LDC Services waiver
Potential and reality

Operationalization of the LDC services waiver is still not sufficiently advanced to infer what benefits it will bring in reality, though the potential benefits can be significant.

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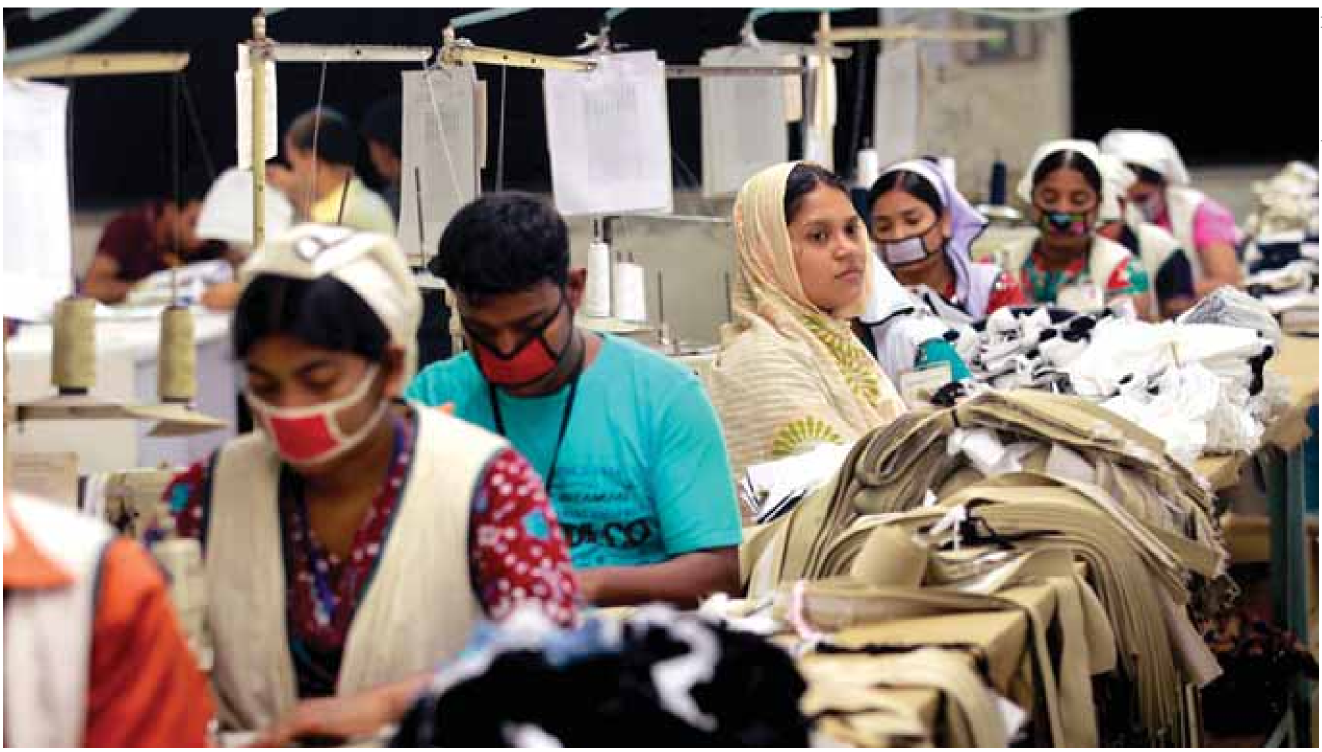
Introduction

The Doha Development Round of trade negotiations launched in November 2001 had promised to put developing country agenda at the centre of the international trade negotiations. However, the World Trade Organization (WTO) has largely failed to deliver on this promise. Meanwhile, the world trading system has continued to fragment into a growing number of trading blocs which threaten to undermine the WTO system and the Doha Development Agenda.

Against this backdrop, the Eighth WTO Ministerial Conference held in Bali in December 2011 yielded a noteworthy, development-oriented outcome—the Least Developed Countries (LDC) services waiver. Under this waiver, which lasts for 15 years from



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the date of its adoption, WTO members are authorized to grant preferences to services and service providers of all LDCs, including non-members. The waiver offers a two-tiered solution: (i) direct market access preferences for services and service suppliers of LDCs with respect to the application of measures under Article XVI as well as any other measures annexed to this waiver; and (ii) non-market access preferences to LDCs such as selective national treatment and less restrictive application of domestic regulations, subject to authorization by the Council for Trade in Services (CTS) and a specified application and approval procedure.

In principle, the LDC services waiver is the first positive legal discrimination in favour of LDCs permitted under the General Agreement on Trade in Services (GATS). An important potential outcome of the waiver is the facilitation of LDC services exports in modes and sectors of interest to them, particularly in labour-based services through the temporary movement of their nationals (mode 4), a long standing area of demand for Developing and Least Developed Countries under the GATS. The possibility of providing "other" preferences such as easing of burdensome requirements is also of interest to LDCs as it offers scope to address regulatory barriers, which often pose the greatest obstacles to LDC services exports.

Significance of the waiver

The LDC services waiver, if operationalized in true spirit, can help achieve various objectives. Foremost, the waiver can allow the WTO to address the growing importance of services in the world economy and accordingly make services a more central part of the negotiation agenda. The waiver can also help restore some faith in the Doha Development Round by signalling that development is embodied in a specific Ministerial decision. By permitting preferential market access and weakening of regulatory requirements, the services waiver is directly

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pertinent to the development agenda as it can potentially help LDCs overcome their high trade costs in services that result from internal supply constraints in infrastructure, skills and institutional frameworks, and consequently enable them to diversify their services exports.

On the multilateral institutional front, the services waiver provides an opportunity to provide momentum to the services negotiations which have been characterized by very low levels of market access commitments and restrictive regulatory conditions. It provides an opportunity to bridge the growing gap between the GATS commitments, and the existing services regimes under unilateral, bilateral and regional arrangements, including those under negotiation in mega-regional agreements like the Trans-Pacific Partnership (TPP) and plurilateral initiatives such as the Trade in Services Agreement (TiSA).

Operationalizing the waiver

Progress towards the operationalization of the waiver only gathered momentum following the Bali Ministerial decision which called on LDCs to submit a collective request that identifies their sectors and modes of particular export interest and directed the Council for Trade in Services to convene a high-level meeting six months after this submission. The Ministerial decision also encouraged members to extend preferences to LDCs, and to enhance technical assistance and capacity building to help operationalize the waiver.

Pursuant to this decision, in July 2014, LDCs submitted a collective request for preferential access, which identifies barriers pertaining to recognition of skills and qualifications, cumbersome documentation requirements imposed on LDC service providers, transit taxes and fees on tourists traveling to LDCs, and burdensome fees for visas, residence and work permits and licenses. Based on these identified barriers, three areas have been listed for potential waivers: (a) market access and national treatment restrictions; (b) recognition of professional qualifications and accreditation of institutions; and (c) visas, work permits and residence permits.

Under the market access category, at the horizontal level, the collective request calls upon member countries to create a special temporary entry visa category for LDC contractual service suppliers; waive all economic needs and labour market tests, residency requirements and restrictions on LDC professionals; remove the wage parity pre-condition for entry; and remove various discriminatory regulations. At the sectoral level, the request focuses on certain services, namely, travel and tourism, financial, transport and logistics, education and training, information and communications technology (ICT) and business process outsourcing(BPO), and creative industry services. In each sector, specific requests have been made, such as requesting preferential quotas for LDC students in higher education institutions, waiving all modal restrictions on all LDC BPO suppliers, and waiving social security deductions and financial security requirements for visas in creative industry services. Under the category of visas, work permits and residence permits, the request calls for expedited and simplified procedures for granting visas, licenses and permits, and waiver of various fees and financial security requirements for entry. Under the category of recognition of qualifications and accreditation, the request calls for concluding agreements with LDC institutions to recognize minimum qualifications, recognition of diplomas and degrees from accredited institutions, and to waive reciprocity conditions for LDC professional bodies. Some LDCs have also raised the issue of burdensome requirements which affect the ability of their small and medium-sized enterprises (SMEs) to supply services through commercial presence.

In response to these requests, in February 2015, 25 members expressed their interest in providing preferential treatment to LDCs in services. These expressions of interest cover most sectors and modes, specifically mode 1 (cross border trade), mode 2 (consumption abroad) and mode 3 (commercial presence). There are also offers to provide technical assistance for capacity building in services. For instance, India has made a specific offer to train 1,000 persons from LDCs in certain services, and to earmark 25 percent of all technical assistance and capacity building opportunities for LDCs. Similarly, China has offered to train 1,200 LDC professionals and organize 19 training sessions in selected services, in addition to preferences in the areas of domestic regulation and market access.

As of November 2015, of the 25 members who had initially signalled their interest to grant preferences, 17 countries namely Australia, Canada, Chile, China, Iceland, India, Japan, Mexico, New Zealand, Norway, Republic of Korea, Singapore, Switzerland, Hong Kong, China, Chinese Taipei, Turkey and the United States (US) had submitted their official notifications, while Brazil, the European Union (EU) and South Africa are expected to submit their notifications in the near future. These offers cover all 12 sectors under the GATS and are to be granted on the basis of a country's ability and willingness to provide preferential access. However, the degree of preferential treatment offered varies across countries.

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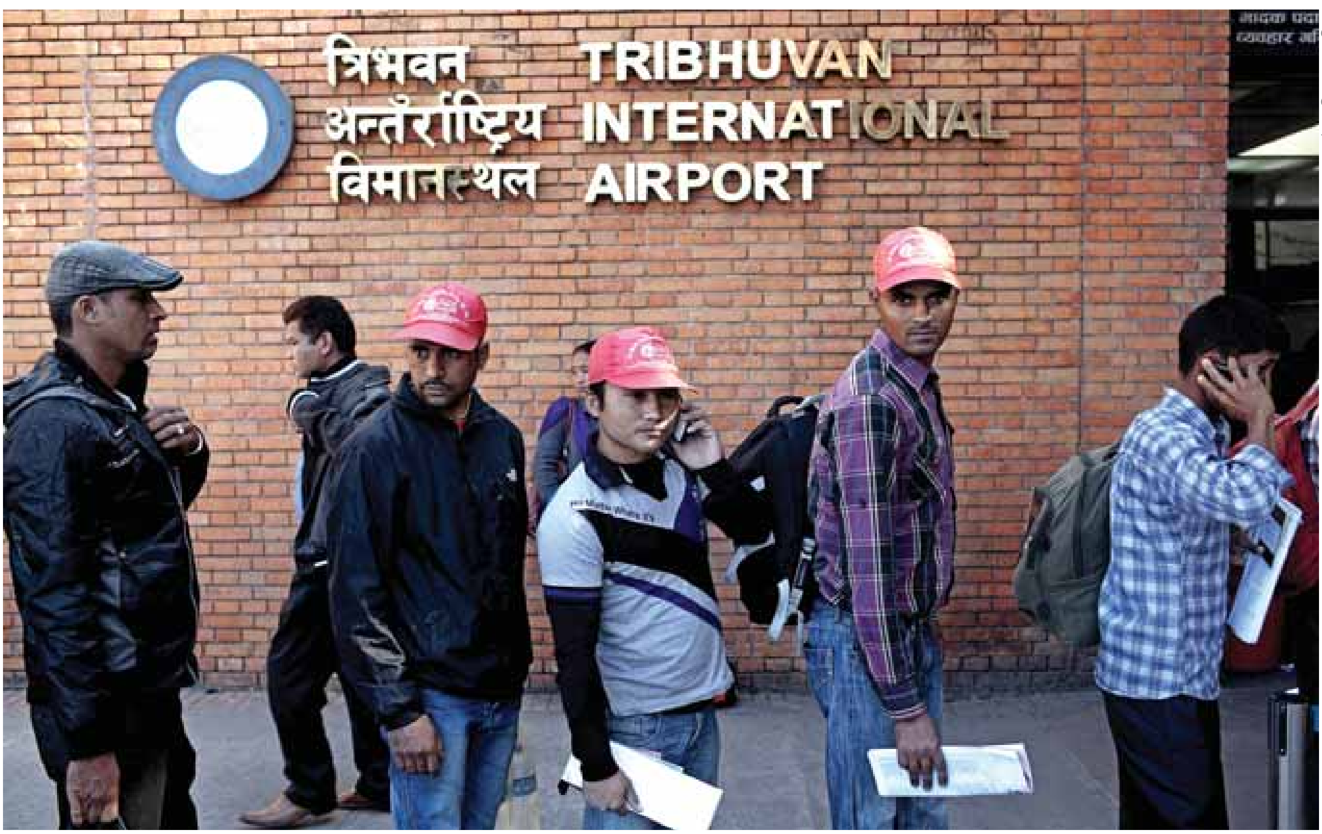
In response to these notifications, the LDC Group has recently outlined a proposal for a possible decision on the services waiver at the upcoming Nairobi Ministerial. This proposal seeks information about the nature of the preferential treatment, the relevant sectors and sub-sectors, and the time period over which the preferences would be maintained. It encourages members which have notified preferences to improve upon their offers, including removal of existing restrictions for LDCs. The proposal also calls for the notified preferences to be made applicable for 15 years from the date of notification.



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Assessing recent developments and future prospects

A preliminary assessment of the offers indicates a greater willingness to grant preferential treatment to LDCs in sectors such as business and transport services. But in areas such as education, environment, health and financial services, the offers are less forthcoming. More importantly, offers remain unbound or limited in scope in regards to mode 4 (presence of natural person), which is of greatest interest to LDCs, while greater willingness to grant preferential access have been expressed in the remaining three modes of services.

Additionally, it is not clear whether the preferences will go beyond market access measures. In practice, developed countries could still keep economic needs tests or residency requirements in sectors where they have granted preferential access. Moreover, the additional administrative burden imposed by the CTS approval requirement, which includes notification by the granting country and an annual review by the CTS for continuing the waiver, could act as a disincentive to granting preferences that go beyond market access. Even the presence of rules of origin may not be effective in practice as defining rules of origin in services trade is complex given the intangibility of services and difficulties in identifying domestic value addition and transformation.

The implications and final outcome of the services waiver also remain unclear due to discussions in other forums, namely TiSA and TPP. It is possible that these latter frameworks might influence the operationalization of the LDC services waiver. While LDCs might gain preferential access in markets like the US, they may have to compete with other TiSA members in the US market if and when the TiSA negotiations are concluded. Overall, the operationalization of the LDC services waiver is still not sufficiently advanced to infer what benefits it will bring in reality, though the potential economic, political and institutional benefits can be significant.

Though the LDC services waiver holds promise, in practice, what it will deliver remains unclear.

What is needed?

Whatever shape the LDC services waiver may take, the main question that persists is whether LDCs will be in a position to utilize the waiver. Firstly, do LDCs have requisite information about markets, service sectors and modes to negotiate their interests? Although the collective request has pinpointed specific sectors and modes, at the individual level, LDCs lack market-specific information on mode and sector-wise services exports and associated barriers. Secondly, do LDCs have the requisite capacity and quality to meet requirements on qualifications, standards and other regulatory conditions in export markets? Studies undertaken for key LDC demandeur countries such as Bangladesh indicate that there are major supply side and quality constraints which impede their ability to utilize the services waiver. Bangladesh's exports of ICT and BPO services will require liberalization and regulatory reforms in supporting infrastructur services such as telecommunications. Hence, in order to compete globally and to access international markets, LDCs will have to take steps to address such internal constraints. They will need to build capacity in service sector institutions and regulatory bodies, increase investment in skills and quality, liberalize restrictions in services, introduce regulatory reforms and improve the business environment in the service sector. Moreover, LDCs will also need to recognize the synergies between import liberalization and export promotion in certain services.

In sum, while the LDC services waiver holds promise, in practice, what it will deliver and more importantly, what LDCs will be able to capitalize on, remains unclear. Even if the recent LDC proposal is accepted at the upcoming Nairobi Ministerial, services related constraints will likely continue to persist. Therefore, LDCs would do well to focus on required domestic reforms and simultaneously insist on technical assistance for capacity building in skills, infrastructure and quality certification in multilateral and other forums. Focus on these areas through domestic initiatives as well as international cooperation would ultimately benefit their domestic markets and the international market. Ultimately, political will and commitment on the part of preference granting and receiving countries will be the key to achieving any progress on the services waiver and in realizing its potential benefits. ■

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