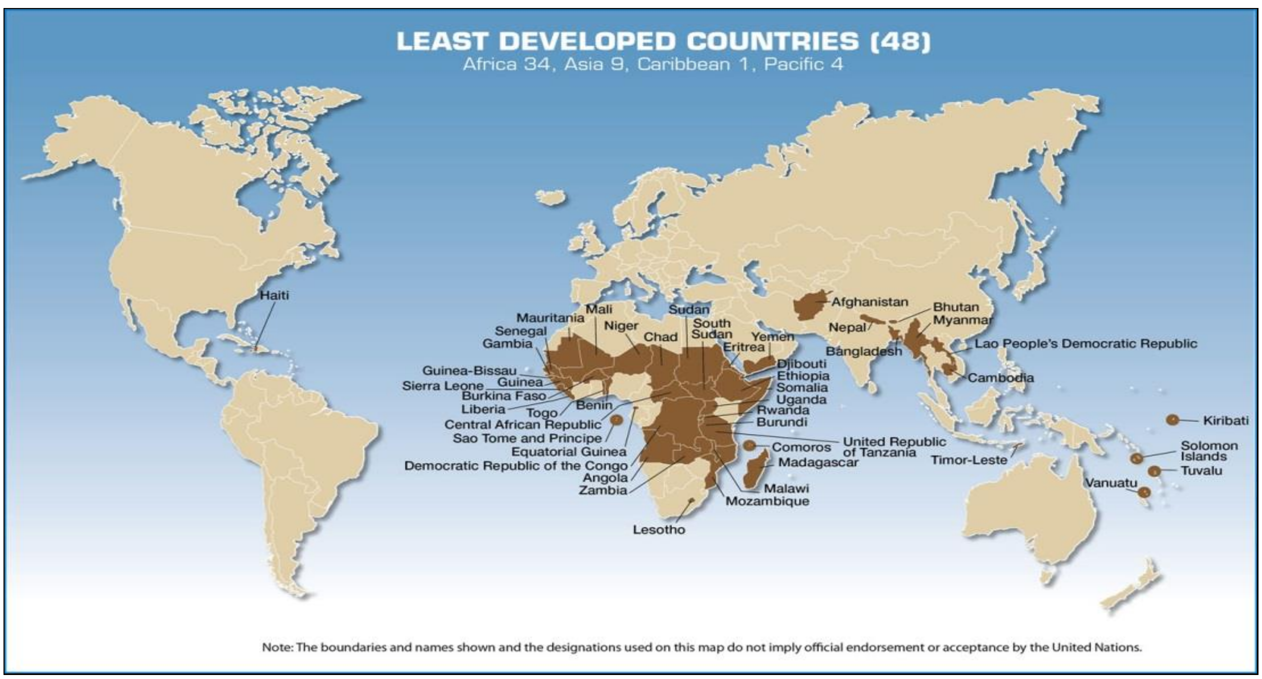
Will the “*LDC Waiver*” Work?

Linda Schmid,[i] February 24, 2015

Q1: What is the origin of the “*LDC Waiver*”?

A1: When member governments of the World Trade Organization (WTO) developed the General Agreement on Trade in Services (GATS) in 1995, they included Article IV to increase the participation of developing countries in the global economy. Special attention was to be given to least developed countries[1] in light of their “development, trade and financial needs.”[2] WTO members have provided special attention in the form of trade-related technical assistance and trade capacity building. Only recently have WTO members moved to implement trade provisions in services crafted for LDCs. At the WTO Ministerial in December 2011, trade ministers established an *LDC Waiver*[3] that enables WTO members to give services and service suppliers of least developed countries preferential treatment in market access. Under the *LDC Waiver*, WTO members can bypass most-favored-nation treatment obligations when opening their markets to LDC WTO members as a group. There are 48 LDCs; 34 are members of the WTO; 8 are joining.

Figure 1: Map of Least Developed Countries



Source: United Nations Conference on Trade and Development (UNCTAD).

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[1] LDC members of the WTO include: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, Gambia, Guinea, Guinea-Bissau, Haiti, Lao People's Democratic Republic, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Senegal, Sierra Leone, Solomon Islands, Tanzania, Togo, Uganda, Vanuatu, Yemen, and Zambia, http://www.wto.org.

[2] General Agreement on Trade in Services, Article IV Increasing Participation of Developing Countries, http://www.wto.org.

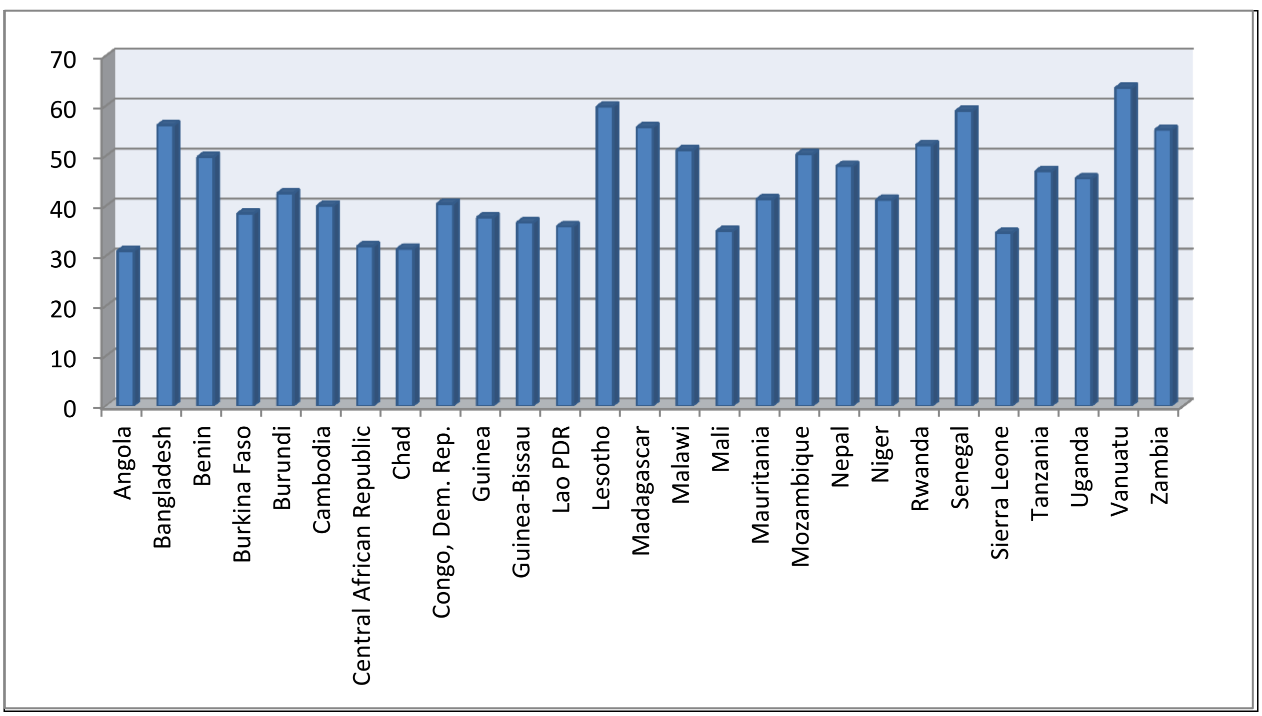
[3] WTO Preferential Treatment to Services and Service Suppliers of the Least-Developed Countries Decision of 17 December 2011, (WT/L/847), http://www.wto.org.

Q2: What are least developing countries seeking under the "LDC Waiver"?

A2: The *LDC waiver* delineates a request offer process for obtaining trade commitments to provide preferential access to LDCs. In July 2014, LDC members of the WTO tabled a collective request[4] for preferential treatment in trade in services. The request asks WTO members to eliminate regulations that restrict market access. These restrictions have been at the heart of many service requests from developing countries throughout the Doha Round of negotiations. For example, in the collective request, LDCs would like WTO members to liberalize the temporary movement of people or service suppliers. In practical terms, this means streamlining visa processes, broadening visa categories, and waiving economic needs tests. LDCs seek preferential treatment on investment, for example, waiving measures that govern repatriation of capital, ownership, and double taxation.

LDCs ask for preferential treatment in financial, IT, and creative industries among other sectors. In the financial sector, for example, LDCs seek a waiver on investment restrictions governing check cashing, currency exchange, money transfers, as well as the provision of insurance services. In the field of information technology, LDCs request waivers on rules that govern online provision, investment, and in-country supply of information communication technology services and business process outsourcing. In the field of creative services, LDCs ask for a waiver of financial security requirements as a precondition to apply for visas or work permits. As figure 2 illustrates, services contribute a notable percentage to GDP in several LDCs. As a consequence, the scope of the collective request is broad and ambitious.

Figure 2: Services, etc., value added (% of GDP) 2012



Source: The World Bank DataBank, 1/30/2015.

[4] World Trade Organization Submission by the Delegation of Uganda on Behalf of the LDC Group, July 14, 2014, (S/C/W/356), http://www.wto.org.

Q3: How will WTO members respond to the LDC collective request?

A3: Each WTO member has the opportunity to respond with an offer of trade commitments that ease trade in services with LDCs. On the overarching issue of temporary movement of service suppliers, offers will likely be very limited. Trade negotiations on the temporary movement of service suppliers have always been politically sensitive for developed and developing economies alike. Where WTO members have made trade commitments on temporary movement they are generally constrained with significant restrictions on categories and types of service suppliers. For example, the US limits market access to 90 days for foreign salespersons of services. Similarly, intra-corporate transferees such as managers, executives and specialists of foreign firms with a branch, subsidiary, or affiliate established in the US are limited to 3 years.[5]

Trade negotiations at the regional level have produced shallow results. For example, the 2001 COMESA Protocol on the Free Movement of Persons, Labor, Services, Right of Establishment and Residence has been ratified by only 1 of the 20 members.[6] The EAC Common Market Protocol contains a provision on the free movement of services with implementation reportedly fragmented.[7] The SADC Protocol on the Facilitation of Movement of Persons was ratified by only 4 members and is yet to be implemented.[8] A successful conclusion to the Tripartite Free Trade Area of the EAC, COMESA, and SADC would potentially facilitate movement of business persons within the FTA. Slow progress at the regional level reflects the universal political difficulty of locking in temporary movement guarantees.

The LDC collective request does contain opportunities for WTO members to make commercially meaningful offers. For example, WTO members can create a special temporary LDC entry visa that waives fees and provides for a streamlined process within categories that already exist. WTO members can improve the processes associated with temporary movement of service providers by adhering to operational principles of transparency, administrative efficiency, harmonization of standards and procedures, and coordination with counterparts. A reference paper on temporary movement which requires members to comply with such principles would reduce the time and cost service providers from LDCs face when serving their clients abroad. Using technology, WTO members can streamline licensing procedures for LDC service providers while maintaining high standards. WTO members can waive regulations or administrative procedures that place an unnecessary financial or compliance burden on LDC service providers. WTO members have an obligation to conduct the due diligence required to index and waive unnecessary trade barriers that inhibit growth of service providers in LDCs.

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[5] US Schedule of Commitments under the General Agreement on Trade in Services (GATS).

[6] International Centre for Migration Policy Development, MME on the Move: A Stock Taking of Migration, Mobility, Employment and Higher Education in Six African Regional Economic Communities, 2013.

[7] Ibid.

[8] Ibid.