All foreign qualified medical and dental practitioners must register with the Health Professions Council of South Africa (HPCSA) and may provide their services in the Public Service for at least 5 years before providing their services to private practices. The recruitment of foreign doctors in South Africa by the Foreign Workplace Management Program (FWMP) is largely to serve the underserved communities in the rural areas and the few underserved urban hospitals e.g. Chris Hani Baragwanath Hospital in Johannesburg. The same restrictions do not apply to national medical practitioners. In other words, Zambian general practitioners face national treatment and market access limitations in the form of quantitative restrictions (0% during the first 5 years of practice) in practicing medicine in the private sector in South Africa.

In order to practice in the Public Service as a General Practitioner, the practitioner must have successfully completed a recognized internship-training programme.³⁴⁰ This is a two-year period for South African-trained medical doctors. While Zambian medical degrees are in principle recognized in South Africa, HPCSA does not recognize the one-year training program medical practitioners in Zambia undergo.³⁴¹ As a result, Zambian general practitioners have to undergo another 2 years of intern-training program in South Africa to obtain the necessary qualifications to practice medicine in the country.

³³⁸ The USMLE fees (including copies of transcripts and certification fees) amount to roughly USD 4,200. See www.usmle.org.

³³⁹ American Competitiveness in the Twenty-First Century Act. The Act was signed into part of Immigration and Naturalization Act (INA) in year 2000 which changed the H-1B program and the employment-based immigration program.

³⁴⁰ Health Professions Council of South Africa, *Application for Registration as a Medical/ Dental Practitioner*, http://www.hpcsa.co.za/downloads/medical_dental/form_176_foreign_qualified_practitioner_mdb.pdf.

³⁴¹ As confirmed in a phone interview with HPCSA.

- *Services provided by Nurses*

Stakeholders raised three types of **regulatory challenges** or barriers to Zambia's exports of nursing services to the United Kingdom of Great Britain and Northern Ireland.

First, in order to provide nursing services in the United Kingdom of Great Britain and Northern Ireland, nurses must be admitted to the Nursing the Midwifery Council (NMC) Register. Stakeholders stress that for them the **cost of registration** with the NMC is high and may act as an obstacle to effective market access.

Second, one of the requirements for inclusion on the NMC Register is that foreign nurses undertake (and successfully pass with a certain score) the **International English Language Testing System (IELTS)** even if these nurses are native English speakers or trained in a native English speaking institution. English is an official language in Zambia and is the language of instruction for nurses in the country.

Third, foreign nurses are required to undertake **additional adaptation courses in the United Kingdom of Great Britain and Northern Ireland** – referred to as the Overseas Nurses Program (ONP). This program is intended to assess the ability and competence of nurses to practice in the United Kingdom of Great Britain and Northern Ireland health environment. Zambian nurses encountered reported that undergoing the ONP in their view was unnecessary as their qualifications and experiences equipped them with the skills and competencies to perform their work successfully in the United Kingdom of Great Britain and Northern Ireland. More importantly, stakeholders mentioned that the **significant costs associated with undergoing such program**, including not only the course fees but also the cost of living in the United Kingdom of Great Britain and Northern Ireland for the duration of the program, in fact causes major difficulties for many nurses who cannot provide up front the resources needed to undergo such programs.

Interestingly, the requirements to undertake the IELTS and undergo additional training in the United Kingdom of Great Britain and Northern Ireland (adaptation) do not apply to EEA nationals (EFTA states and 27 European Union Member States) even if the EEA nurses and midwives are not native English speakers. EEA nationals are also subject to lower registration fees with NMC.

Possible Preferences

Possible measures that could be devised as preferences for LDCs under the Waiver to address the above challenges encountered would include those contained in the following lists. These lists are both extensive and illustrative. (It bears repeating that many of the issues could of course also be addressed, alternatively or in combination with unilateral preferences under the Waiver, through regional trade arrangements such as COMESA, SADC, the Tripartite Agreement or the AfCFTA; through other forms of cooperation, and/or through unilateral action on an MFN basis.)

- *Accountancy Services*

- Grant LDC providers of auditing services facilitated residency status;
- Waive the residency requirement for LDC providers of auditing services;
- Fast track and facilitate the recognition of qualifications obtained in LDCs;
- Encourage professional bodies to negotiate the terms of mutual recognition agreements with their counterparts in LDCs;
- Eliminate or reduce market access restrictions (quantitative restrictions) for LDC providers of auditing services;
- Create an LDC quota for LDC providers of auditing services;
- Provide preferences for LDC providers of auditing services in filling the auditors' quota;
- Facilitate access to work permits for LDC service providers;
- 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 of shortage of domestic skills;

- Fast track procedure for obtaining work permits for LDC service providers establishing commercial presence (Mode 3);
- Reduce work permit fees for LDC service providers.

- *Architecture Services, Engineering Services and (relevant) Services related to Mining*

- Fast track and facilitate the recognition of qualifications obtained in LDC countries;
- Encourage professional bodies to negotiate the terms of mutual recognition agreements with their counterparts in LDC countries;
- Facilitate the licensing of LDC providers of engineering and architecture services;
- Facilitate access to work permits for LDC service providers;
- 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);
- Grant national treatment to LDC engineering and architecture services under government procurement tenders;
- 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 (*e.g.* count LDC nationals as 'Black' under B-BBEE; or waive B-BBEE strictures for LDC tenderers);
- Grant preferential treatment in scoring tenders for construction projects involving LDC bidders (alone or as members of consortia);
- Extend third country preferences, *e.g.* under GPA, to LDC tenderers;
- Relax requirements for LDC bidders in engineering/architecture projects procured by governments including those related to the financial capacity of bidders (*possibly in conjunction with accepting bank guarantees and insurances to mitigate possible risks*).

- *Medical Services*

Preferences addressing challenges related to accreditation, licensing and visas in the United States of America include:

- Outsource step 1 and 2 of the USMLE exam to examination centres located in or in close proximity to LDCs;
- Reduce the USLME fees for LDC applicants;
- Exempt LDC providers of medical services (*and other services falling under the speciality occupations*) from the numerical caps applicable to H-1B visas;
- Facilitate the granting of J-1 visa for LDC M.Ds intending to undertake the USMLE examination.

- Preferences addressing market access and national treatment limitations in South Africa include:
- Eliminate market access restrictions for LDC general practitioners;
 - Relax market access restrictions for LDC general practitioners (e.g.: reduce the minimum period of practice in the public service as a precondition to practicing in the private sector);
 - Eliminate national treatment restrictions for LDC general practitioners.
- Preferences addressing regulatory restrictions in South Africa include:
- Encourage regulatory bodies for health professionals to negotiate mutual recognition agreements with counterparts in LDCs including on matters related to obligatory intern-training programs.
- General preferences addressing challenges related to accreditation, licensing and visas include:
- Facilitate the granting of visas and work permits for LDC providers of medical services;
 - If visas/work permits for foreign providers of medical services are granted on the basis of a quota, grant preferences for LDC providers in filling the quota.

- *Services provided by Nurses*

- Encourage professional bodies in host country to negotiate terms of mutual recognition agreements with their counterparts in LDC countries;
- Waive or reduce registration /application fees in professional bodies in host country for nurses from LDCs;
- Revise the requirement to undergo English language testing (incl. IELTS) for nurses from LDCs where English is an official language or where the nurse obtained qualifications from an English medium institute or university;
- Revise the requirement to undergo additional studies and supervised trainings provided that the training (qualification) of the LDC nurse meets the standards in the host country.

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

- *Accountancy Services (Accounting, bookkeeping, auditing)*
- **Most of the suggested preferences are not addressed through the notifications.**
- **The primary target markets for accounting and auditing services – neighbouring African markets – are so far not covered by any preference notifications.**
 - Nine notifying Members made specific promises of preferences relating to accounting, bookkeeping or auditing services. These are Canada, Japan, Switzerland, Mexico, United States of America, Chile, Iceland, Uruguay, European Union (the Netherlands, the United Kingdom of Great Britain and Northern Ireland, Spain, Italy, Germany, Belgium, France, all European Union).
- **South Africa’s preference notification contains no preferences relating to professional services**, nor any improvements over its horizontal GATS commitments on Mode 4. For accounting and auditing it has also virtually no general GATS commitments – no commitments at all in accounting, and for auditing a theoretically full market access in Mode 3 (‘none’), but apparently coupled with the requirement to be a citizen of South Africa (in the NT column) – in other words: No commitment.
- **Some inspirations can be drawn from the existing notifications.**
 - Several provinces of Canada have gradually relaxed their requirements for Mode 1 – instead of residency or even nationality requirements for auditing services they now (only) require (also) a commercial presence, i.e., a Mode 3 investment. While that remains burdensome, it is easier to overcome, and often makes business sense anyway, so it does pave the way for viable business models involving an important Mode 1 component for accountancy/auditing firms. (Curiously one province – Nova Scotia – went the other way, and installed a residency requirement instead of a commercial presence requirement.)
 - The United States of America also shows itself liberal in Mode 4, where it allows (like in its TPP offer and in KORUS) full market access “for natural persons of the LDC

who are in the United States of America lawfully for the purpose of supplying such services, except that an in state office must be maintained to receive a license to perform audits for Arkansas, Connecticut, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, New Hampshire, New Mexico, Ohio, Vermont, and Wyoming. United States of America citizenship is required for licensure in North Carolina.” Again, the commercial presence requirement, applicable only in some states, operates as a remaining but – in case of sufficient economic interest – surmountable obstacle.

- Switzerland proposes an elegant way to do justice to the desire to have access to auditors of important companies, which may translate into a residency requirement, but at the same time be as open as possible. For both Mode 1 and Mode 4 it is open to foreign service providers, except that “at least one auditor of a "joint-stock company" or a "stock company with unlimited partners" must have his domicile, his principal office or a registered branch in Switzerland.”
 - Mexico gives up on its 49 per cent capital ceiling for Mode 3 service providers in accounting, bookkeeping as well as auditing and opens its market completely (‘non’ in Mode 3). This corresponds to its TPP (‘best PTA’) offer.
 - Chile keeps its reserved activities for locally registered auditors limited to auditing of financial institutions: “external auditors of financial institutions must be registered in the Register of External Auditors.” This corresponds to its TPP offer.
 - In the European Union, Belgium waives the otherwise applicable ENT for accounting and bookkeeping services in Mode 4 “for CSS when the annual wage is above the amount defined by the relevant laws and regulations.” This model could be used by others who maintain ENTs for fear of salary dumping. While this would take away the cost advantage of LDC providers, it still provides an opening.
 - A slate of other European Union Member States allow accounting and bookkeeping in Mode 4 as provided in the horizontal commitments, which includes CSS and IP.
- [Architecture Services, Engineering Services and \(relevant\) Services related to Mining](#)
- **The majority of the suggested preferences are not addressed through the notifications.** Some of the preferences offered relate to facilitating the licensing and accreditation of LDC providers of engineering and architectural services.
 - **The primary target markets for architecture and engineering services – neighbouring African countries – are so far not covered by any preference notifications, with the exception of South Africa, which however offers no additional opening in these subsectors.** While already committed to full market access in Mode 3, the limitations in Modes 1 and 2 for Agriculture (“For building plans of 500 m2 and over the services of a locally registered architect have to be utilized”) could have been addressed. South Africa has already made full GATS commitments for engineering and integrated engineering services, except for Mode 4 (horizontal).
 - **14 notifying Members made specific promises of preferences relating to architecture or engineering services.** These are Australia; Canada; Chile; Hong Kong, China; Japan; India; Iceland; Mexico; New Zealand; Switzerland; Turkey; United States of America; Uruguay; and the European Union (Belgium, Germany, Italy, France, Spain, United Kingdom of Great Britain and Northern Ireland and Netherlands, all European Union). Some of these are of interest here, at least as examples, assuming arguably that they are done on a preferential basis:
 - Certain provinces in Canada opened fully the market to Mode 1 by waiving the residency requirement for the provision of architectural services. Other provinces have kept its reservations in Mode 4, but did valuable improvements in waiving the nationality requirement for the accreditation of architects. Canada also undertook commitments in integrated engineering services in Modes 1, 2 and 3, which were not included in its GATS schedule, but correspond to its offers in TPP. With the exception of the province of Saskatchewan, where residency requirements apply for Mode 1, there are no limitations to the provision of integrated engineering services in Modes 1, 2, and 3.
 - In the European Union, Belgium – as it does for a number of other subsectors – waives the ENT for contractual services suppliers of architectural and engineering services when the annual wage is above the amount established by the relevant laws and

regulations. France, the United Kingdom of Great Britain and Northern Ireland and the Netherlands allow engineering services in Mode 4 as provided in the horizontal commitments, which include CSS and IP.

- Japan and New Zealand open their market fully to the supply of urban planning and landscape architectural services from LDCs providers in Modes 1, 2 and 3. Hong Kong, China also shows itself liberal in Modes 2 and 3.
- The United States of America open their market to Mode 4 for the supply of engineering services and integrated engineering services. It allows – as in its TPP offer – full market access “for natural persons of the LDC who are in the United States of America lawfully for the purpose of supplying such services”.
- India gives up on its 51 per cent capital ceiling for Mode 3 supply of engineering services and only requires the establishment to be through a company incorporated in India. While that remains as a limitation, it is easier to overcome, and it is worth noting that this preference is even better than its India-ASEAN (‘best PTA’) offer.
- Uruguay allows engineering services in Mode 4 as provided in the horizontal commitments, which include CSS, professionals and specialists. This is better than in its 2004 trade agreement with Mexico (‘best PTA’).

- **Medical Services**

- **None of the suggested preferences are addressed through the notifications.**
- **The primary target markets for Zambian exports of medical services – South Africa or the United States of America – are not proposing any specific preferences in this subsector.**
- **Only three Members – Japan, Mexico and the European Union (several Member States) – offer specific openings relating to medical services.**
 - Mexico shows itself fully open to the supply of medical services from LDCs providers in Modes 2 and 3, while Mode 4 remains unbound except for business visitors, investors, intra-company transferees and professionals with an offer of paid employment in Mexico.
 - Japan opens its market to Mode 2. It also eliminates limitations on the participation of foreign capital in Mode 3, although it remains (otherwise) unbound.
- **Perhaps most remarkably, a range of 16 European Union Members (excluding the United Kingdom of Great Britain and Northern Ireland) offer a new opening in Mode 4, namely for Contractual Service Suppliers (CSS), albeit for 15 of them subject to an ENT.** This obviously reduces the legal and hence economic value, but the general possibility of access remains important. Note that Independent Professionals are not covered by this preference, which corresponds to the European Union’s offer in the European Union-CARIFORUM EPA.
- **Also of note is what is not offered – for example: Remaining limitations on telemedicine.** For example, 21 (out of 28) European Union Member States keep Mode 1 for medical, psychologists’ and dental services unbound, which means telemedicine is not covered for them, while one (Hungary) explicitly allows telemedicine.

- **Services provided by Nurses and Midwives**

- **The suggested preferences are not addressed through the notifications.**
- **The primary target markets for services provided by Zambian nurses – the United Kingdom of Great Britain and Northern Ireland and South Africa – do not provide for preferences relating to nurses.**
- **Only three notifying Members made specific promises of preferences relating to services provided by nurses and midwives:** Japan, Chile and the European Union (several Member States). None of them offers much inspiration for creative preferences.
 - Japan relaxes Mode 3 (nursing) by eliminating limitations on foreign capital participation, but keeps the sector otherwise unbound.
 - Chile opens Modes 1-3 for nurses’ services (Mode 4: horizontal commitments), matching its TPP commitments.
 - Similarly to the preferences offered for medical services, a range of European Union Members (excluding the United Kingdom of Great Britain and Northern Ireland) are offering some cautious additional openness in Mode 4 for midwives and nurses in the

form of Contractual Services Suppliers (but not independent Professionals), mostly subject to ENTs. It bears repeating that while an ENT denies legal guarantees, it may be a way to provide an opening in an otherwise closed sector, and hence can be a good tool.

3.3 Construction Services

3.3.1 Definition

Under the WTO's Services Sectoral Classification list "Constructions and related engineering service" include "General construction work for buildings"; "General construction work for civil engineering"; "Installation and assembly work" and "Building completion and finishing work". All of these are included in the assessment below. In addition, a number of Professional services are of great relevance for the construction sector, namely architectural, engineering, integrated engineering and urban planning and landscape architectural services, which were addressed above.

3.3.2 Construction Services in Zambia

Over the past decade the importance of the constructions sector for Zambia's GDP has been growing steadily. In 2006 construction was the third most important sector with a contribution of 13 per cent, in 2010 the share rose to 21 per cent (same as for agriculture, the previously most important sector) and in 2013, grew to 29.1 per cent making it by far the most important sector in terms of contribution to GDP.³⁴² In 2015, the contribution fell to 10.6 per cent, however the sector remained as one of the four key drivers of growth during 2016.³⁴³ Government spending is the main driver behind this development, with high-profile projects such as Link 8000 aimed at constructing 1500 kilometers, Pave 2000 for pedestrian paths and Lusaka 400 for the rehabilitation of Lusaka roads with jointly more than 5 billion USD.³⁴⁴ Most of these projects, in turn, have become both necessary and possible due to the overall boom in mining.³⁴⁵ The key drivers of growth during 2016 were mining, wholesale and retail trade, and construction and manufacturing. These four sectors account for two-thirds of total growth during the year.

All construction contractors must be registered with the National Council for Construction (NCC) under one of the following five categories: General building and housing, General civil engineering works, General road and earth works, General mining services, Electric and communications.³⁴⁶ As of September 2017, the NCC has issued 5867 contractor registrations, among them 287 for foreign companies.³⁴⁷ Some companies hold more than one registration, thus the number of actual construction companies is somewhat lower.³⁴⁸ Nearly half of all contractors are registered with the lowest grade, namely grade 6, while just over 500 registrations exist for companies with either grade 1, 2 or 3.³⁴⁹ Grading of construction firms is important for purposes of exporting services, acquiring large projects and accessing government tenders. Data also suggests that all foreign companies in the market have been awarded one of the three highest grades (grade 1-3) and hold nearly 54 per cent of all existing grade 1-3 registrations (i.e. 245 out of 532 registrations of companies with grade 1-3 are held by Zambian companies, while 287 are held by foreign companies).³⁵⁰

Moreover, most companies in the general mining services category hold either grade 1, 2 or 3 registration and only three Zambian companies hold registration for mining services. The vast majority of Zambian companies, i.e. those with grades lower than grade 3, specialize in general roads and earthworks and in

³⁴² AfDB, OECD, UNEP, *African Economic Outlook (AOE) for Zambia 2011* (n.p., 2011). Available from <http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/PDF/Zambia%20Full%20PDF%20Country%20Note.pdf>; and AfDB, OECD, UNEP, *African Economic Outlook (AOE) for Zambia 2014* (n.p., 2014). Available from and http://www.africaneconomicoutlook.org/fileadmin/uploads/aeo/2014/PDF/CN_Long_EN/Zambia.pdf.

³⁴³ Peter Engbo Rasmussen, Colleen Zamba and Elda Chirwa, *African Economic Outlook for Zambia 2017* (n.p., AfDB, OECD, UNDP, 2017), p.5. Available from www.africaneconomicoutlook.org/sites/default/files/2017-05/Zambia_EN_2017.pdf.

³⁴⁴ ³⁴⁴ AfDB, OECD, UNEP, *African Economic Outlook Zambia 2014*, p. 5.

³⁴⁵ Ibid, p. 3.

³⁴⁶ National Council of Construction, *Categorisation of Contractors*, 2016. Available from <http://www.ncc.org.zm/wp-content/uploads/add-guidelines-pdf/CATEGORISATION%20OF%20CONTRACTORS.pdf>.

³⁴⁷ National Council of Construction, *List of Registered Contractors for 2017*. Available from <http://www.ncc.org.zm/wp-content/uploads/2012/11/registered-contractors-30thSep.pdf>.

³⁴⁸ Ibid, author calculations.

³⁴⁹ Ibid, author calculations.

³⁵⁰ Ibid, author calculations.

general building and housing work.³⁵¹ It should be noted that subsidiaries of international companies are considered as ‘local’.³⁵²

Among the larger Zambian companies is Gomes Haulage, a company specialized in sulphuric acid transportation in the copper belt region.³⁵³ The company holds three registrations. It is registered as grade 1 in general building and housing, as grade 5 in general civil engineering and grade 6 in general civil engineering works.³⁵⁴ Sable Construction, on the other hand, is a grade 1 registered local company specialized in road construction.³⁵⁵ Another major regional player is the *Inyatsi group*, an originally Swaziland-based, Zambian controlled company that operates in Mozambique, South Africa, Swaziland, Namibia and Zambia and has operations in Botswana.³⁵⁶

Export statistics for construction or related engineering services are unfortunately not available for Zambia. Imports, however, have been steadily decreasing since 2008 with the value dropping from 282.4 million USD in 2008 to 50.357 million USD in 2015.³⁵⁷ The statistics and stakeholder reports suggest that the involvement of local actors in domestic construction projects is steadily increasing even faster than the sector’s overall development. There is also increasing potential for exports, especially on cross-border construction projects and for projects related to region specific activities such as the mining activities in the copper belt that links the North of Zambia with the Democratic Republic of the Congo.

3.3. Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Export of construction services take place primarily in Modes 3 and 4, the latter mainly in the form of semi- or low-skilled labour, and thus classically barriers encountered by exporters are often those pertinent to the said modes of supply more generally.

In addition, major construction projects including mining and infrastructure projects such as the construction of roads and highways, dams, airports and bridges are classically procured by governments and often aim at generating domestic employment. Therefore, national treatment restrictions including requirements of nationality, residency, local content (including in the form of using local service suppliers) or the employment of local staff are classical barriers encountered by the industry in export markets under projects procured by governments.

Stakeholders report market access, regulatory and other challenges to their exports to regional markets including South Africa, Mozambique, Swaziland and Uganda in addition to national treatment restrictions and regulatory restrictions encountered in the context of construction projects procured by governments.

Market access barriers: joint venture/partnering requirements

Challenges related to market access include restrictions on the form of legal entity and the participation of foreign capital especially in large infrastructure projects. Stakeholders report that several markets require the foreign provider to form a joint venture or otherwise partner with local companies.

Restrictions on participation in government procurement tenders

For **government procurement** tenders – which are largely not disciplined by the GATS and technically Members do not need the Waiver to grant preferences for LDC providers as explained in Box 3 above – stakeholders reported national treatment limitations and regulatory limitations.

³⁵¹ Ibid, author calculations.

³⁵² Outcome of company profile and registration research on the basis of the NCC registry.

³⁵³ Company profile, Gomes Haulage, Linked-in Profile, <https://www.linkedin.com/company/gomes-haulage-limited>.

³⁵⁴ National Council of Construction, List of Registered Contractors for 2017.

³⁵⁵ Company profile, Sable Construction. Available from <http://www.sabletransport.com/construction.html>.

³⁵⁶ In-country consultations. See also company profile Inyatsi. Available from <http://www.inyatsi.net/index.php/extensions/our-history>.

³⁵⁷ World Trade Organization, Zambia Construction Services, i-Tip Services trade database, 2017. Available from <https://i-tip.wto.org/services/default.aspx> (accessed 8 December 2017).

Similar to the challenges reported by Zambian engineers and described in detail in Box 4 above, industry representatives underscored that government tenders for construction projects in South Africa, for example, are subject to (1) *de jure* or *de facto* nationality requirements - (In line with the Preferential Procurement Policy Framework Act and its implementing regulations, tenderers attaining a B-BBEE status level of contribution are granted up to 20 preference points.³⁵⁸ While in principle open to all, in most cases only South African companies can effectively obtain B-BBEE status.); and (2) a local content requirement in the form of employment of local staff, with legislation requiring 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 who would like to use their own (foreign) workers.

Regulatory challenges and visa and work permit requirements

Regulatory challenges reported in the context of government procurement tenders include the requirement to be registered with specialized ranking institutions, excessive requirements related to the financial capacity of bidders and provide proof of availability of equipment and human capital on the ground.

Providing proof of availability of equipment and human capital on the ground are associated with additional challenges including: (1) transporting construction equipment across borders is difficult as most of these are leased or mortgaged and their transportation across the border is restricted. (2) providing proof of availability of human capital (insofar as such capital is imported) is often associated with challenges related to **visa** and **work permits**.

Stakeholders reported that obtaining work permits for foreign workers is a major challenge not only for semi-skilled labour but also for professional staff including engineers and managers. Obtaining extensions for work permits to cover the duration of the project implementation period is another major challenge in all export markets.

Box 7 above provides some detail about aspects of the work permit regime in South Africa as an example.

Possible Preferences

- Remove or relax market access limitations for LDC providers of construction services especially those related to the form of the legal entity and the participation of foreign capital;
- Grant national treatment to LDC providers of construction services under government procurement tenders;
- 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 (*e.g.* count LDC nationals as 'Black' under B-BBEE; or waive B-BBEE strictures for LDC tenderers);
- Grant preferential treatment in scoring tenders for construction projects involving LDC bidders (alone or as members of consortia);
- Extend third country preferences, *e.g.* under GPA, to LDC tenderers;
- Relax requirements for LDC bidders in construction projects procured by governments including those related to the financial capacity of bidders (*possibly in conjunction with accepting bank guarantees and insurances to mitigate possible risks*);
- Facilitate access to work permits for LDC service providers;
- 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 of shortage of domestic skills;

³⁵⁸ Zambia, Preferential Procurement Policy Framework Act, 2000, articles (5) and 6(2).

- Facilitate the extension of work permits for LDC providers of construction and associated services (*e.g.: engineering and project management services*) to allow for the conclusion of construction projects in host countries;
- Fast track procedure for obtaining work permits for LDC service providers establishing commercial presence (Mode 3).

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

- **None of Zambian construction companies' target markets have notified any LDC preferences under the Waiver.**
 - Nine Members are addressing the sector. These are New Zealand, Norway, Switzerland, Canada, Turkey, Iceland, Brazil, Uruguay, the European Union (Belgium, Germany, Italy, France, the Netherlands, Spain).
 - South Africa's notification does not address the construction sector, likely because its GATS schedule already promises far-reaching openness: In four main subsectors full commitments ('none') apply in Modes 2 and 3, and for Mode 4 the horizontal commitments apply. (Mode 1 is left 'unbound' for lack of technical feasibility – this assessment from the 1990s needs to be re-assessed in the age of digitization, remote-controlled machines, and robots). That said, South Africa so far does not have any commitments for pre-erection works, special trade construction work (*e.g.* masonry) or construction equipment rental.
 - (Perhaps most pertinently for Zambian construction interests South Africa does not relax B-BBEE for the benefit of LDCs. While politically this may be too much to ask at this point, it remains desirable and potentially feasible to consider this in due course.)
- **There are very few notified preferences that provide any inspiration for measures that address Zambian companies' concerns and needs.**
 - Many of the notifying Members open Mode 4 supply in all or some construction subsectors up in accordance with their horizontal commitments (Norway, Turkey, Canada (Ontario), Iceland, Uruguay, several European Union Member States).
 - In some cases this covers CSS. None, however, goes the next step to allow CSS that are not highly qualified. Only that would effectively open construction markets to dynamic participation of SME building firms.
- **No LDC preferences in public procurement.** While the LDC Waiver would not be needed to cover such preferences because 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 Zambian construction industry, which has been building strength in its home market over the past years of mining boom.

3.4 Education Services

3.4.1 Definition

Under the WTO's services sectoral classification list 'education services' are sub-divided into primary education services, secondary education services, higher education services, adult education services, and, other education services.

Higher education services cover 'post-secondary' (such as technical and vocational training on a large variety of subjects), and other 'higher education services' (mainly university education).

Traditionally global trade in education services took place primarily in higher education as primary and secondary education are often provided through governmental institutions directly to the students in their home locations. Today, an increasing number of students travel abroad to receive secondary or primary education, either for short-term studies or to boarding schooling institutions.

Moreover, global trade in education services used to take place predominantly through Modes 2 and 4 whereby, students travel to the location of the education institution to consume education services abroad; likewise, teaching staff and other natural persons engaged in the delivery of education services

travel to the location of the education institutions to deliver education services. Today, education services are offered in all modes of supply. Distance and online learning are very common these days (Mode 1) and the emergence of private education especially in the higher education segment paved the way for foreign providers of education services to establish offshore campuses in order to offer its education services beyond the borders of where it is mainly based (Mode 3).

3.4.2 Education Services in Zambia

Over the past 25 years Zambia made significant efforts to develop the education sector in an attempt to increase access to education and to reach the millennium development goals. While focusing mainly on primary and secondary education, the efforts and momentum generated spill-over effects on Zambia's public and private education institutions.

Zambia's tertiary sector encompasses more than 400 educational institutions including 25 universities, 300 general colleges and 78 specialized colleges that include 60 nursing schools, 2 health colleges, 10 agriculture training colleges, 28 teacher colleges and Zambia's Institute of Chartered Accounting (ZICA). These institutions are currently registered with the Ministry of Higher Education (MoHE) or the Technical Education, Vocational and Entrepreneurship Training Authority (TEVETA).³⁵⁹

Data on the exportation of education services is not available but the number of foreign students in Zambia, the availability of distance learning programs at Zambian institutions and discussions with stakeholders suggests that Zambian exports of education services in Modes 1, 2 and 4 are non-negligible, and represent potential.

Online records suggest that nearly 100 foreign students are currently enrolled at the three public universities in Zambia. Stakeholders further reported that with the endorsement of the International Federation of Accountants (IFAC) and the Pan African Federation of Accountants (PAFA), the Zambian Institute of Chartered Accountants (ZICA) has become a competitive service provider not only in Zambia but also in the region attracting students from neighboring English-speaking countries such as Botswana, Namibia, Lesotho, Malawi and Swaziland.³⁶⁰

The Zambian Institute of Accountancy Studies (ZCAS) as one of the region's foremost accountancy training institutes historically served around 5 per cent foreign students. These numbers have gone down as regional neighbours, historically reliant on Zambia, established their own national accountancy training institutes. Now covering a much wider range of business-related studies ZCAS enjoys a great reputation and still attracts foreign students – this year, e.g., from the Democratic Republic of the Congo, Zimbabwe, Angola, as well as Nigeria, Pakistan and China – albeit in much smaller numbers (12 out of 2100 students in 2017/18). ZCAS, however, also exports education services in Modes 1 and 4 to regional education centres teaching accountancy including in the form of curriculum development, teaching methodology and conducting, supervising and correcting examinations.

One of the impressive examples of Zambia's providers and exporters of education services is the Kafue Gorge Regional Training Centre (KGRTC) established in 1989 by SADC Energy Ministers with the support of Scandinavian donor funding to offer specialized training in hydropower and related engineering disciplines. In addition to the niche technical expertise, the Centre is equipped with state of the art hydropower turbans that are available only in three locations worldwide including Zambia.³⁶¹ The Centre offers (a) specialized training courses on matters related to electricity generation from hydro generation to supply chain of electricity, dam safety management, transmission lines maintenance, emergency restoration system towers and occupational health to interested parties worldwide including so far 22 African countries, Bhutan and Nepal (*i.e.*: export of education services in Mode 2), (b) installation of and after sales training services on the hydropower equipment for markets/countries that purchase the equipment (*i.e.*: export of education services in Modes 4 and 1) and (c) hosts researchers from around the world including developed countries such as Canada to conduct research at the Centre on matters related to hydropower and system analysis (*i.e.*: export in Mode 2).³⁶²

³⁵⁹ Data compilation on the basis of governmental records listed on the websites of the MoHE and TEVETA. Available from <http://www.mohe.gov.zm/> and, <http://www.teveta.org.zm>.

³⁶⁰ In-country consultations.

³⁶¹ In-country consultations. See also Company profile of Kafue Gorge Regional Training Centre (KGRTC). Available from <http://www.kgrtc.org.zm/>.

³⁶² *Ibid.*

Moreover, distance learning is becoming popular in Zambia with an increasing number of institutions offering vocational tertiary training, in particular for computer and information technology services. In addition, the *Zambian Open University* offers specialized distance learning programs for Bachelor, Master and PhD degrees as well as Diplomas also for students from the region (*i.e.*: export in Mode 1).³⁶³

3.4.3 Barriers encountered, possible preferences, actual preferences

Barriers Encountered

Education services are heavily regulated in most countries, not least to ensure universal access to education, monitor and control the quality and delivery of education, ensure that the qualifications obtained fulfill the competence requirement as set by the regulatory authority and protect the integrity of the education system more generally.

Classical measures to achieve the above objectives include (a) licensing and registration requirements and procedures for education institutions with national authorities, (b) accreditation requirements and procedures and (c) recognition of qualifications. These measures obviously have an impact on trade in education services and can therefore be treated as classical barriers to trade in education services in addition of course to (d) visa requirements and procedures since those heavily affect the ability of providers and consumers of education services to deliver or consume the service abroad.

Arguably the dominant mode of supply is Mode 2 – foreign students coming to study at local universities and schools. In this mode only very few ‘hard’ obstacles usually apply, as countries usually do not stop their nationals from attending schools abroad. However, more subtle challenges do intervene and may have a significant impact, such as difficulties in obtaining accreditation/recognition for curricula and diplomas, and lack of scholarship portability.

Recognition of qualifications

Recognition of qualifications - the qualifications they issue – is among the challenges faced by *Zambian* providers of education services in export markets especially in the non-academic professional training segment. *KGRTC*, for examples, offers “Skills Award” qualifications. This type of qualification is not fully recognized in many countries including African countries such as *Ghana*, *Botswana* and the *United Republic of Tanzania*.

Licensing and registration requirements for educational institutions

Another barrier are registration requirements, namely the need for educational institutions to register with national professional bodies in their target markets. This is sometimes cumbersome and appears unnecessary. Stakeholders reported that some professions including engineering require their members to demonstrate “continuous professional development” through undertaking training courses. This can be done abroad as long as the courses are delivered by a training/educational institute registered with the professional body at home. This means that *KGRTC*, for example, has to be registered with the engineering councils/associations in all the countries from which current and potential trainees originate in order for it training courses to be recognized for purposes of the “continuous professional development” requirement. This is a cumbersome and costly process.

Visa requirements and procedures

Stakeholders reported that visa requirements and procedures are among the key barriers to exporting education services in Mode 4. Important to note in this context that some *Zambian* educational institutions export their services in several modes of supply and encountering barriers to trade by one mode of supply hampers the chain of services offered and exported through other modes of supply. The *KGRTC*, for example, exports training services for hydropower generation and maintenance using certain equipment whereby the customer gets trained in *Zambia* (Mode 2), buys the equipment and needs the services of the *KGRTC* to install (Mode 4) and service the equipment (Mode 1). If the technicians at

³⁶³ Comparison of available programmes on the basis of websites of institution accredited with *TEVETA*.

the KGRTC cannot reach the customer to install the equipment because they could not obtain a visa, the training activities of the KGRTC (Mode 2) and the after sales service (Mode 1) risk being severely reduced for that client.

Stakeholders further reported that some countries do not have embassies in Zambia and Zambian nationals wishing to travel to these countries have to travel to South Africa to obtain a visa, which increases the cost for Zambian providers.

Lack of scholarship/funding portability

In addition, stakeholders reported that some countries including in the region do not extend the coverage of government scholarships for studies in Zambia, which affects possible enrollments.

Possible Preferences

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

- Facilitate and fast-track the recognition of qualifications including technical/professional (non-academic) qualifications obtained in LDCs;
- Recognize the registration of LDC educational/training institutions;
- Facilitate the registration of LDC educational/training institutions with national professional bodies /national authorities;
- Reduce the registration fees for LDC educational/training institutions with national professional bodies or national authorities;
- Facilitate the granting of visas for LDC providers of training services especially those working with recognized training institutions and/or in the presence of a training contract;
- Create reliable and easily accessible ‘trusted person’ system to benefit LDC service providers that repeatedly require visa/work permits;
- Extend the eligibility for scholarships, grants and student loans to studies at LDC educational institutions.

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

- **Only four Members, namely Norway, the United States of America, Thailand and the European Union have made any specific preferences available in this sector.** Primary target markets are not represented among the notifying Members, and specific engagements on education services are very limited.
- **Some limited inspiration** can be drawn from existing notifications, such as from the United States of America’s promise of full market access in Modes 1-3 for higher education institutions. This, however, does not address accreditation and recognition.
- **No WTO Member addresses key regulatory aspects such as accreditation and recognition.** While it is challenging to imagine and craft ‘hard’ preferences, Members could well consider systematically engaging with suitable LDC education service provider to facilitate the accreditation of programmes etc., possibly supporting their design and compliance efforts.
- **No Member has responded to the suggestion, in the LDCs’ Collective Request, to grant scholarship portability allowing students to study in LDCs.**

4. Concluding Observations: Zambia, Services Exports and the LDC Waiver

Zambia is a “Landlocked Land of Opportunity” for services and services exports. Its mining boom has been translating into opportunities for services, including direct services exports in the four modes of supply.

Challenges encountered in the context of accessing export markets are those found in many LDCs. Most of those, however, are not being addressed by the response of WTO Members to the LDC Services Waiver so far. This has several reasons, some structural, some substantive.

The main reason is that Zambia's neighbours and main trading partners, including for services exports, have not responded to the call for preference programmes for LDC services and service providers, with the exception of South Africa. However, South Africa's notification appears to contain little of direct value for Zambian services exporters.

While of course the primary expectation to grant preferences is from developed Members 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, as in the case of Zambia, which is involved in at least four regional processes covering services (SADC, COMESA, Tripartite and AfCFTA). The LDC 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.

That said, the case of Zambia makes it clear that regional services integration is often the most promising avenue for progressive integration and liberalization, not least because it may facilitate and integrate regulatory coordination and cooperation. Zambia is thus well-advised to have a double strategy: advance the regional agenda's forcefully, while keeping the Waiver closely in view as an important tool in the toolbox. When formulating specific demands and presenting them to trading partners, the Waiver should always be considered as a complementary or alternative option to the often bigger, more intensive regional integration tools.

V. Addressing Cross-Cutting Issues

The pilot reviews discussed in the previous section reveal the existence of general cross-cutting barriers facing LDCs in foreign markets. It seems useful to look at these challenges through the prism of (1) selected real examples and follow them through the (2) Collective Request and Members' response so far, as reflected in the (3) Notifications, to (4) gather ideas for further possible steps that would open up real market access for LDC services exports.³⁶⁴

A. Physical Market Access for Service Providers

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

LDC service providers and their staff face often very high barriers to entry – often significantly higher than those confronting their direct competitors from other countries –, caught in the wider context of immigration policies that are ill-adapted to services trade. Multiple issues persist, including the absence (or non-application) of suitable visa categories, including for (LDC) business visitors; the duration of visa/work permit procedures; documentation requirements, including the need to provide original copies; the requirement to visit consulates, sometimes in third countries, sometimes more than once; high fees, often amounting to a substantial share of per capita GDP in LDCs, and their non-refundability in case of refusal; financial security requirements; visa refusal stamps; the absence of written reasons for refusal; and limited or no rights to appeal. These and other factors often work in concert, in a 'chicken and egg' relationship, reinforced by additional presence requirements, such as a residency requirement for membership in an accountancy association, which in turn may be a prerequisite for the authorization to conduct audits, including in other modes of supply than Mode 4.

- *Collective Request*

The *Collective Request* duly emphasizes the importance of the visa/work permit issue.³⁶⁵ The *Collective Request* contains a specific part entitled "*Across all sectors, especially those found in the Annex, waive visa, work permit, residence permit measures*" (part B), where the LDCs included several specific requests, such as:

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

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

³⁶⁴ This sections draws strongly on Schloemann/Hijazi/Pitard (2016), *Now the Real Thing: Getting Creative to Make the LDC Waiver Work*, ILEAP, CUTS International Geneva and University of Sussex, pages 17-20.

³⁶⁵ This alone was a significant development at the time. Previously many LDC delegates had joined others in engaging in the mistaken belief that a footnote to the GATS Annex on the Movement of Natural Persons excluded visas *per se* from GATS coverage.

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

- *WTO Members' notifications of offers under the LDC Waiver*

However, just a few WTO Members responded to that request, and even those did so very selectively. Turkey, for example, provides for access to a facilitated electronic Visa process (e-Visa) for tourism and business purposes to almost all WTO Member LDCs. The measure focuses on a crucial difficulty for LDC service providers, namely the many challenges associated with actually managing 'physical' visa processes through consulates and embassies, often in remote locations, with lengthy travel times for people and documents. However, it is not clear whether this is done on a preferential basis (with LDCs being treated better than others, even with exceptions, for which the Waiver would provide cover), or just happens to be the result of a security-based application of a general visa programme.

India however offers a straightforward preference by waiving the visa fees for natural persons of LDC applying for Indian Business and Employment visas – the visas used by service providers traveling to India in Mode 4.

- *Possible creative responses*

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

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

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

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

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

The Collective Requests suggests waiving financial security requirements generally for stays below 90 days. While some Members may find it difficult to go that far (although in practice the financial security requirements operate primarily as a deterrent, rather than an actual means to secure visitors' viability – which would allow flexibility for LDC service providers without preconditions), gradual solutions can be devised by tailoring financial security requirements to the specific situation of LDC service providers. For example, existing service contracts presented by LDC service providers, generally or in certain sectors, could be allowed as guarantee or collateral.

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

An important impact could also result from the careful crafting of visa categories, without even necessarily engendering any overall change in flexibility. The Collective Request asks members to “create a special temporary entry visa subcategory to allocate quotas within existing or newly created quota systems, for LDC contractual service suppliers or independent professionals.” Doing so would indeed be welcome. But even short of allocating quotas the very existence of a suitable visa category for LDC service providers (or subsets of them) would likely already have a positive effect, by facilitating de facto or de jure better treatment than under general categories as requirements and practices can be more easily targeted to respond to LDC realities.

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

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

B. Fees, charges, taxes

It is well known, that costs tend to matter more to SMEs than to bigger companies, in particular when unrelated to turnover or profits – such as most licensing, permit, authorization fees. Businesses with

weak capital bases are much more vulnerable to cash flow challenges than those with more substance to rely on. In short: LDC service providers, usually SMEs, often with very little capital, care deeply about fees, charges and taxes, their timing and their accompanying circumstances such as payment terms, refundability etc.

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

The issue arises across sectors and in multiple forms. Fees for licenses, permits and other forms of authorizations to provide a service, one-off or recurring; fees for the recognition of qualifications, for the administration qualification exams, for the authentication of certificates or the participation in qualification courses; taxes related or unrelated to turnover, profits, inputs; and social security contributions are among the many fees, charges and taxes that LDC service providers face when accessing foreign markets.

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

- *Collective Request*

The Collective Request reflects the issue in multiple ways, but remains somewhat short on detailed ideas. The Collective Request, for example, broadly asks Members to “[w]aive social security, income tax and similar deductions to remuneration of all LDC service suppliers across all sectors and modes of supply.”³⁶⁶ The same demand is further specified (repeated) specifically for LDC performers and cultural professionals, who indeed often encounter arguably unnecessary and sometimes discriminatory social security contribution requirements. The Collective request also, as already mentioned, asks Members broadly to “[w]aive residence permit, licenses, and work permit fees and any other processing fees” for contractual service suppliers (CSS), independent professionals (IPs) and intra-corporate transferees (ICT).³⁶⁷

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

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

- *WTO Members' notifications of offers under the LDC Waiver*

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

- *Creative responses*

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

³⁶⁶ S/C/W/356, page 3, Section A, numbered paragraph 9.

³⁶⁷ S/C/W/356, page 7, Section B, numbered paragraphs 1 and 2.

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- It seems often feasible to exempt LDC service providers – partly or wholly, generally or under specified conditions, all or only some sectors – from (some) withholding taxes, as requested in the Collective Request. Many countries apply these to some groups of foreign service providers, such as visiting cultural performers, audiovisual service providers, lawyers and others. In many cases a relatively straightforward mechanism could be to extend benefits accorded to other foreigners under double taxation agreements unilaterally to LDC providers. The sums involved are relatively small, and it seems quite feasible to contemplate exemptions. The withholding taxes are primarily imposed to pop stars, opera singers, etc. Most LDC performers will not fall into the primary target group. But for the eventuality that some do, it would seem feasibly to limit exemptions to suitably calculated *de minimis* cases (e.g. taxes for performance fees up to X000 USD).
 - A similar situation exists with regard to social security contributions, equally mentioned in the Collective Request. Some countries, in an advance defence against abuse and often to placate local providers who otherwise complain about (real or perceived) disadvantages, impose social security contributions on visiting service providers, often directly deducted from fees. While not per se wrong in any sense, in some cases this leads to questionable results. As discussed in the context of Senegalese performers, in France, for example, foreign independent professionals are normally charged social security contributions – directly deducted from fees – as if they were French employees, albeit without necessarily gaining any entitlements in return. This is waived for EEA nationals who are treated as independents, i.e., responsible for their own social security, and as a result are exempt from automatic deductions. A possible LDC preference seems suitable, namely the extension of the EEA practice to LDC providers. More generally social security contributions could be waived, especially in cases where they do not actually lead to any entitlements.
 - Even in the absence of actual exemptions there is often room for real-life facilitation that could make a difference. Many LDC service providers lack the effective capacity to manage the tax- and social-security-related processes effectively. As a result, refunds due are not claimed, and other facilitation options not used. Facilitated procedures, pro-active support and free advice (e.g. by “LDC Helpdesks”) could help equalize what in fact amounts to an existing disadvantage – in many cases the ‘preference’ would thus merely establish a level playing field.
 - In many cases exemptions from licensing or qualification-related fees seem rather feasible, one case at a time, or even across the board for LDC applicants. In the United Kingdom of Great Britain and Northern Ireland, for example, for ‘overseas’ nurses seeking registration in the application fee at the first stage of the application process is GBP 140. This amount is equivalent to around 17% of the per capita GNI of Lesotho. The mandatory study course and supervised training attracts further fees (over GBP 1000), in addition to living expenses during that time. But even where a reduction or elimination of these fees is difficult mechanisms for deferred payment – for example: after the first three months of practice – could allow LDC providers to be exempted.
 - Exemptions from other fees and contributions should be equally contemplated. An example could be to exempt LDC courier service providers from contributions to universal services funds.
 - Extending tax privileges available for (some) domestic providers, for example local start-ups, to Mode 3 service providers from LDCs would also often provide a relatively easy route to meaningful LDC preferences.

It seems fair to conclude that WTO Members have left significant room for upgrading their preference offers. Given that many of the conceivable measures are quite limited in their fiscal impact and often find parallels in existing schemes (e.g. fee exemptions for disadvantaged groups), a little more effort may often lead to the harvesting of some in fact low-hanging fruit.

C. Mode 4 Categories: Tailoring Responses, Sidestepping Old Instincts

Mode 4 commitments made by most WTO Members in their GATS schedules rely on categories of natural persons, in most cases pre-defined for all sectors in the horizontal sections of the schedules. Many

Members focused primarily on intra-corporate transferees such as managers and specialists, and did not even include independent professionals (IP) and contractual service suppliers (CSS) in their schedules. Consequently, these two categories of IP and CSS, of significant relevance to LDC service providers who often will not have enough capacity to establish and operate a local base in the host country (i.e., provide services in Mode 3), do not benefit from market access.

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

- *Collective Request*

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

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

- *WTO Members notifications of offers under the LDC Waiver*

As discussed earlier the response from WTO Members has been surprisingly positive. While some of the notifying Members display the expected reflex to shy away from cross-cutting improvements in Mode 4, around half of them offered - in some cases significant – new or improved horizontal commitments on CSS and IP. Examples include Chile, the European Union, Norway and Iceland, with Chile arguably leading the way with a rather open category, avoiding overly restrictive requirements regarding specialization etc.

- *Additional illustrative creative responses*

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

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

To take another example raised by the Collective Request, namely the (CSS/IP) category of installers and servicers of machinery and equipment. While the link to a transaction regarding the relevant machinery – as reflected in the Collective Request, apparently taking its inspiration from developed country proposals – captures the classical case (a seller of an piece of equipment also offers and sells the ancillary services), it may not be necessary to exclude alternative contractual arrangements or even cases where the seller of the goods has nothing to do with the servicing, but both seller and buyer work on the

basis of the assumption that such services will be available from third party suppliers – for example, LDC service providers. In fact, this ‘disentanglement’ will be of particular interest for SME producers (or buyers) of the relevant machinery who need to limit their exposure to contractual risk, while opening opportunities to third party servicers/installers. Those from LDCs could be treated preferentially in this context.

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

VI. Conclusions and Recommendations³⁶⁸

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

The Glass is Half Full

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

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

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

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

³⁶⁸ This section integrates most of the conclusions from Rodriguez Mendoza/Schloemann/Bellmann/Hijazi, UNCTAD 2016.

Substance: Towards Attentive, Generous and Creative Preferences³⁶⁹

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

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

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

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. Real-life issues may include somewhat rough cut measures reflected in GATS Article XVI:2 – numerical limits, ENTs, maximum foreign shareholdings, etc. – but in most cases are a lot more subtle. Travel times to interview locations; suitable visa categories for service providers, sector-specific where appropriate; security and fee requirements, etc. It is crucial that the message – that there are potential services exports that could be realized if looked at closely, rather than subjected to mechanisms that are not adapted to them and their market level, that work for big banks and telecoms operators but not small IT, accountancy or construction companies – reaches those in capitals who have the power to make targeted choices needed.

A key precondition for success is generosity that responds to potentials for development. WTO Members and their representatives need to avoid defensive reflexes, some of which are deeply engrained in services negotiators (who sometime continue to favour a mercantilist approach rather than the smart design of adjusted mechanisms meant to further certain imports, namely those from LDCs). The same applies to others, such as interior ministry and consular officials dealing with visa issues, or professional associations with a long-standing bias against change and flexibility. Importantly, the generosity needed is not the costly type, but rather an attitude. Many solutions that can be found are entirely cost free, or very cheap.

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

³⁶⁹ Several of the conclusions reflected here have been adapted – partly *verbatim* – from Schloemann/Hijazi/Pitard (2017), *Now the Real Thing: Getting Creative to make the LD Services Waiver Work*, ILEAP, pages 16-18.

Scope: Towards Broader Geographical Coverage

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

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

Institutions and Support: Towards a Holistic Process

The notion of a comprehensive, structured and permanent support system for trade preferences in services could emulate the original idea of a “Generalized System of Trade Preferences” proposed at the first meeting of the United Nation Conference on Trade and Development (UNCTAD) in 1964. The main objective at that time was to support developing countries by enhancing their export earnings, promoting industrialization, and encouraging economic diversification. At the second conference held in 1968 in Delhi, UNCTAD formally recommended the creation of a "Generalized System of Tariff Preferences" under which industrialized countries would be allowed to grant autonomous trade preferences to all developing countries. In order to create the legal framework for such a system, a waiver from the general MFN treatment obligation provided under Article 1 of the GATT was granted in 1971 through the adoption of the so-called "enabling clause". Originally envisaged for a period of ten years, the Enabling Clause was subsequently renewed in 1979 for an indefinite period of time.

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

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

1. **Data Collection** to further improve the availability of disaggregated, timely and reliable information on services trade flows with a particular focus on LDCs, as well as on barriers to trade. Ideally these efforts should move towards sector specific data on trade flows with individual trading partners under the WTO/UNCTAD/ITC services database. It should also contribute to the further development of data on services as input into the production of a good exported abroad under the TiVA database or the EVA dataset. The new dataset(s) on applied regimes currently being integrated into the I-TIP Services database
2. **Research, Analysis and Information Dissemination** to improve the design and implementation of trade preferences in services. A first element in this context will consist in raising awareness within LDCs and among LDC services stakeholders about services exports, the possibility to tackle and remove clearly identified barriers, the Services Waiver, FTAs and other tools, and – not least – existing preferences and market openings to be exploited. A significant challenge facing LDC service providers is their lack of awareness about the opportunities offered by the Services Waiver, and arguably by services market access opportunities more generally. Preferences offers are displayed in a rather technically challenging manner for service providers and information about how to benefit from them is

largely confined to the Geneva community. An act of translation and explanation of what these preferences entail for service providers would be a highly desirable contribution for LDC services exports. A second task will consist in assessing the significance and “commercial meaningfulness” of preferences granted to LDCs with a particular focus on the qualitative side. This should ideally be done more systematically and regularly in the future – noting that only 24 Members notified preferences so far. There is further a critical need to systematically collect and distil information about best practices in the design, notification and implementation of services preferences granted under the waiver (or broader: services market openings that can benefit LDC providers). If done systematically and regularly, this information could significantly contribute to improving the nature, scope and economic relevance of future preferences granted under the waiver.

3. **Capacity Building and Technical Assistance** to support LDCs in the design of coherent and development oriented domestic policies and regulations in the area of services. As highlighted in section 3, services cover a wide range sectors usually falling under the responsibility of various ministries and government agencies. Given the regulatory intensity of many services activities and the wide range of sectors involved, proper coordination across various government agencies is critical. As a contribution to this process, there is a critical need for demand-driven country specific support in the design and development of friendly services policies and regulations. Such support could start with the development of services trade diagnostic analysis and promotion in LDCs. As LDCs attempt to develop their services exports, they need to systematically examine alternative modes of supply, identify the geographical pattern of production and demand of services, and identify services sectors in which the country has a comparative advantage for direct or indirect exports. The Diagnostic Trade Integration Studies (DTISs), which are prepared and updated by the LDCs under the EIF constitute a critical starting point to identify relevant sectors, but also constraints and Aid for Trade needs.
4. **Forum for Dialogue, Exchange of Experiences and Continuous Monitoring, Peer Review and Mutual Inspiration.** There is currently no forum for the discussion of services trade preferences in a comprehensive and inclusive manner, in a non-negotiating setting at the international level. Discussions in the WTO will focus by nature on notifications undertaken by individual Members and on the duration of the waiver. While this is important, there is clearly a need for a more comprehensive discussion based on sound analysis and addressing all the relevant elements preventing LDCs from effectively benefiting from existing and future preferences. Given its long experience in this area, UNCTAD would be ideally placed to provide such a forum.

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

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