

The LDC Services Waiver – Operationalized?

A first look at preferences granted, constraints persisting, and early conclusions to be drawn

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List of Abbreviations

ASEAN	Association of Southeast Asian Nations
CSS	Contractual Service Suppliers
CTS	Council for Trade in Services
DTIS	Diagnostic Trade Integration Study
EBOPS	Extended Balance of Payment Services Classification System
EFTA	European Free Trade Association
EuroStat	Statistical Office of the European Union
EVA	World Bank Export in Value Added Database
GFC	Global Financial Crisis
GTAP	Global Trade Analysis Project
ICT	Information and Communications Technology
IGO	International Governmental Organization
IMF	International Monetary Fund
IP	Independent Professionals
ITC	International Trade Centre
MFN	Most Favoured Nation Treatment
OECD	Organization of Economic Co-operation and Development
PTA	Preferential Trade Agreement
SME	Small and Medium-Sized Enterprises
UNSP	United Nations Statistical Database
WBTSDB	World Bank Trade in Services Database
WEF	World Economic Forum

1 Introduction

The notion of special treatment for Least Developed Countries (LDCs) in services goes back to the 2003 Decision of the Council for Trade in Services on Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services¹. Quite general, this decision aimed at defining negotiating modalities for LDCs in the area of services to ensure that Members would take the special situation of LDCs into consideration when negotiating with them. Interestingly, the LDC modalities recognised among others:

“the importance of trade in services for LDCs [...] beyond pure economic significance due to the major role services play for achieving social and development objectives and as a means of addressing poverty, upgrading welfare, improving universal availability and access to basic services, and in ensuring sustainable development, including its social dimension”.

The text also highlighted the need for Members to open their services markets as a priority in sectors of interest to LDCs. A bit more than 2 years later, further developments on the matter were reflected in the 2005 Hong Kong Ministerial Declaration:²

“In the services negotiations, Members shall implement the LDC modalities and give priority to the sectors and modes of supply of export interest to LDCs, particularly with regard to movement of service providers under Mode 4”.

The declaration recalled and reaffirmed *“the objectives and principles stipulated in (...) the Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services adopted on 3 September 2003”* and in relation to services negotiations, recognized *“the particular economic situation of LDCs, including the difficulties they face, and acknowledge that they are not expected to undertake new commitments”*.

After several years of discussions on how to effectively implement those LDCs modalities, trade ministers finally adopted on 17 December 2011 a waiver to enable developing and developed-country Members to provide preferential treatment to services and service suppliers originating in LDCs. The Waiver, initially granted for 15 years from the date of adoption, releases WTO Members from their legal obligation to provide non-discriminatory (MFN) treatment to all trading partners (GATS Article II), when granting trade preferences to LDCs. It effectively operates as a new LDC-specific “Enabling Clause for services”.³

Two years later, with no progress made, Ministers came back to the issue with a subsequent decision on the ‘Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least Developed Countries’, adopted on 7 December 2013 at the Ninth Ministerial Conference in Bali. That decision established a process which foresaw that a High-Level Meeting – an idea akin to that of the Signalling Conference of 2008, or a pledging conference – would be held six months after the submission of a Collective Request by the LDC Group.⁴ After a significant exercise in fundamental research

¹ TN/S/13

² WT/MIN(05)/DEC

³ The term “Enabling clause for services” was first used by Hannes Schloemann in his article: The LDC Services Waiver – Making it Work, BRIDGES Africa, Vol. 1 No. 4, 13 August 2012.

⁴ For relevant decisions in this area, see WT/L/847 (December 2011), WT/L/918 (December 2013), WT/L/982 (December 2015)

commissioned by the LDC Group conducted by ICTSD, WTI Advisors and ILEAP and financed by TAF, the LDC Group developed the Collective Request and circulated it to Members in July 2014, followed by the High Level Meeting in February 2015, at which Members announced how they intended to respond to the LDC request.⁵

Members had agreed that those intending to grant preferences under the Waiver would follow up by submitting specific and detailed notifications of their intended preferences by July 2015. While meeting the deadline proved challenging to some, it is remarkable given the rather sluggish beginnings of the process that to date no less than 23 Members - including several developing countries – have indeed submitted notifications and started implementation, namely Australia, Brazil, Canada, Chile, China, Chinese Taipei, the European Union, Hong Kong (China), Iceland, India, Japan, Republic of Korea, Liechtenstein, Mexico, New Zealand, Norway, Singapore, South Africa, Switzerland, Thailand, Turkey, Uruguay and the United States.

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

As they say, however, the proof is in the pudding. While the range of preference-granting countries itself is noteworthy, the breadth, depth and real-life relevance of the preferences offered is less obvious. As a contribution to this process, this paper carries out an in-depth assessment of the preferences offered in the context of the Waiver and the challenges facing LDCs in taking advantage of them. It starts with an analysis of the offers notified so far by preference-granting countries using both a quantitative and qualitative approach. The first step consists in analyzing each preference granted by WTO Members in a matrix. For this purpose, a comparison of the preferences was made with the preference granting Member's DDA offer, the Member's best PTA as well as with the Collective Request.

As a second step, the data accumulated in the matrix was used to draw preliminary conclusions on the actual relevance of the preferences in practice: are they granted in sectors of interest to LDCs? Are they already applied to all trade partners in practice, and consequently fell into mere recognition of MFN treatment? Generally, are preferences really beneficial to LDCs in providing broader and better market access to them? The paper further provides an initial assessment of the preferences that matter more and those that matter less for LDCs and sheds some light into best practices. Part 3 then moves to identifying the factors that may affect – negatively or positively - LDCs' ability to effectively benefit from preferences in the area of services, based on existing literature and empirical evidence. It reviews, among others, issues related to supply side constraints including LDC competitiveness, firm level constraints, policy impediment and global and regional market requirements.

The paper concludes by suggesting a comprehensive, structured and permanent support system for trade preferences in services drawing inspiration from the "Generalized System of Trade Preferences" proposed by UNCTAD in the mid-60s. Such a system would not only

5 S/C/W/356 (July 2014)

focus on reviewing the implementation of the Waiver but also on addressing supply side constraints, information and analysis deficit while providing a constructive forum for dialogue among government representatives, IGOs, private sector and relevant stakeholders.

Several people have worked on developing this paper. Special thanks go to Clementine Pitard and Anna Markitanova of WTI Advisors for their work on the matrix and to Nicholas Frank from ICTSD for his analysis on LDC competitiveness and country/sector specific supply side constraints.

2 Assessment of Preference Offers Notified by WTO Members: Who, What, How Much?

2.1 Analysing the Preferences Notified: An Extensive Exercise in Approximation

2.1.1 The Matrix

The analysis of what amounts to over two thousand individual preferences undertaken in this paper is systematized in a matrix where each individual preference, broken down by Member, subsector and mode of supply, is assessed against the country's own offers made in the course of the DDA negotiations on services, the country's best/most recent preferential trade agreement (PTA), and the LDCs Collective Request of July 2014.

2.1.2 Only GATS Plus Reflected, or: The Format of Notifications

The over two thousand preferences analysed are in fact already a subset of all 'commitments'⁶ notified, namely those that actually go beyond the existing GATS commitments of the respective notifying Member.

Many notifications contained elements that did not exceed the status quo, in most cases as a result of the format chosen. Some Members, such as the EFTA countries Switzerland, Norway and Iceland, decided to enshrine LDC preferences in a complete restatement of their schedule, with preferences slotted in as variations to the existing GATS schedule commitments. These restatements by definition would contain many elements that re-state the status quo. (While this form of presentation may be practical in the sense that LDCs and their providers will have only one complete schedule to look at when considering their market access options, it does make the identification of preferences contained in that schedule a rather tedious exercise.)

While being more selective most other notifying Members would usually cover all modes of supply for any given subsector mentioned, even if the intended preference only extends to one or two modes. Those modes where no changes occurred, of course, would again only be re-statements of the status quo.

⁶ The term is used here in its generic meaning. While theoretically possible no Member so far has chosen to actually bind its promised preferences formally under the GATS.

2.1.3 The Matrix: Analyses Briefly Explained

The analytical matrix underlying the observations following below assesses each of the ‘preferences’ – the individual promises going beyond the scheduled status quo under GATS – against three comparators, namely the country’s own latest DDA offer, a recent comparator PTA (“best PTA” – but see qualification below) and the LDCs collective request.

Each of the over 2000 entries (rows) is identified by country, sector/subsector, description of the preference granted, the degree of liberalization achieved (full/partial), and the said comparisons with DDA offers, ‘best PTA’ and the Collective Request.

In addition to the explanations on the matrix elements below, Annexes I and II provide a illustrative overview of the matrix and its elements.

2.1.3.1 Comparison with DDA Offers

The first of three comparisons relates to the offers submitted by WTO Members in the course of the DDA negotiations. These started in 2001, absorbing the so-called ‘GATS 2000’ negotiations mandated by the GATS itself.⁷ As part of these negotiations many WTO Members submitted initial offers, and several revised offers, between 2003 and 2008.

The preferences examined here were thus assessed against the latest DDA offer submitted by the respective Member; in most cases these are revised offers. It is useful to keep in mind that these offers are around a decade old, and even at the time in most cases reflected the de facto applied MFN practice rather than additional market opening.

2.1.3.2 Comparison with Best/Recent PTA

The second key comparison performed relates to commitments offered by the respective Members in their preferential trade agreements (PTAs) with others. This comparison is interesting because it juxtaposes what Members offer to LDCs unilaterally now with what they have been ready to offer others – often more powerful services exporters – in equally preferential, albeit reciprocal, situations.

Importantly, in contrast to the DDA offers, which were meant to apply on an MFN basis and, as indicated, in most cases reflected already applied MFN practice at the time, these PTA commitments, thus, in principle reflect a preferential approach. That said, it must be kept in mind that most PTA commitments, while being formally undertaken as commitments on a selective and preferential basis *vis-à-vis* PTA partners, very often also reflect only what is already applied as MFN practice.

For reasons of practicality in most cases one comparator PTA had to be chosen, approximating – but likely not always equating – the actual ‘best’ PTA commitment made. Due care however was applied in selecting both recent and pertinent PTAs with significant ambitions in services. For the EU, for example, the most fruitful comparator appeared to be the EU-CARIFORUM EPA because it reflects an early effort to provide market access and

⁷ GATS Article XIX:1 in fact mandates rounds of negotiations as part of the built-in ambition and agenda of ‘progressive liberalisation’ every five years – a mandate Members have in fact ignored as a result of the DDA negotiations first absorbing the mandated negotiations and then being effectively stalled since 2008.

other services benefits to relatively weak developing country partners. In the case of most TPP parties the just released TPP commitments were used.

Choosing one agreement to rely on also means that even if it were the ‘best PTA’ on average it won’t necessarily contain the best specific commitments for each and every sector, sub-sector and mode of supply.

A further general caveat needs to be kept in mind: Comparing services commitments is not always straightforward when different scheduling techniques are involved (negative list, positive list, various hybrids). While again good care was applied, the volume of the exercise did not leave sufficient space to make in-depth assessment in complex cases, and a certain margin of error may apply.

2.1.3.3 Comparison with Collective Request

For purposes of comparing preferences granted with the Collective Request we broke the latter down into two parts – one more specific, and one more general.

Part 1 (paragraphs 1-39 of section A, paragraphs 1 – 9 of section B and paragraphs 1 – 7 of section C of the Collective Request) are all detailed requests for specific commitments for specific modes of supply in specific sub-sectors. Part 2 (paragraph 40 of section A of the Collective Request) represents a more general request to waive restrictions on Modes 1, 3 and 4 for a substantial list of subsectors / service activities.

In the Matrix preferences are marked as “M1” if they correspond to Part 1, as “M2” if they correspond to Part 2, and as “M1 and M2” if they correspond to both parts. We considered a preference to match both parts of the Collective Request where a preference-giving Member describes it in such (general) terms that it might potentially cover the LDCs’ needs described in both parts.

Importantly, we ignored the Annex for purposes of the comparison because it contains a very generic list of services sectors for which the preferences were requested. The quite large number of preferences that are marked “P” compared to the Collective Request, that is to say, are “better” or go beyond what was requested for, is partly attributable to that choice (see further below).

2.1.4 The Remaining Mystery: Which Ones are Actual, Applied Preferences?

To make it short: this mystery is not solved in this paper. Finding out which of the notified preferences actually reflect applied (real-life) preferential treatment would require an analysis of applied regimes, a demanding exercise which this paper cannot perform.

It is fair to assume, however, that a significant part of the putative preferences here identified reflect what has often been dubbed ‘autonomous liberalisation’, *i.e.* MFN treatment that is better than that promised in GATS schedules – but nonetheless applied on an MFN basis, of course, in compliance with GATS Article II, which applies unconditionally. Such ‘preferences’ that do not go beyond existing applied MFN treatment, of course, are in fact not preferences at all. They may reflect treatment that is attractive for LDC providers, and should be welcomed as such, but they neither require nor ‘implement’ the LDC Services Waiver, whose very function and only *raison d’être* is to allow for treatment that deviates from MFN in favour of LDC services and providers. Where these services and providers are treated like all others, the Waiver as such runs empty.

The use of the term ‘preferences’ here must thus be understood with that (major) caveat in mind. We use it here once a notified promise of treatment reflects improvements *vis-à-vis* the GATS schedule – which is, in fact, only the first step, a necessary but not sufficient condition.

2.2 The Main Findings: What, How, and How Much?

2.2.1 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 well over 600 potential options is already impressive – and that’s before any of the said complexity of regulation, market access or other, is introduced.

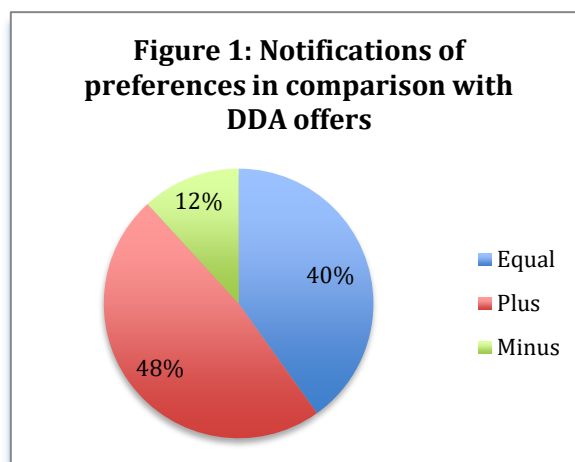
Categorizing, counting and assessing the preferences contained in the notifications is thus a complex task requiring multiple choices that can affect statistical outcomes and other findings. The following main findings and conclusions thus must be read with that caveat in mind. Some preferences could have been categorized in another manner while some counts could have been constructed differently. That said, we believe that the main messages distilled here hold water, and are indeed of interest.

2.2.2 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.

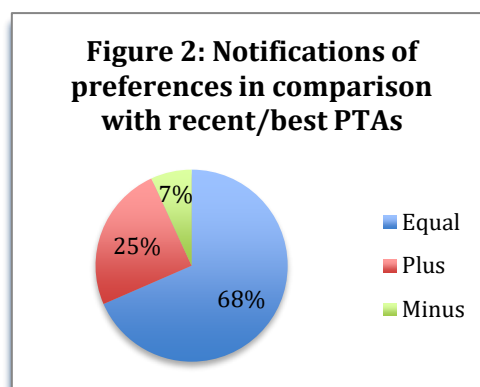
While that is indeed encouraging in the sense that it reflects a willingness of members to engage seriously in the challenge to design services preferences and make the Waiver work – something that could not necessarily be expected given the history – it needs to be taken with a grain of salt. Already 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 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.



2.2.3 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.

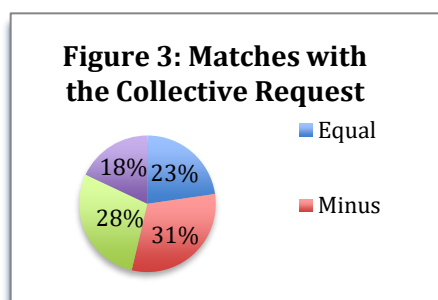
The idea that existing preferential treatment offered to third countries through PTAs could also be unilaterally extended to LDCs under the Waiver had and has an obvious appeal: Those preferences are already tested, technically and politically; and they have been granted to what usually are services 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.

2.2.4 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,

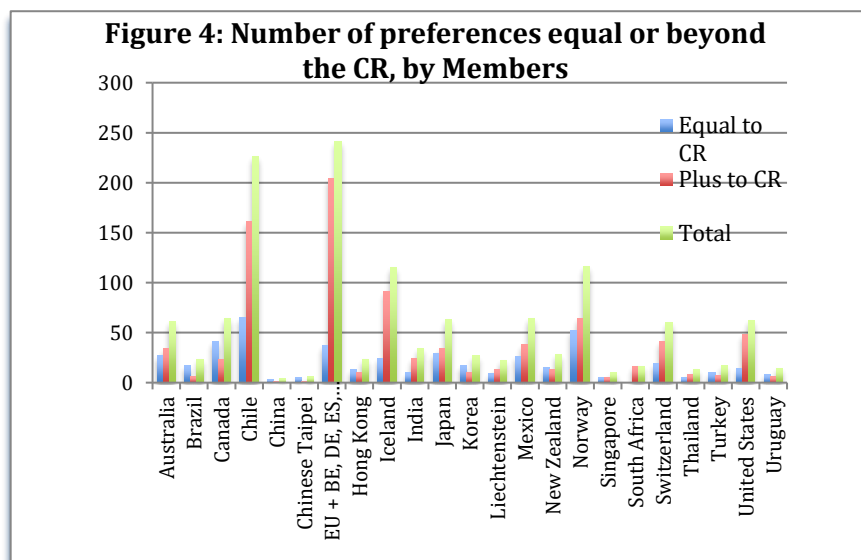
⁸ Paragraph 1.3 of the Decision on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries, 7 December of 2013 reads: “Members [...] are encouraged at any time to extend preferences to LDCs’ services and service suppliers [...]. 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.

as a result of the slightly convoluted design of the document, with various overlapping lists and specifications.

First, 18 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.’

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: While seemingly positive at first sight, 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.



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.

2.2.5 Business and Transport, plus Recreational, Distribution, Tourism and Communication: Preferences by Sectors

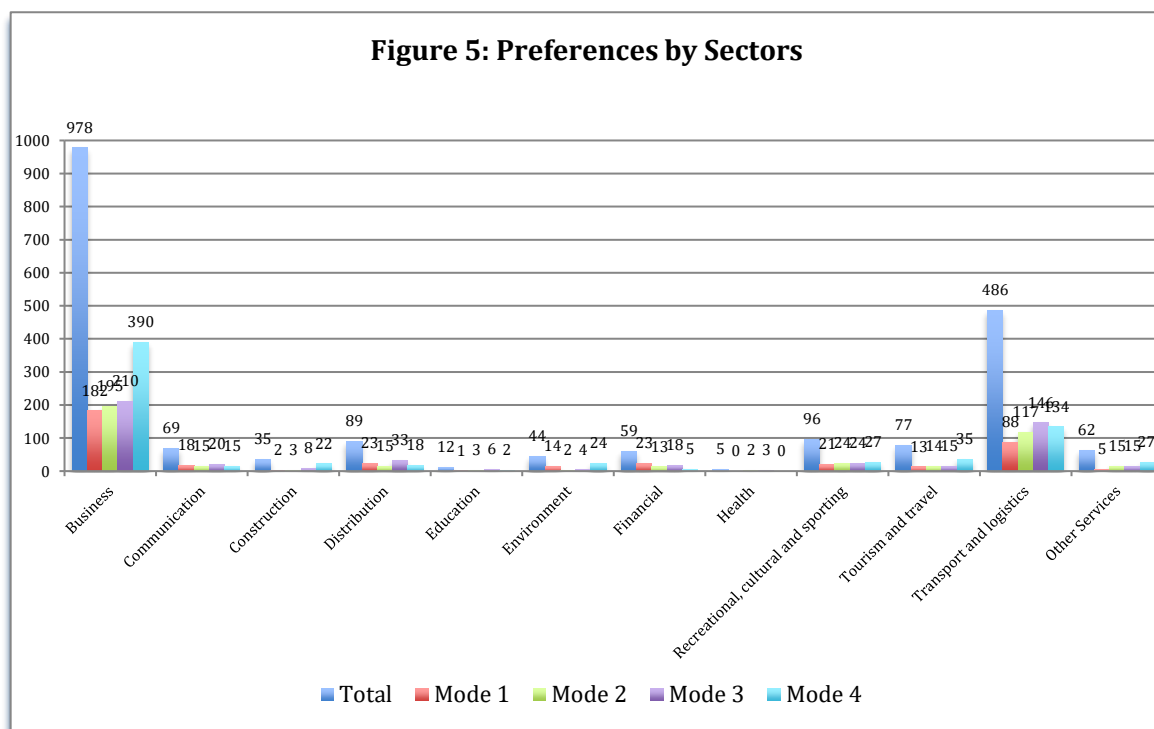
The distribution of notified preferences among services sectors is rather uneven. By far the largest number is found in Business Services. While some of that effect is clearly due to the sector’s size and diversity, this is also one of the sectors where some of the most interesting sub-sectors for LDCs 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. Not surprisingly the LDC’s Collective Request contains many references to this sector.

The second largest sector is Transport Services. This, again, 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 won't get in as a result of visa and work permit requirements and procedures, leaving a large potential of bona fide exports virtually stranded.

Arguably disappointing is also the 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.

Also less than satisfying is the offer in Construction Services. Here LDC operators often do have a comparative advantage, to which the preferences on offer only respond partly. Most



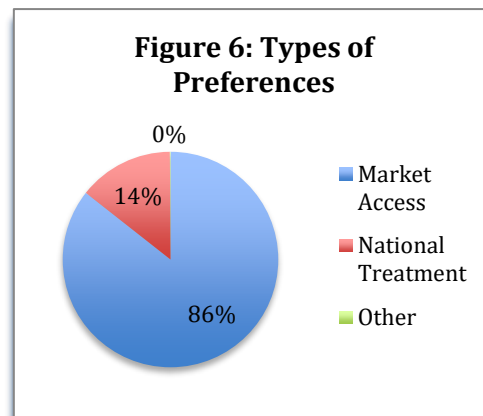
crucial here is liberal and effective access for CSS – something most Members find difficult to offer.

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.

2.2.6 Types of Preferences: Mostly Market Access, but Some Others

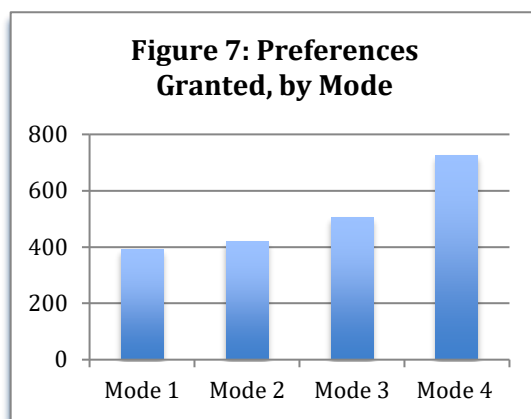
Most preferences offered are in the classical area of market access as defined by GATS Article XVI. However, somewhat remarkably given the initial reluctance of Members to consider any other preferences, reflected in the construction of the Waiver 15 per cent of the preferences counted concern aspects other than market access.

Almost all of these however come in the form of National Treatment promises, with very few providing preferential regulatory treatment specifically of LDC services or their suppliers, apart from or beyond the treatment of nationals. Here more would certainly have been possible.



2.2.7 More Mode 4 than Expected! Preferences by Mode

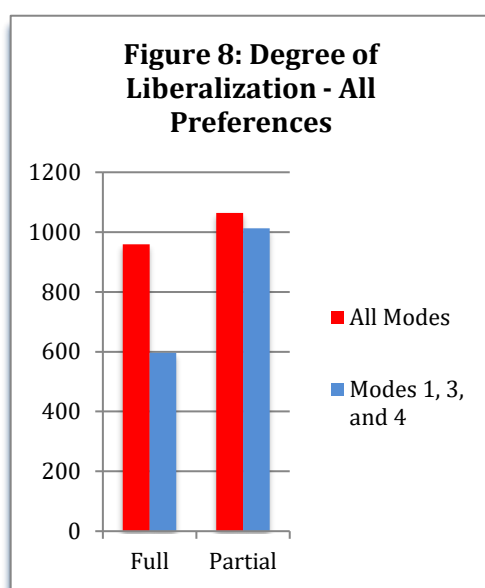
Rather encouraging is the notifying Members' response to the LDCs' expected strong emphasis on Mode 4. One third of the preferences – as counted here – concern Mode 4. This effect is to some extent linked to the counting method applied, where improved horizontal commitments are counted per each sub-sector 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. In fact, the method applied here arguably significantly underreports the said multiplication effect. We counted only those sub-sectors that are contained in the notification, not all sub-sectors committed in the existing schedule of commitments. This arguably leads to a significant distortion where a Member intends to apply the



horizontal preference also to those sectors already scheduled but not again reflected in the notification (possibly because they are already fully/largely committed).

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.

2.2.8 How Far Does It Go? Degrees of Liberalisation

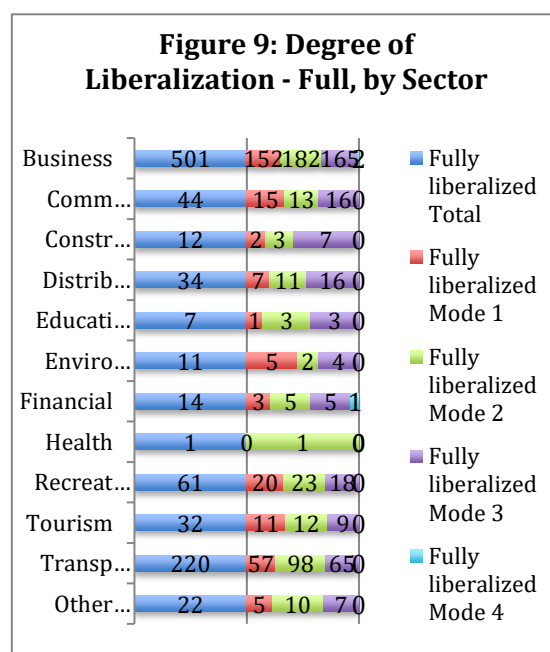


How much liberalization is achieved by a commitment (or its implementation)? The answer is often less clear than it may seem. Even full market access can be effectively nullified through regulatory barriers. Conversely, partial market access with limited or no national treatment can sometimes still provide meaningful business opportunities. Limitations also come in myriad shapes and forms – from geographic scope (applicable in some but not other places) to maximum shareholdings to quotas, each with a distinct effect hardly comparable to others. Keeping those caveats in mind, however, there are some pertinent observations that can be made when considering the Waiver notifications at issue here.

2.2.8.1 The Overall Picture – Full v. 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’ (= no limitations on Market Access or National Treatment, depending on the column). 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 promises. For the EU 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 commitments the number of full commitments drops to less than two thirds, or around 600, while the partial commitments remain virtually unaffected. Otherwise put: 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.

That said, in turn, it must be kept in mind that virtually all Mode 4 commitments remain in one way or another qualified, almost by definition, and are counted here as ‘partial’ commitments. Because Mode 4 commitments amount to one third (700+ out of 2100+) of all promised preferences accounted for in our analysis, the picture for the remaining ‘classical’ focuses, namely Modes 1 and 3, looks again different: There the ratio of full versus partial commitments is a rather healthy 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

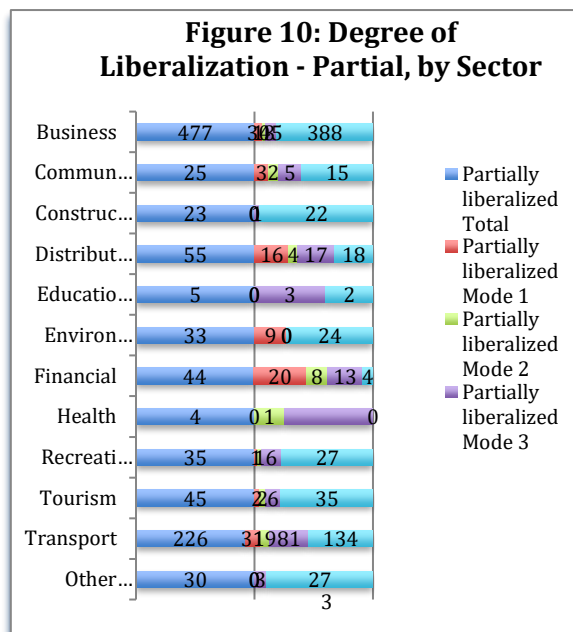
2.2.8.2 Degree of Liberalisation by Sector and Mode

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.



2.2.9 Some Make a Point, Some Tick Boxes: Preferences by Members

A closer look at the number of preferences offered by the 23 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 in any case.

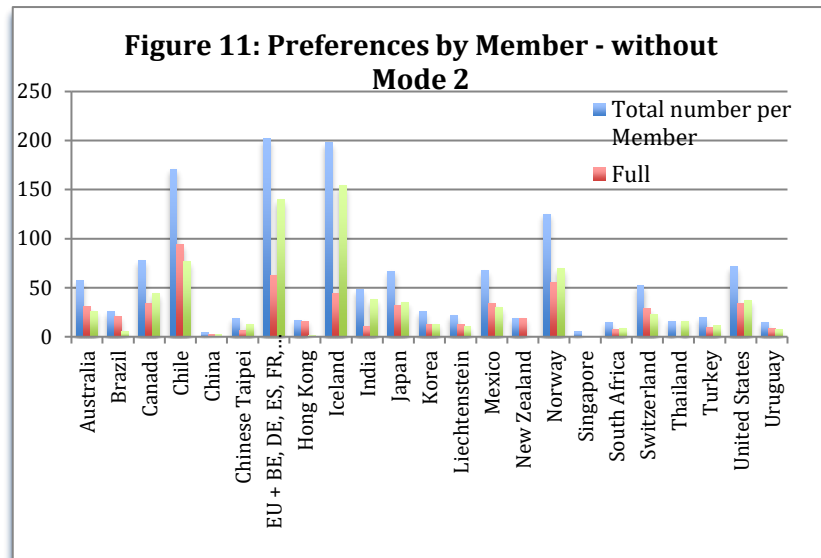
The European Union, Chile, Iceland and Norway lead the table, with the United States, Canada, Australia, Japan and Mexico, India and Switzerland forming a second group. Very few preferences were offered by China and Singapore Chinese Taipei.

Brazil, Chinese Taipei, Hong Kong, Korea, Liechtenstein, New Zealand, 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 don't necessarily imply quality.

Within the group of the countries with the most numerous preferences offered, Norway and Iceland took the approach to present a complete re-statement of their GATS schedule, with LDC preferences integrated. The EU's approach was arguably similar, with different optics as the EU applied its now standard (FTA) approach to group Modes 1-2, 3 and 4 in separate sections. While in theory the chosen scheduling technique should have little impact on the number and quality of commitments, it would not seem inappropriate to speculate that here it had such an impact. As the Members go systematically through their schedules, opportunities for preferences present themselves equally systematically and are possibly taken up more easily if there are no reasons against using the respective opportunity. This effect would not occur where Members selectively target certain preferences. Chile could

serve as a counter-example here. However, while Chile lists only preferences, the approach seems to have still been a systematic 'sweep', leaving few stones unturned. The result is one of the most extensive – and deep – sets of preferences.



It bears repeating that the number is of

limited relevance. 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.

2.3 A Look at Quality: Which Preferences May Matter More, which Less? What is Missing?

What do the notified preferences do for LDC services and service providers? The answer to that question lies beyond this paper's reach, but needs to remain the eventual target.

That said, this section offers an admittedly tentative qualitative assessment of some of the preferences offered by the main LDC trading partners, briefly looking at their potential significance, viability and economic value from the perspective of an LDC services provider.

2.3.1 Preferences that (Probably) Matter More

In their July 2014 Collective Request the LDCs – at least to some extent – articulated their primary interests. This provides a starting point, but neither an exclusive nor a comprehensive reference, for considering which preferences offered by the notifying Members will likely matter for LDCs.

- Mode 4: Contractual Services Providers (CSS) and Independent Professionals.** 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.) or ICT services (e.g. computer specialists being sent to clients abroad), apart from traditional professional services – all of significant immediate interest to LDCs. While some notifying Members display the – arguably expected – reflex to shy away from cross-cutting improvements in Mode 4, almost half of them took the bait and offered - in some cases significant – new or improved horizontal commitments on CSS and IP, traditionally the most 'difficult' – but for LDCs in particular most relevant – categories of Mode 4 providers. Examples include

Chile, the EU, Norway and Iceland, with Chile arguably leading the way with a rather open category, avoiding overly restrictive requirements regarding specialization etc.

- **Systematic multi-/cross-modal commitments.** Services are often provided in several modes as part of the same contractual relationship. As a result market openings that are fragmented across modes of supply do not sit well with what service suppliers need. This affects small providers more than bigger ones, as they have less flexibility in allocating human and other resources, and those from developing countries more than those from more advanced economies, as their de facto access levels (not least because of visa regimes and transport costs) further reduce their adaptability. Against this background comprehensive commitments across all or most modes of supply are the best way to ensure effective access. Chile's notification again arguably provides a good example, with a general approach to provide – in a great number of sectors – full access on Modes 1, 2 and 3 ('none') coupled with an improved horizontal promise on Mode 4 (see above – CSS).
- **Targeted efforts in complex areas.** Relevant and useful are targeted efforts to respond specifically – even on a small-scale basis – to specific export potentials in specific sectors. An example in point would be India's LDC-only quotas on tour guides and language teachers. While the immediate economic impact of such openings will be limited, their longer-term development potential may be more significant. A 'foot in the door' may lead to further opening on the basis of positive experiences, but more importantly provides export practice more generally to providers and their sectors, and hence assists in fostering a much-promising 'mental shift' towards a more outward looking, export-oriented services sector in LDCs.

2.3.2 Preferences that (Probably) Matter Less

- **Mode 2 in sectors other than health, tourism and education.** Many notifications contain multiple Mode 2 commitments in multiple sectors. In most cases these are of limited practical relevance; Members are of course aware of that, but offer them often as parts of clusters, which is useful and should be welcomed. However, in some cases the less welcome practice of offering a Mode 2 promise as a mere token appears to have found its way into the emerging Waiver practice as well. Arguably a case in point are Singapore's Mode 2 commitments – five out of a total of ten preferences offered – in laundry collection, textile and fur cleaning, dry cleaning, pressing and dyeing and colouring services. With the possible exception of the last it is hardly imaginable to see these commitments ever used by, say, Cambodian or Laotian service providers.
- **Remote sectors.** Similarly, while LDCs do export services in most if not virtually all sectors and modes of supply, or could do so soon, there are subsectors where current interests are more limited, such as aircraft maintenance and repair services in Mode 3 (although Ethiopian Airlines may legitimately disagree). Again, where preferences are offered in these subsectors as a result of a systematic and comprehensive approach these should be welcomed as part of the facilitating 'landscape' for LDC services trade. Where however these are used to inflate preference programmes they deserve less acclaim.
- **Restrictive definitions.** As under GATS and in FTAs generally restrictive definitions also operate within the notifications to limit – sometimes to very little – the operative value of the preferences offered. An example in point may be Canada's

commitment in tour guide services, which is generous except that most of those service activities that matter in Canada – tourist services related to hunting, fishing, trapping, outfitter hunting and wilderness tourism – are excluded a priori.

2.3.3 Missed Opportunities

- **Unnecessarily restrictive approaches.** Sometimes arguably overly cautious restrictions and limitations reduce the value of otherwise potentially interesting openings – example: Brazil’s standard practice to keep Modes 1, 2 and 4 entirely ‘unbound’.
- **Very few regulatory preferences, despite specific requests.** Members have so far offered virtually no regulatory preferences of note – with a few exceptions, such as India’s waiver on visa fees. These matter greatly for LDC service providers, and should be considered much more actively and creatively by Members in the future.

2.4 Distilled: Some Best Practices & Lessons Learned

What are, thus, the best practices and lessons learned that can be distilled for the 23 notifications submitted so far? Some observations can indeed be made, but this should be done while keeping the main caveat – and limitation of this paper – in mind: Comparing promises only gets us so far; the proof will be in the pudding, or the applied reality.

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.

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

2.4.1 Best Practices

2.4.1.1 Approach, Technique and Presentation

- **Comprehensive and systematic approach** pro-actively considering the complete range of services sectors, rather than a selected approach to ‘cherry-picked’ sub-sectors and modes of supply: 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, such as some of those offered by India, 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). Brazil’s notification, for example, clearly juxtaposes each preference promise with the status quo under the GATS schedule – a very useful service to the reader. That said, the

approach taken by Norway, Iceland and Switzerland 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 (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. 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.
- **Courage, courage! 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. Brazil's practice, for example, to keep Mode 1 (and Mode 2) systematically 'unbound'⁹ would appear to reflect such arguably exaggerated caution. LDC providers – such as Lusophone suppliers in far-away LDCs such as Angola or Mozambique – would often benefit most from effective access through Mode 1. (That said, the glass is arguably half full, and should be recognized as such: Brazil has offered Mode 3 access in several sectors of interest to LDCs which are uncommitted under the GATS – a welcome move in any case.)

2.4.1.2 Substance

- **Taking Mode 4 seriously.** Among the most interesting potentials for LDC services exports are improvements for exports through CSS and IP, often effective trailblazers for and components of primarily Mode 1-based business models, alongside SS and 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 here.
- **Taking regulatory issues (and possible preferences) seriously, creatively so.** Services are regulation intensive sectors, particularly compared to goods. 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.

⁹ With three exceptions – Veterinary, Maritime Agency and (financial) Consultancy, Actuarial and Survey Services. See S/C/N/839.

- **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 fact that these and other explorations may also help India's own ambitions in Mode 4 only underscores the need to advance them. The LDC Waiver indeed provides the opportunity to expand trade in services by exploring better solutions for SME providers, and should be welcomed as such. This will be for the benefit of LDC providers as well as possibly others, but without detracting from the former.

2.4.2 Lessons Learned

- **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.

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 '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.

3 Constraints Affecting LDCs' Abilities to Benefit from Services Preferences

3.1 Introduction

The granting of trade preferences to LDCs under the WTO waiver may contribute to stimulate services exports. However, due to their structural handicaps including low income base, economic vulnerability and weak human assets, LDCs face a number of constraints which may affect their ability to benefit from trade preferences granted under the waiver. In many respects, these constraints are sector and country specific and assessing them in a comprehensive manner is clearly beyond the scope of this paper. This section focuses instead on a set of challenges which are common to most if not all LDCs based on a review of existing literature and illustrated by examples of country and sector specific constraints. For practical purposes, these challenges are organised around four broad categories. First LDCs need to properly assess the role of services and services trade in their development strategies and, second identify key sectors with export potential. Based on that, LDCs need to understand the main factors driving competitiveness in those key sectors and finally how to overcome supply side limitations acting as binding constraints on the export side. The remaining of this section focuses on these broad set of challenges.

3.1 Assessing the Importance of Services and Services Trade

In a world increasingly 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 play an important role in this equation not only as a source of export diversification but also as a source of competitiveness for the economy as a whole. Services often 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. Beyond its direct effects on economic growth, services are also a major contributor to the Post-2030 Sustainable Development Agenda in a number of LDCs, due to its poverty alleviation potential as well as its inclusive character (Adhikari 2015).

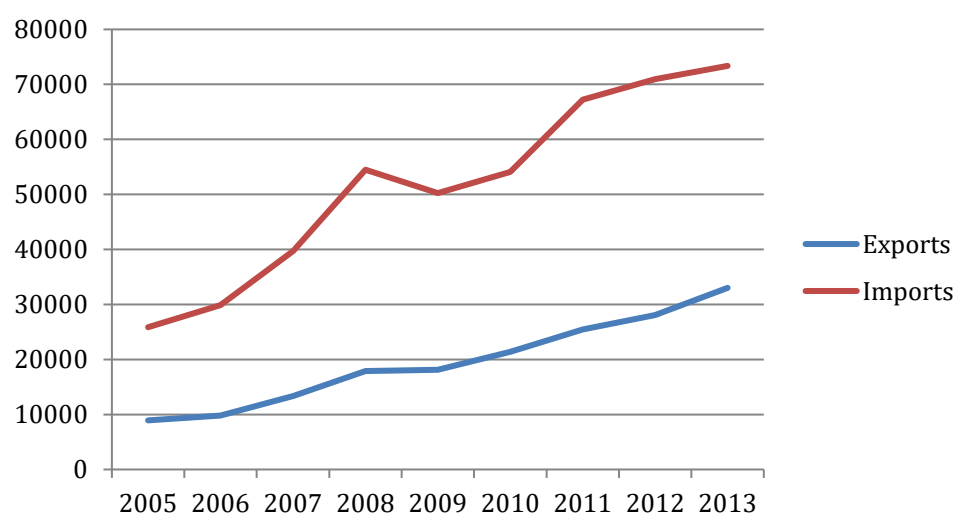
Assessing the importance of services and services trade requires consulting services trade data and statistics. When considering services trade data it is important to note that current statistics in many countries, including not least LDCs, rarely capture with any accuracy what is actually happening. This reflects both the secondary attention accorded to services trade and the objective difficulties in collecting and collating the relevant information as elaborated in section 3.2 below.

With the above caveat in mind, existing services data suggests that while commercial services exports from LDCs have been characterized by impressive growth rates and an increasing share of global services exports over the last decade, LDCs still only account for 0.5 per cent of global services exports which does not compare favourably with their share of global goods exports (1.1 per cent). Services data further suggests that services exports

account for less than 15 percent of LDC total exports.¹⁰ The rather precarious position of African LDCs becomes clearer if LDC exports are broken down by region. For African LDCs, services account for 6.1 per cent of total exports which is well below the level of their counterparts in Asia.¹¹

Figure 12 shows the evolution of LDCs commercial services export and imports since 2005 highlighting the growing net trade deficit for LDCs as a group. In spite of this overall negative trade balance, LDCs as a group still exhibit a trade surplus in specific sectors including manufacturing services -largely driven by Myanmar and Bangladesh- travel, reflecting the importance of in-bound tourism, and telecommunications, computer, and information services (mainly driven by Bangladesh, Yemen, Nepal, and Senegal).

Figure 12: Exports and imports of commercial services by LDCs (2005 – 2013 Mio USD)



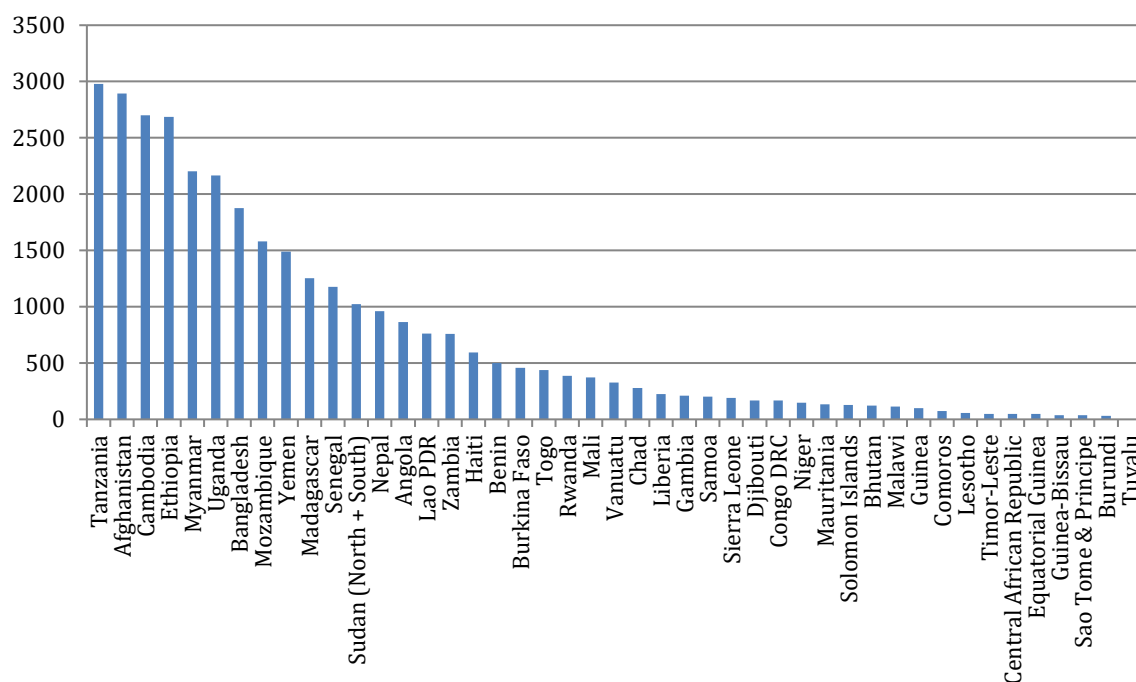
Source: ITC, UNCTAD, WTO joint dataset

Figure 13 shows total commercial services exports (excluding government services) by individual LDCs for which balance of payment data is available in the ITC-UNCTAD-WTO joint data set on services trade. Overall, Tanzania, Afghanistan, Cambodia, and Ethiopia lead the group with export exceeding USD 2.5 billion each, followed by Myanmar and Bangladesh. In terms of specific sectors, figure 14 provides a breakdown by type of commercial services for some of the top LDC exporters. It illustrates the leading role of travel, transport, other business services and to some extent, construction or telecommunications, computer, and information services. It also shows the heterogeneity of services exports in LDCs.

¹⁰ ITC (2013). LDC Services Exports: Trends and Success Stories

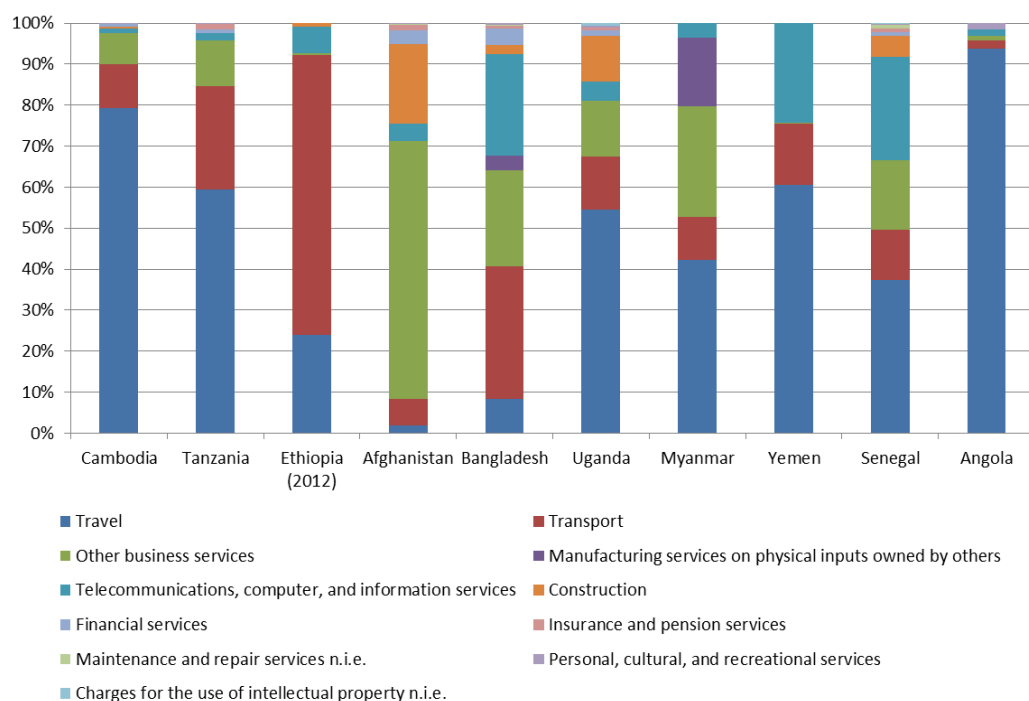
¹¹ Trade Insight (2015). Vol. 11, No 3: Supporting Services Trade Diagnostics and Promotion in LDCs.

Figure 13: LDCs exports of services (2013 Mio USD)



Source: ITC, UNCTAD, WTO joint dataset

Figure 14: LDCs exports of commercial services by sector (2013)



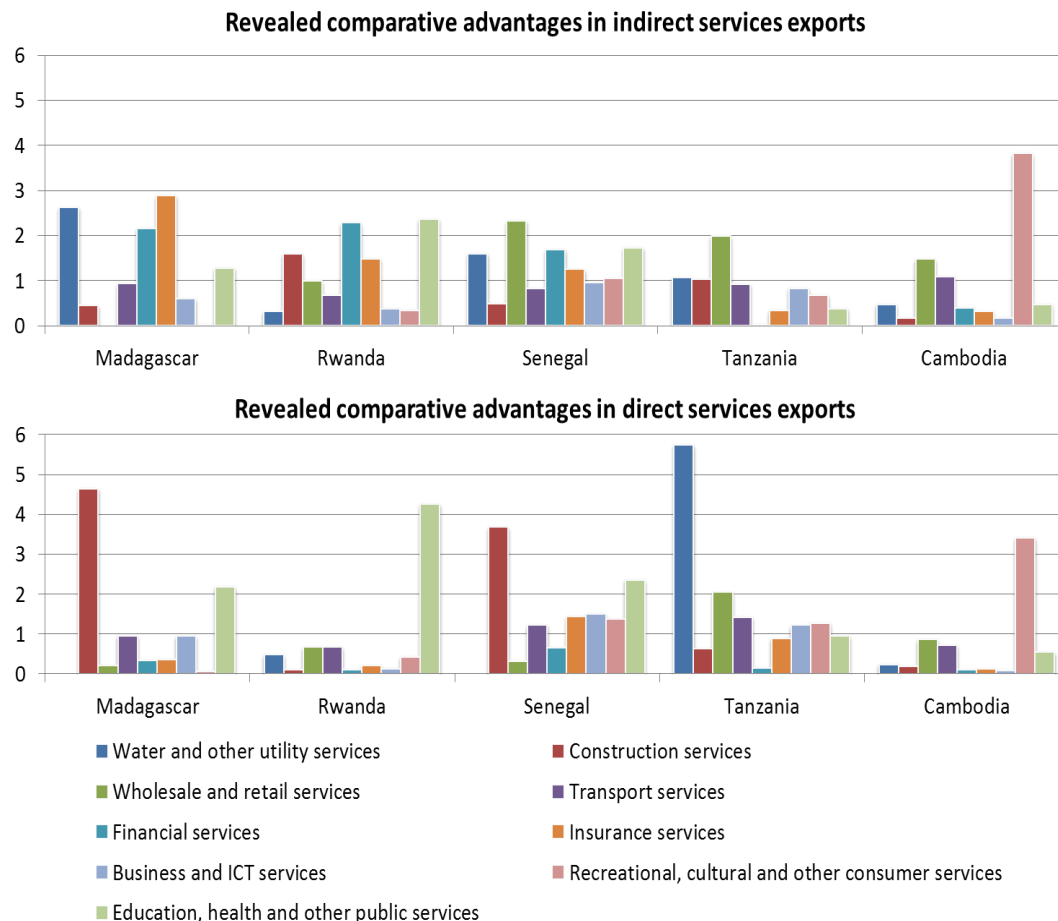
Source: ITC, UNCTAD, WTO joint dataset

Beyond direct exports, services can also be traded indirectly as input in the production of other goods or services exported abroad. Since 1990, the share of services in value added

has increased steadily across all income groups including LDCs. Today, services not only play an increasingly important role in the functioning of global production networks, they are also increasingly incorporated in manufacturing products traded internationally.¹²

Reflecting this distinction between direct and indirect exports, figure 15 looks at revealed comparative advantages of selected LDCs in different services sectors.¹³

Figure 15: Comparative advantage in indirect and direct services exports in selected LDCs



Source: Fiorini and Hoekman (forthcoming) based on World Bank EVA Database. Data refer to 2011

The first set of graphs shows how much services are indirectly exported as intermediate inputs relative to a world average performance -with a value above 1 revealing an export performance higher than the world average. In the second figure we show revealed comparative advantages in direct exports compared to the average world performance -here again a value above 1 reveals an export performance higher than the world average. Interestingly both figures show substantially different services rankings.

Senegal and Madagascar for example show clear revealed comparative advantages in the direct export of construction services. In terms of indirect contributions to exports however,

¹² This notion of servicification of goods production has led to a new term being coined: mode 5 services trade, with growing evidence suggesting that mode 5 is becoming even more important than some traditional GATS modes of supply (Cernat and Kutlina-Dimitrova 2014).

¹³ This analysis builds on research by Fiorini and Hoekman (ICTSD, forthcoming)

wholesale and retail services is the most important sector for Senegal whereas Madagascar relies more on insurance or financial services. In a similar vein, Tanzania shows a clear revealed comparative advantage in terms of direct exports of water and utilities services while the same sector has a performance in terms of indirect exports which is equal to the world average. An implication of this is that enhancing competitiveness in different services sectors may result either on improving direct exports or exports of other goods or services depending on existing revealed comparative advantages.

3.2 Constraints Facing LDCs in Identifying their Export Potential

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. There are several *ad hoc* diagnostic tools for such analysis (for further details, see Sáez et al. 2014). In the case of LDCs, the Diagnostic Trade Integration Studies (DTISs) which are prepared and updated by the LDCs themselves at regular intervals constitute a critical starting point to identify relevant sectors but also constraints and Aid for Trade need.¹⁴ As we move forward, developing further those analytical tools appears as a logical first step. The remaining of this section identifies some of the supply side constraints affecting LDCs in reaping the potential benefits of market access for services exports.

3.2.1 The Need for Disaggregated, Timely and Reliable Services Data

One of the major challenges facing LDCs in defining their export potential relates to data availability. The collection of data on cross-border trade in services is notoriously difficult, in large part due to the intangible nature of services but also the high capacity needed to record such data. With respect to modes 3 and 4, measurement is equally difficult and incomplete. Ongoing revisions and refinements of the BOP classification work towards solving these issues but up to date, services statistics remain under-developed with limited industry, product, geographical, and time series data.

At the international level, three main sources provide specific services data: the United Nations Statistical Database (UNSD), the WTO/UNCTAD/ITC services database and the World Bank's trade in services database (WBTSDB). The UNSD provides data on imports and exports for 199 countries from 2000 onwards. The WTO database details services trade in total commercial services, transport, travel and other commercial services for selected regions and economies from 1980 onwards, with more disaggregated data as of 2000. Finally, the World Bank's Trade in Services Database combines various data sources (including the IMF, OECD, EuroStat and the UNSD). It provides data on annual bilateral services trade flows covering modes 1 and 2 for 248 countries and regions across several sectors over the period 1981-2010. The use of "mirror" flows allows for an expanded coverage of North-South services trade. However South-South services trade, particularly among LDCs remains largely unreported (Shingal 2015).

¹⁴ Services and particularly the tourism sector have featured prominently in 42 out of the 47 DTIS studies conducted by LDC so far reflecting both the importance of the sector in national and regional priorities, but revealing also a pattern of significant concentration in LDCs services exports. Going deeper in the analysis, a recent effort by the EIF in reviewing 15 DTIS has revealed the importance of other sectors including transport and logistics in 12 countries or ICT and financial services in nine countries (Adhikari 2015).

While these datasets represent significant improvements, existing information is often insufficient to perform detailed quantitative analysis. For most LDCs the data is only available at the level of total trade with the world and not disaggregated by partner (sometimes with the exception of major trading partners). Furthermore, while some sectoral details are available in the more recent data, in many instances LDCs struggle to report beyond one digit EBOPS level (the Extended Balance of Payment Services classification system) with high variability from year to year suggesting possible weaknesses in the data collection and transcription/coding process (Shingal 2015). Table 1 below describes some more specific data challenges prevailing in services statistics by modes of supply.

Table 1: Data challenges by modes of delivery

Mode of supply	Examples	Challenges	Estimated share of total services trade (percent)
Mode 1: Cross-border trade	<ul style="list-style-type: none"> International phone calls Telemedicine Online courses International transportation services 	Balance of payments does not distinguish between cross-border supply and presence of natural persons	25–30
Mode 2: Consumption abroad	<ul style="list-style-type: none"> Tourism Education Health tourism 	Tourism includes goods and is not subdivided into categories of services consumed by tourists. Some transactions are in other balance of payments categories.	10–15
Mode 3: Commercial presence	<ul style="list-style-type: none"> Financial services Distribution services Construction services 	Foreign Affiliates Trade Statistics (FATS) are available for only a limited number of countries (largely OECD countries). Foreign direct investment (FDI) statistics cover a larger set of countries, not only majority-controlled companies. Statistics do not distinguish between Modes 3 and 4.	55–60
Mode 4: Presence of natural persons	<ul style="list-style-type: none"> Professional services Entertainment services 	Balance of payments does not distinguish between cross-border supply and presence of natural persons or between modes.	Less than 5

Source: Sáez et al. (2014)

As highlighted above, services can also enter as input into the production of a good exported abroad. Taking this indirect form of services export into account requires data on services exports in value added terms (as opposed to gross terms). Such statistics are starting to be provided through the recent OECD-WTO Trade in Value Added database (TiVA) and the World Bank Export in Value Added Database (EVA) that makes use of the GTAP (Global Trade Analysis Project) input-output data. As with other dataset, however, LDC coverage remains limited both in terms of sectors and countries covered. In spite of these shortcomings, the EVA database provides information on the domestic value-added content of exports for 118 countries including several LDCs across 27 sectors of the economy, including 9 commercial services sectors, spanning intermittent years between 1997 and 2011. Interestingly, the database allows distinguishing, for each sector, the forward linkage of value added from the backward linkage.

3.2.2 Interagency Coordination and Private Sector Engagement

By nature, services cover a wide range of 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. Promoting an effective process of interagency coordination in turn is likely to generate positive policy making externalities (Sáez 2010). In this respect, it might be critical for LDC governments to establish such mechanisms as a way to integrate into national level development planning the potential benefits from the WTO services waiver. Such mechanisms should also consider establishing formal or informal channels for

private sector engagement and consultations. LDC service providers remain largely unaware of existing and new market access opportunities offered by the services waiver and interaction with the government is still limited in spite of recent improvements. This could be achieved through regular workshops at the national and regional level involving trade promotion organisations and private sector representatives from both exporting and importing countries.

Evidence also suggests that grouping local business champions together into various forms of services platforms can play a critical role in improving business networks but also policies and regulations affecting services (Drake-Brockman et al 2015). Contrary to services coalitions established in developed countries which tend to focus on lobbying and the promotion of services liberalisation, developing countries' services coalitions have traditionally focused on developing the services sector and helping their members take advantage of existing market access opportunities. In this respect, they tend to complement public sector institutional roles, and catalyse dynamic entrepreneurial activity (ILEAP 2012).

Several initiatives have emerged in LDCs both at the national and regional levels. Key obstacle however include the lack of adequate and consistent funding but also the lack of awareness pertaining to private sector needs vis-à-vis services policy, negotiations, and even trade promotion, and thus the associated challenge of articulating their own needs and generating public sector buy-in. As a result many initiatives in LDCs continue to face challenges in shifting from ad-hoc activities and influence to a more systemic role as a fully functioning coalition (ILEAP 2012).

3.3 Improving Competitiveness

Once LDCs have identified their priority sectors and export potential, a second step consists in addressing the factors affecting competitiveness. There are at least two fundamental reasons to be concerned about low levels of service sector competitiveness in LDCs. First, in terms of short run effects, low levels of competitiveness and productivity leave already vulnerable LDC economies further exposed to external shocks, such as declines in commodity prices; and second, competitiveness gains are crucial to ensuring that, in the medium term, LDCs are positioned to reap the rewards of a potential “demographic dividend” characterized by an increasing labour supply and declining dependency ratios.¹⁵

The development of competitive service sectors, and corresponding increases in services exports, are vital for the structural transformation and long run health of LDC economies. As highlighted above, improvements in domestic service sector competitiveness not only drive exports of services but, given the critical role of services as inputs into the production of tradable goods and services, also serve to drive economy-wide efficiency gains.¹⁶ The case of financial services illustrates this point neatly: efficiency gains in a country's financial sector can result in increased exports of financial services, while, at the same time, these gains can also diffuse to the rest of the economy and result in lower cost production of goods and services.

Competitiveness is a term that is used in much of the development policy community as well as in the academic literature with large variation in its underlying meaning. Some definitions

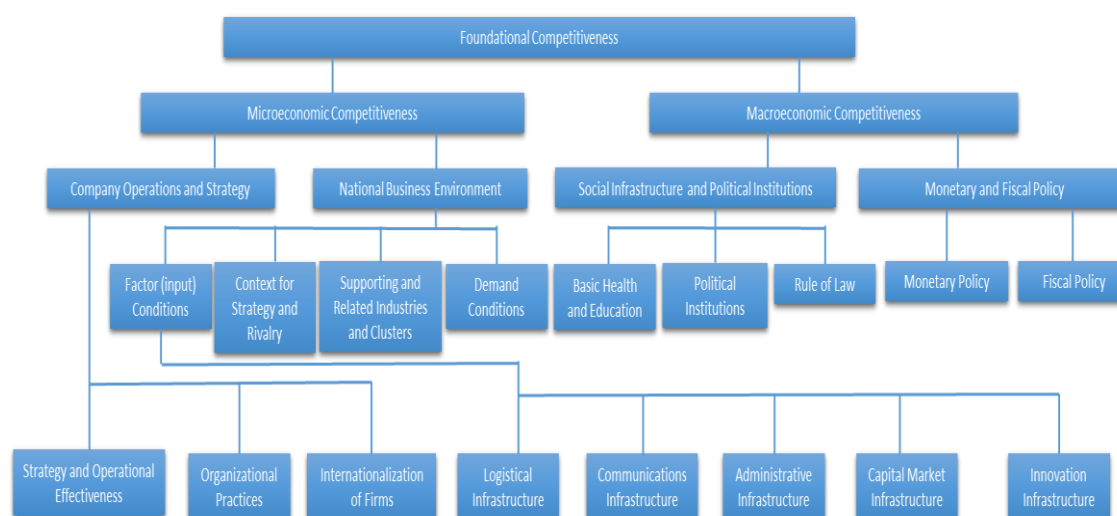
¹⁵ UNCTAD (2013). The Least Developed Countries Report: Growth and employment for inclusive and sustainable development

¹⁶ World Bank (2015). Valuing Services in Trade: A Toolkit for Competitiveness Diagnostics

reduce the concept of competitiveness to a zero-sum game predicated on labour costs and corporate market share. While high market shares can be a signal of a sector's competitiveness, high market shares can also be achieved through the use of inefficient and costly government policy (*i.e* subsidies). Similarly, evidence suggests that while labour costs can have an effect on a sector's performance, the determining factor is productivity gains rather than labour costs per se.¹⁷ In contrast to the approaches which focus on labour costs and market share, much of the recent academic literature and empirical evidence has focused on the relationship between competitiveness and productivity. Indicators present in the WEFs Global Competitiveness Report and the World Bank's Doing Business index have been designed to capture those factors which affect productivity and subsequently competitiveness. Porter, and a large number of others, have noted that productivity differences are the underlying factor in explaining cross-country differences in economic success.¹⁸

The academic literature, with its numerous approaches to the question of the determinants of competitiveness, has identified a wide assortment of factors ranging from the importance of property rights and educational policy at the macro level to the state of communications infrastructure and innovation at the micro level. It is outside the scope of this paper to determine the relative impact of the various identified determinants. However, using Porter's framework structure for assessing competitiveness, factors affecting service sector competitiveness can be loosely grouped into two primary groups: macro and micro economic factors.

Figure 16: A competitiveness conceptual framework



Source: Adapted from NBER (2012).

Macroeconomic factors encompass: i) political and social institutions, including basic health and educational services, the strength and health of political institutions, and the rule of law; and ii) the general macroeconomic environment (monetary and fiscal policy). Microeconomic factors are more numerous and include: i) the domestic business

¹⁷ Inter-American Development Bank

¹⁸ NBER (2012). The Determinants of National Competitiveness. <http://www.nber.org/papers/w18249.pdf>

environment, which includes elements such as demand conditions, the nature of domestic competition (as determined by regulatory frameworks), the presence of supporting industry clusters, and what Porter terms factor conditions such as logistical, communications, administrative, innovation and capital markets infrastructure); and ii) firm level determinants including the level of internationalization, business sophistication, and operational effectiveness.¹⁹

3.3.1 Macroeconomic Competiveness in LDCs

The heterogeneous nature of LDCs makes it difficult to propose a set of macroeconomic policies which can be applied universally. However, a number of overarching points regarding macroeconomic policies, geared towards promoting growth and investment more broadly, and service sector development specifically, can be stylized. While there is little that LDCs can be do in terms of exogenous shocks, sound macroeconomic policy can lay the foundation for growth and development.

3.3.1.1 Fiscal and Monetary Frameworks

Given that productivity gains, at the core of competitiveness, are strongly linked to investment and that investment is linked to fiscal and monetary policy, the maintenance of a stable macroeconomic environment is key. Furthermore, while price stability is an important macroeconomic goal, monetary policy should not be so constrained as to severely limit the levels of credit available for productive investment especially given the problems many exporters, especially those in service sectors, face in terms of accessing financing. While many LDCs certainly are faced with an unfavorable fiscal position, deficit reduction targets should not come at the expense of countercyclical policy flexibility, especially for those whose economies are characterized by low levels of diversification. The successful use of automatic stabilizers in developed economies during the financial crisis highlights the importance of well-functioning social protection systems.

The case of Mauritius, a significant services exporter given the size of the economy, provides a useful example of a country with a coherent macroeconomic framework. Since the 1980's, the country has gradually moved towards a more liberalized system of exchange rate management. Capital controls have largely been abolished and the Bank of Mauritius only intervenes in forex markets to limit volatility. Highlighting the importance of countercyclical macroeconomic policy, Mauritius put in place a significant stimulus program, composed of both fiscal and monetary components, in the wake of the global financial crisis (GFC) which went some ways to alleviating the shocks generated by the crisis.

3.3.1.2 Social Infrastructure and Political Institutions

The protection of property rights, effective law enforcement, efficient bureaucracies, institutions for social insurance, institutions for education, and regulatory institutions have been shown to be one of the key set of determinants for generating economic growth. Social and political institutional arrangements impact economic growth by determining incentives for actors to acquire skills sets, investment in assets, and determine the level of transaction costs. On a more granular level, a particular focus for LDCs wishing to expand their service sector capacity and exports has to be on improving educational outcomes given the skill-intensive nature of many exported services. While LDCs as a group have made significant

¹⁹ Ibid

improvements in primary enrolment rates, further efforts should be made to further boost primary school enrolment. Furthermore, higher education is of critical importance in ensuring that LDC's workforces are equipped to participate and competitive in a services and skill orientated global economy.

Recent research into the binding supply-side constraints for service sectors in LDCs has revealed a technical and skills-related gap across a wide variety of sectors ranging from, what have been traditionally thought of as, lower-skill intensive sectors such as tourism to higher-skilled sectors such as finance and ICT. For example, in Rwanda, private sector operators in the tourism sector have identified a need for tour guides, chefs, and front office staff while operators in the ICT sector have acknowledged the need for increasing the number of IT specialists. This need for both skilled and semi-skilled labour is a recurring theme across LDCs from all regions.

3.3.2 Microeconomic Factors

In addition to macroeconomic factors, which tend to be more crosscutting in nature and not as particular to services industries in LDCs, a number of specific microeconomic factors are important for improving service sector capacity in LDCs namely: infrastructure, regulation, and access to finance.

3.3.2.1 Infrastructure Deficits

While services tend to require fewer infrastructures than manufacturing industries, there is still a pressing need to develop reliable and effective infrastructure in LDCs as many of the challenges which LDC service exporters face are directly tied to infrastructural constraints. According to the WEF, the provision of transport, communications, and logistics infrastructure has far more of an impact on economic growth and trade than favourable market access conditions (WEF 2013). One of the leading constraints in many LDCs is the lack of transport infrastructure (road, rail, port, and air links). This not only has important ramifications for the direct export for transport services but also for other service sectors of export interest to LDCs, such as tourism, which are dependent on the provision of efficient transportation services.

In Tanzania for example, transport infrastructure deficits, and the resulting poor performance of transportation services, has discouraged the necessary development of infrastructure in the tourism sector such as hotel accommodation, restaurants, and tour operation facilities. Similarly, the lack of transport infrastructure in the Solomon Islands, as exemplified by a meager 2.4 per cent of paved roads, has raised the costs of travel for clients and tour operators relative to other countries in the region.

Many LDCs have identified ICT-enabled services as a priority sector. Given the importance of the provision of reliable power and bandwidth, the development of sufficient infrastructural capacity is required. One of the major supply-side constraints identified by stakeholders operating in the sector in a number of LDCs has been the lack of cost-effective and stable internet access and a reliable supply of electricity. The lack of sufficient communications infrastructural capacity severely limits the ability of LDCs to not only expand their shares of ICT-enabled exports, but also to tap into domestic demand. While there is certainly variation in LDCs' positions on these infrastructural constraints, East African LDCs have access to fairly reliable internet, at least in relative terms, via the Eastern Africa Submarine Cable while many Pacific LDCs are still dependent on microwave satellites and while some LDCs have more reliable access to electricity than others, the point remains that if LDCs wish

to take full advantage of the sector's export potential, ICT-related infrastructural improvements are necessary.

3.3.2.2 *The Regulatory Environment*

As service sectors in many LDCs are underdeveloped, services liberalization is necessary in order to ensure access to efficient service suppliers. The World Bank has noted that, "Liberalization allows an economy to increase both the services intensity and the value addition of the goods and services it produces and exports"²⁰ By increasing the productivity of domestic service sectors through trade in services, LDCs can not only improve the competitiveness of goods exporters but, perhaps more importantly, improve their capacity to export services. While the domestic regulatory environment in LDCs may not explicitly pose barriers to trade in services, it nevertheless can have a strong impact on it. Underdeveloped and unpredictable regulatory frameworks reduce the efficiency of domestic service operators and limit the provision of services from external sources thereby further limiting domestic productivity.

Evidence suggests that sources of the regulatory constraints which many operators in LDCs experience is twofold: i) regulations are burdensome and unnecessarily complex and ii) a regulatory vacuum in which regulatory frameworks either are not present or have not been sufficiently developed. For example, private sector operators in Lesotho's financial sector have noted that they operate in an environment characterized by inadequate regulation, currently the Central Bank of Lesotho supervisory division works in good faith with sector operators as new legislation has yet to be approved, while Tanzania financial operators have identified the lack of an updated insurance framework as a major constraint to the development of insurance services, an important aspect of risk management in economies. On the other hand, tourism operators in Tanzania are constrained by a cumbersome regulatory framework which is characterized by multiplicity of taxes, levies, licenses, fees and charges that tend to stifle new investments flows into the industry. Similarly, the lack of effective regulation of existing monopolies and of rules against unfair practices can increase the cost of doing business for tourism entrepreneurs in Vanuatu as the country lacks an overarching competition law.

3.3.2.3 *Access to Finance*

The World Bank has noted that finance is one of the cornerstones of the development process.²¹ Efficient and inclusive financial systems are critical in channeling resources to the most productive sectors of the economy and allocating risk to those most able it. Improving the efficiency and reach of financial service providers in LDCs is required to not only increase exports of financial services, an important point given that 38 LDCs export financial or insurance services,²² but also to improve the productivity of those service sectors with export potential. A crude indicator of financial access is the number of ATMs per 100,000. In 2004, the LDC Group as a whole accounted for less than 1 ATM per 100,000 before improving in 2014 to 4.3. However, this level lies well below that of middle income countries

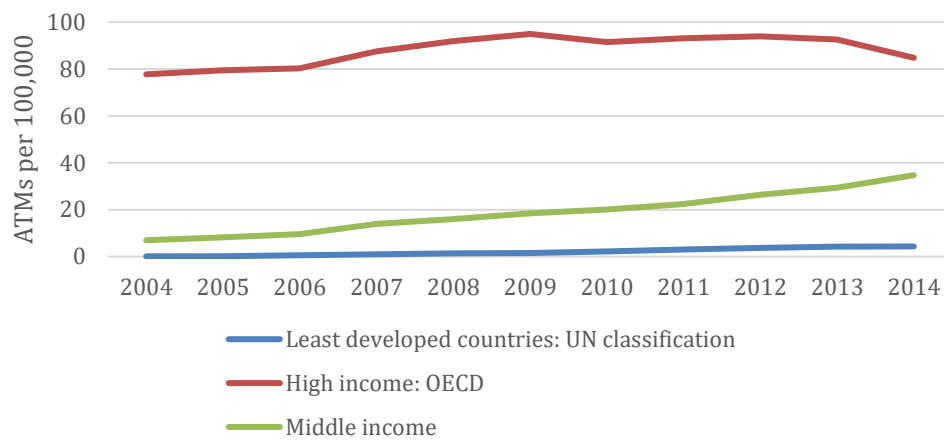
²⁰ World Bank (2015): Valuing Services in Trade. <https://openknowledge.worldbank.org/bitstream/handle/10986/21285/9781464801556.pdf?sequence=8&isAllowed=y>

²¹ World Bank (2006). Policy Research Report on Access to Finance: Measurement Impact and Policy Concept Note http://siteresources.worldbank.org/INTFR/Resources/PRR_on_Access_to_Finance.pdf

²² ITC (2013). LDC Services Exports: Trends and Success Stories

(34.7 in 2014) and OECD economies (84.8) illustrating that the financial access gap continues to plague the economies of LDCs.

Figure17: Financial services in LDCs 2004 - 2014



3.4 Supply-Side Constraints for Key Export Sectors

Going one step further and building on the considerations highlighted above, this section provides a brief breakdown of the constraints identified in the four main sectors of export interest to LDCs (tourism, ICT, and transport and financial services.) These constraints were identified in a series of recent country studies conducted in 2015/2016 by the International Centre for Trade and Sustainable Development (ICTSD) in close collaboration with local researchers, government officials and private sector representatives. The LDCs examined include: Rwanda, Tanzania, Uganda, Lesotho, Solomon Islands and Vanuatu. A summary table at the end of each sub-section provides an overview of the main constraints identified in those different LDCs by sector.

3.4.1 Tourism Services

In the face of adverse economic conditions, slowdown in growth in many developed and emerging economies as well as geopolitical tensions, the global tourism sector has shown resilience. The sector globally accounts for 7 per cent of global GDP (approximately USD 7 trillion) and is forecast to growth at 4 per cent annually-well above the level of projected growth for financial services, transport and manufacturing.²³ services data suggests that for the LDC group as a whole, tourism services account for the largest share of total exports reflecting the critical role that the sector plays in LDC economies in terms of contributing to GDP growth, foreign exchange earnings and employment.²⁴ Given the central role of the tourist sector in LDCs, it is unsurprising that the sector has been identified by a large number of countries as a priority sector for expansion.

Identified constraints in the tourism sector include:

²³ WEF(2015). The Travel and Tourism Competitiveness Report: Growth through Shocks. http://www3.weforum.org/docs/TT15/WEF_Global_Travel&Tourism_Report_2015.pdf

²⁴ ITC (2013). LDC Services Exports: Trends and Success Stories

- **Access to finance:** a number of tour operators reported that the growth of the sector was inhibited by insufficient access to finance, particularly by SMEs.
- **Skills deficit:** inadequately skilled labour including service personnel, technicians, and food preparation professionals.
- **Weak industry organizations:** in some LDCs, the industry is self-regulated by industry associations. However, a mandate for tour operators to subscribe to an industry association has not been incorporated into national law.
- **Regulations, bureaucracy and policy:** many tour operators identified government bureaucracy, in the form of licenses, permits or other forms of official permission to enter or expand their influence in the tourism market, as a major constraint. Furthermore, the application of a model high value-low volume tourism has resulted in operators being unable to obtain significant market share.
- **Restrictions on land ownership:** restrictions on land ownership often make it difficult for developers to secure the right to acquire property and erect facilities for tourism purposes.
- **Telecommunications infrastructure:** a complex/high-cost ICT/telecommunications environment which impeded the sector's expansion and competitiveness
- **Electricity and water infrastructure:** erratic electricity and water supplies add to operators' costs, deter investment and tarnish the image of the sector as a whole.

Table 2 : Tourism services constraints by LDC

Constraint	Rwanda	Uganda	Tanzania	Lesotho	Vanuatu	Solomon Islands
Skills deficit	x	x	x	x	x	
Access to finance	x	x			x	x
Telecom Infrastructure				x		x
Power & water supply				x	x	x
Transport infrastructure			x	x		x
Land ownership					x	
Consolidated policy	x	x		x		
Fees, licenses, standards & permits			x			
Limited competition					x	
Weak industry organizations		x				
Standards	x				x	

3.4.1.1 Transport Services

The second largest exported service sector from LDCs, as a group, are transportation services. LDCs have increased their share of global transportation exports from 21 per cent in 2001 to 24 per cent in 2011 which equals the combined exports of other commercial services (finance, communications and assorted business services) and other business

services.²⁵ Like tourism services, transport has been identified by a significant number of LDCs as a priority sector.

Identified constraints in the transport sector include:

- **Transport infrastructure:** low levels of physical infrastructure, specifically in road, rail, air and maritime transport, has been identified as a major binding constraint.
- **Cabotage restrictions (regulation):** significantly raise the costs for transport operators seeking to move goods internationally
- **Monopoly presence and limited competition (regulation):** ensures that unproductive operators are not subject to market forces.
- **Lack of policy alignment (regulation):** various government ministries do not cooperate and overarching and integrated transport policy is often lacking.
- **Lack of harmonized regional regulations:** trucking operators identified the lack of regional standards, in terms of axel load and Gross Vehicle Weights (GVW) as a barrier preventing regional competition.

Table 3 : Transport services constraints by LDC

Constraint	Rwanda	Uganda	Tanzania	Lesotho	Vanuatu	Solomon Islands	Zambia
Skills deficit	x						
Transport infrastructure	x	x	x	x	x	x	x
Fees, licenses, standards, and permits			x				
Cabotage restrictions	x						
Lack of policy alignment (domestic)		x	x	x			x
Lack of policy alignment (regional)	x	x	x				
Standards					x		

3.4.1.2 ICT Services

While not accounting for the same share of services exports from LDCs, ICT-enabled services have been identified by a number of LDCs as a priority sector. The development of robust ICT sectors in LDCs will not only generate positive externalities, such as enhanced connectivity and various positive social outcomes to name but a few, but also can serve as a vital source of trade, investment and employment.

Identified constraints for the provision and export of ICT services include:

- **Access to finance:** sector growth, especially for start-ups, constrained by inadequate access to finance.
- **Telecommunications infrastructure:** a complex/high-cost ICT/telecommunications environment which impeded the sector's expansion and competitiveness
- **Electricity infrastructure:** unreliable electricity supply
- **Skills deficit:** lack of skilled IT professionals
- **Monopoly presence and limited competition:** presence of monopolies or oligopolies which result in higher costs for network access.

²⁵ Ibid

- **Low ICT penetration rates:** limited penetration especially in rural areas
- **Lack of domestic policy alignment:** some LDCs do not have national ICT policies and where they do exist, in many cases, are either in draft form or are underutilized.
- **Alignment with international standards:** some domestic ICT standards are not aligned with international standards and cybersecurity regulations
- **Alignment with regional standards:** lack of common regional disciplines, especially for those LDCs involved in regional agreements, limits the creation of a unified market.

Table 4: ICT services constraints by LDC

Constraint	Rwanda	Uganda	Lesotho	Vanuatu	Solomon Islands	Zambia
Skills deficit	x	x	x			
Access to finance	x	x	x	x		x
Telecommunications Infrastructure	x	x	x	x	x	x
Power & water supply	x		x		x	
Regulatory Capture		x				
Firm capacity	x					
Limited competition						x
Policy constraints (domestic)	x	x	x	x	x	x
Regional policy alignment		x				
Standards	x		x			

3.4.1.3 Financial Services

Global cross border exports of financial services were valued at USD 445 billion in 2013 and have demonstrated an impressive annual growth rate of 10 per cent (2000-2013).²⁶ The sector globally remains dominated by developed countries which account for approximately 80 per cent of global exports. However, although financial services account for only a small share of LDCs services exports, 38 LDCs export financial services while the sector in LDCs grew by 6 per cent (2013).²⁷

- **Skills deficit:** lack of skilled financial services professionals
- **Information quality and availability:** many LDCs either lack or possess limited credit bureaus and registries which retards the provision of loans from financial institutions. Likewise, the lack of strong auditing and accounting standards further limits the ability of financial institutions to lend.
- **Property rights:** in order to improve access to finance, the provision of strong creditor rights and an effective collateral mechanism is required to lower lending cost. Ill-defined property rights limit the availability of useable collateral for borrowers.

²⁶ UNCTAD (2014) Expert Meeting on the Impact of Access to Financial Services. http://unctad.org/meetings/en/SessionalDocuments/ciem6d2_en.pdf

²⁷WTO(2014) Market Access for Products and Services of Export Interest to Least-Developed Countries. file:///C:/Users/nfrank/Downloads/LDCW59.pdf

- **Limited competition:** the creation of a competitive banking environment can increase access to financially excluded groups, particularly SMEs.
- **Low levels of financial literacy:** This translates into a low savings rate and correspondingly less money available in the financial system to lend (at attractive rates) to start-ups and other businesses.
- **Financial infrastructure:** limited points of sale, ATMs and use of electronic payment systems
- **Telecommunications infrastructure:** a complex/high-cost ICT/telecommunications environment which impeded the sector's expansion and competitiveness
- **Poor ICT skills base:** the lack of ICT skills among workers in the financial sector limit the ability of export financial services
- **Electricity and water infrastructure:** erratic electricity and water supplies add to operators' costs and limit investment

Table 5: Financial services constraints by LDC

Constraint	Rwanda	Uganda	Tanzania	Lesotho	Zambia
Skills deficit	x			x	
Access to finance			x	x	
Telecommunications Infrastructure		x	x		
Financial Infrastructure	x				x
Power and water supply	x			x	
Limited competition				x	x
Policy constraints (domestic)			x	x	x
Regional policy alignment	x	x			
Low savings rate	x				
Standards	x				
Property rights		x			

4 Conclusions: Towards a Comprehensive System of Preferences in Services

The preference offers presented so far in the context of the LDC services waiver constitute a significant and widely acclaimed development. With 23 notifications for preferences already submitted to the WTO covering over two thousand individual preferences and several more under preparations, this initial response to the LDC Collective Request represents a critical first step. 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 percent 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. Granted, some members have

responded to the challenge more enthusiastically than others and some more creatively than others. But overall these achievements are symptomatic of the general good will and commitment by trading partners - developed and developing alike - to support LDCs' efforts at strengthening their services sector.

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. 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.

Unlike what is often done under services agreements, the LDC waiver is about actual preferences – *i.e.* real-life deviations from applied MFN treatment and actual improvements in LDC trade opportunities. Opening up new trade opportunities for LDC services exports obviously contribute to enhancing LDCs exports but also enhance the economic diversification and structural transformation in LDCs while driving economy-wide efficiency gains. 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.

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 Nations 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. 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.
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 about the services waiver and existing preferences within LDCs. A significant challenge facing LDC service providers is their lack of awareness about the opportunities offered by the services waiver. 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 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. Such assessment was made in the second part of this paper for certain preferences, and this should ideally be done more systematically and regularly in the future – after all only 23 Members notified their preferences so far. It would be crucial to discuss allocation of responsibilities and that such tasks are undertaken by credible entities such as UNCTAD. Finally, following this assessment, there is a critical need to systematically collect and distill information about best practices in the design, notification and implementation of services preferences granted under the waiver. Such an analysis could follow and improve on the approach developed under section 2.4 of this paper. 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. **Provide a Forum for Dialogue** and exchange of experiences. There is currently no forum for the discussion of services trade preferences in a comprehensive 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. A first step in this direction could be initiated at the occasion of UNCTAD 14 or later this year and could be followed by discussions leading to the institutionalization of the process in order to foster the effective monitoring of the implementation of the Waiver and to assist LDCs to face related issues.

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WTO Documents

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Decision on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries adopted on 17 December 2011, WT/L/847 dated 19 December 2011

Decision on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries adopted on 7 December of 2013, WT/L/918 dated 11 December 2011

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Annex I: The Matrix: Useful Background Information

Composition of the matrix – in the process of generating this paper, the WTI Advisors team developed a matrix that contains the following elements: the reference of each notification of preference; the preferences themselves, their relevant sectors and subsectors; the level of liberalization granted for each preference (full or partial); the preference in comparison to (i) the DDA offer, (ii) to the most liberalized PTA (Preferential Trade Agreement) of the granting Member; and (iii) the Collective Request issued in July 2014 (S/C/W/356) in relation with the operationalization of the waiver.

Below is basic information on how to read the matrix. Annex II provides illustrations regarding the language and codification used in the matrix and the way to sort out the data in the most relevant and useful manner.

Tools of comparison of preferences - The term “Preference” in this paper is used to illustrate preferences compared to GATS commitments, although in practice, a number of Members apply their DDA offer rather than their original GATS schedule. Thus, every commitment mentioned in the column “preference” is a preference over the GATS Commitments. If a Member notified a “preference” that equals its GATS commitment, that preference was not taken on board in this paper and its Matrix.

To see the preferences by subsector in the matrix, it is possible to sort out the data using the W-120 codification column. For the purpose of evaluating the actual significance of the preferences, the preferences granted by a WTO Member were compared with the commitments mentioned in its DDA Offer and in its “best PTA” *i.e.* the PTA in which the Member grants the most preferential treatment, as well as with the waivers requested by the LDC Group in its Collective Request. For the purpose of comparing the preferences granted by a Member with its best PTA, we chose the most recent PTA and/or a recent PTA signed with a key WTO Member. The TPP was considered as the best PTA for the relevant countries.

Symbols used in the matrix and actual meaning - In the matrix, specific language was used to describe the result of the comparison between each preference and its equivalent in the DDA offer, the best PTA of the granting Member or the Collective Request: “P” for “Plus”, “M” for “Minus” and “E” for “Equal”, meaning that the preference is better or less good than, or identical to its counterpart in the DDA offer or the best PTA. The level of liberalization of a preference was also taken into account. For this purpose, each preference was described either as “P” – meaning partially liberalized – or “F” – meaning fully liberalized.

As regards full liberalization – full liberalization is reflected in the term “none” that means “no limitation”. This meant that either the Member had no commitment at all for a subsector in its GATS schedule and made commitments in its notification of preferences (*e.g.* Japan, “Services incidental to agriculture, hunting and forestry”) or that it had a partial commitment and extended it to a full commitment in its notification (*e.g.* Mexico, “Accounting, auditing and book-keeping services” becomes fully liberalized on mode 3 instead of foreign investment being limited to 49 per cent of the registered capital of enterprises in the GATS schedule).

As regards partial liberalization - three types of preferences can be seen as partially liberalized. First, those describing a commitment that provides more liberalization regarding a subsector compared to the GATS schedule of the Member (*e.g.* Switzerland, “Insurance

and insurance-related services”, mode 3, less conditions must be fulfilled to establish a business on its territory). Second, those with a commitment regarding a subsector that did not appear at all in the GATS schedule (e.g: Chile, “Arbitration and Mediation / Conciliation Services”). Third, preferences that refer to exactly the same commitment as in the GATS schedule, but which respective subsector has a broader scope than in the original schedule, and that as a result provide additional business opportunities to LDCs’ services providers (e.g: Australia, “storage and warehouse services”, mode 4, the subsector targeted by the preference is extended beyond the GATS schedule, even including more services than in the W-120 classification).

Comparison with the Collective Request – For purposes of comparing preferences with the Collective Request, the Matrix considered the Collective Request to consist of two parts: a specific part and a general part.

Part 1 – paragraphs 1-39 of section A, paragraphs 1 – 9 of section B and paragraphs 1 – 7 of section C of the Collective Request, mentions specific commitments for particular modes of supply of particular services sub-sectors. Part 2 – paragraph 40 of section A of the Collective request, represents more general request to waive restrictions on Modes 1, 3 and 4 for a substantial amount of subsectors. When the given preferences correspond to a particular part of the Collective Request, they are marked “M1” for those corresponding to Part 1, “M2” for those corresponding to Part 2, and “M1 and M2” for those corresponding to both parts. The Matrix considered a preference to match both parts of the Collective Request, if a preference-giving country described it in general terms so that it might potentially cover the LDCs’ needs described in both parts.

The Annex in the Collective Request – containing a very generic list of services sectors for which the preferences were requested – was not used as a basis for the comparison in the Matrix. The quite big number of preferences that are marked “P” compared to the Collective Request, that is to say, are “better” or go beyond preferences requested by the LDC Group, is also attributable to the fact that the services sub-sectors listed in the Annex were not taken into account for the purposes of comparison.

Horizontal Commitments - One of the main difficulties experienced in compiling the data for this analytical task was how to address horizontal commitments, all the more that the original aim of the paper was to analyse preferences in relation to specific subsectors. However, most preferences on Mode 4 and some on Mode 3 refer to horizontal commitments. The challenge was to ascertain where these preferences stood: in the GATS schedule or in the notification of preference itself. In the absence of horizontal commitments in the notification, it was prudent to consider the GATS schedule as the reference. In that case, mode 3 or 4 “preferences” were not taken as such. Where horizontal commitments were mentioned in the notification itself and preferential commitments made reference to them, they were included in the matrix in a row referring to all subsectors. If the horizontal commitments mentioned were presented by the Member as a preference but were found identical to the GATS commitments of the Member, these preferences were kept it in the matrix only for ease of reading. If the horizontal commitments were better than those in the GATS they were considered as preferences.

Scope of horizontal commitments of the notifications - Another challenge came up regarding the scope of the horizontal commitments mentioned in the notification. It is questionable whether the horizontal commitments mentioned as preferences in the notification of a granting Member would be extended to all the subsectors mentioned in this

Member's GATS schedule of specific commitments or only to the subsectors explicitly mentioned in the notification of preferences. The first option was treated as the right one.

Specific issue of horizontal commitments regarding mode 4 – There was none or almost no subsector that was considered as fully liberalized on mode 4 in the matrix. However, this needs to be looked at in a broader perspective. Most commitments on mode 4 are referred to under horizontal commitments. It followed logically that those were seen as partially liberalized, as horizontal commitments always contain limitations. This was an “editorial” choice that was made to keep the same trend for all modes, but has to be read with care. In fact, the paper considers that horizontal commitments that are very favourable to LDCs are almost “fully liberalized” in practice, although not in theory. A reading that would probably significantly raise the number of commitments that “fully” liberalize a subsector.

Annex II – The Matrix Illustrated

The following pages offer an illustrative guide to the excel-based matrix. It includes samples of the matrix with some useful explanations on how to read the different elements analysed and how to use the matrix to search specific information and sort out the preferences by criteria.

Overview of the Matrix

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
	Country	Doc No	Code	Sector	Subsector	Description of Preference or Reservation	Mode	Market Access	Other	Comment	Liberalization (P or F)	Comment	DDA Offer (Minus, Equal, Plus - M-E-P)	Comments	Best PTA (M-E-P)	Comments	Match Collective Request (M-P)	Comments	General Comments
1	Australia	S/C/N/805	All	All	All	Commitment on CSS: definition - entry and stay subject to employer sponsorship - entry is for periods of stay up to 12 months with possibility of further stay.	4	Yes	X	X	P	X	E	X	M	TPP - spouses and dependants can stay with CSS in TPP. No precision on this in notification.	M	M1	
2	Australia	S/C/N/805	1Fn	Business services	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	None	1	Yes	X	X	F	X	E	X	E	TPP	P	X	
3	Australia	S/C/N/805	1Fn	Business services	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	None	2	Yes	X	X	F	X	E	X	E	TPP	P	X	
4	Australia	S/C/N/805	1Fn	Business services	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	None	3	Yes	X	X	F	X	E	X	E	TPP	P	X	
5	Australia	S/C/N/805	1Fn	Business services	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	Unbound, except as indicated in the horizontal section	4	Yes	X	X	P	X	E	X	M	TPP	P	X	
6	Australia	S/C/N/805	9B	Tourism and travel related services	Travel agencies and tour operator services	None	1	Yes	X	X	F	X	P	X	E	TPP	E	M1 and M2	
7	Australia	S/C/N/805	9B	Tourism and travel related services	Travel agencies and tour operator services	Unbound except as indicated in the horizontal section: no mention of CSS in Schedule of Commitments	4	Yes	X	X	P	X	E	X	M	TPP	M	M1 and M2	
8	Australia	S/C/N/805	1Ee	Business services	Rental/leasing services without operators: other - leasing or rental services concerning personal and household goods	None	1	Yes	X	X	F	X	P	X	E	TPP	E	M2	
9	Australia	S/C/N/805	1Ee	Business services	Rental/leasing services without operators: other - leasing or rental services concerning personal and household goods	None	2	Yes	X	X	F	X	P	X	E	TPP	P	X	

A screenshot of a data table with columns A through K. Blue arrows point to the sorting arrows on the 'Code', 'Market Access', and 'Liberalization (P or F)' headers.

A	B	C	D	E	F	G	H	I	J	K	L
Country	Doc No	Code	Sector	Subsector	Description of Preference or Reservation	Mode	Market Access	Other	Comment	Liberalization (P or F)	Con
Australia	S/C/N/805	All	All	All	Commitment on CSS: definition - entry and stay subject to employer sponsorship - entry is for periods of stay up to 12 months with possibility of further stay.	4	Yes			P	

Screenshot 1: The matrix allows you to sort the entries by country, Doc No, Code, Sector, Subsector, Modes of supply etc. by clicking on the small tabs as indicated by the arrow.

A screenshot showing a sorting and filtering dialog box overlaid on a table. The dialog box has sections for 'Sort' (Ascending/Descending), 'Filter' (By color), and a list of items to filter by (Australia, Brazil, Canada - Alberta).

A	B	C	D	E
Country	Doc No	Code	Sector	Subsector
Australia	S/C/N/805	All	Country	All
Australia	S/C/N/805	1Fn	Business	Maintenance

Screenshot 1 bis: Here is what appears when you click on one of the arrows. At the bottom of the box, a list of items is given, it reproduces the entries that you made in the corresponding column. You can tick or untick each item in order to see only some of them in the column. You can also filter by alphabetical order by clicking on “Ascending” or “Descending” at the top of the box.

4				Services		indicated in the horizontal section		
	Korea	S/C/N/808	All	All	All	Commitments for CSS (none in schedule)	4	Yes
5				Tourism and travel related	Tourist Guides Services	None	3	Yes

Screenshot 2: "All" means all classification codes, all sectors, all subsectors. It appears in the rows containing Horizontal Commitments of each country.

E	F	G
Subsector	Description of Preference	Mode
Tourist Guides Services	Unbound except as indicated in the horizontal section: in SC, no commitment for CSS	4
Services incidental to mining	None	1
Services incidental to	None	2

	M	N	U	
nt	DDA Offer (Minus, Equal, Plus - M-E-P)	Comments	Best PTA (M-E-P)	Cc
	P		E	TP
	M		M	TP
	P		E	Ch

Screenshot 3: In the column "Description of Preference" the term "Unbound" means that the country has made no commitment for the subsector in question and the term "None" means the contrary, i.e. the country has no limitation for that specific sector.

Screenshot 4: When comparing the preferences with those of the DDA Offer, the best PTA and the Collective Request, the letters M, E and P were used, meaning respectively "Minus", "Equal" and "Plus". The notification preference is used as a point of comparison, for example, "Minus" means that the preference is less favourable than the respective preference in the DDA Offer, the best PTA or the Collective Request.

	K	L
t	Liberalization (P or F)	Comments
	F	
	P	
	F	

Screenshot 5: In the column “Liberalization”, “P” means “partial liberalization”, i.e. there are still limitations for the subsector and the mode of supply concerned, “F” means “full liberalization”, i.e. no more limitation exists.

Match Collective Request (M-E-P)	Comments	Gr
M	M1 and M2	
E	M2	
P		

Screenshot 6: When comparing notifications with the Collective Request, in addition to using the letters “M”, “E” and “P”, the comment is made as to which part of the Collective Request (CR) the match corresponded: M1 or M2. For the letter “P”, by nature, it went beyond the CR, so nothing was indicated. M1 refers to the first part of the request, that is more detailed, and M2 refers to the second part of the request, more general because it mentions only sectors.

			services	Distribution Services		
Hong Kong, China	S/C/N/810	All	All	All	Attachment of notification on natural persons is not a preference: text identical to schedule.	4
Hong	S/C/N/810	9B	Tourism	Travel agencies and tour	None	1

Screenshot 7: A row sometimes appears in relation to horizontal commitments. When the commitment is not preferential but still included in the matrix either for convenience or because it was mentioned as preferential by the granting country, it was indicated in red as showed by the arrow.

O	P	N
Best PTA (M-E-P)	Comments	C R P
E	EFTA - Central America (Costa Rica and Panama) (2014)	E
E	TPP	P
E	TPP	P

Screenshot 8: The column “Comments” next to the “Best PTA” column mentions the PTA used for the comparison.

Screenshot 9. The entries may be filtered by introducing the specific word or phrase in the the filter tab, for example for finding a specific

Description of Preference or Reservation	Mode	Market Access	Other	Comment	Libera n (P or
None except: Auditing: requirement for a commercial presence. (instead of permanent residence for accreditation, in GATS)					
None except: Auditing: Residency requirement for accreditation (instead of commercial presence in GATS)					
None except: Auditing: Requirement for commercial presence (instead of citizenship in GATS)					
None except: Auditing: requirement for a commercial presence. (instead of permanent residence for					