OPERATIONALISING THE LDC WAIVER

LDC SERVICES EXPORTS AND THEIR CHALLENGES:
A FEW SNAPSHOTS FROM THE GOLD CREEK

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Background: The Waiver – An LDC-Only Enabling Clause for Services

• Recalled – before December 2011:
  – MFN applies (GATS Art. II)
  – No authorization for preferences for DCs/LDCs (no Enabling Clause → no GSP for services)

• Dec 2011 Waiver now authorizes preferential treatment…

• …but does not oblige Members to grant preferences

• Covers preferences only for LDC services/service providers

• But for all LDCs, not only WTO Members
Scope: What does the Waiver Cover?

- **Automatically covered**: Market Access preferences “of the type referred to in GATS Art. XVI” (“Small Window”)
- **Potentially covered**: Other preferences (“Large Window”)
  - Regulatory preferences (e.g. easier procedures)
  - Preferential national treatment (e.g. subsidies, support mechanisms)
  - Other preferences (e.g. tax exemptions)
  - **But**: Authorization from CTS required
Avoiding Misunderstandings: What the Waiver is about

- **Actual trade facilitation for services re:**
  - **All** sectors and subsectors – not just tourism & transportation (although they matter)
  - **All** modes of supply – not just mode 4 (although it matters)
  - **All** countries as current or potential importers of LDC services – not just major developed countries (although they matter)

- Big steps are welcome, but incremental steps can make a difference as well – smart design is key
Avoiding Misunderstandings: What (use of) the Waiver can and cannot do

• It **cannot** (directly) solve all issues and challenges that LDC service suppliers face when exporting – it can’t, e.g.
  – Boost supply-side capabilities
  – Solve business management issues
  – Provide capital or generate critical size
  – Solve regulatory issues at home

• BUT It **can**:
  – Eliminate or reduce regulatory/administrative challenges LDC service exporters face in export markets

→ Make no mistake: These matter **BIG TIME**
A Few **Nuggets** from the Creek: Gambia

- State of the art software house serves domestic and foreign clients (school, point of sale, other) – but only in Africa, and only through licensing/local agent model combined with Mode 1
  - Why not combined with Mode 4?
  - Why not Europe and others?
    → **The V-Issue is Key**

- Some famous, many medium famous, many locally but not internationally known **musicians**…

- …are forced to virtually avoid Europe, lose significant business
  → **Again: The V-Issue is Key**
A Few **Nuggets** from the Creek: Gambia

- What could realistically help? E.g.
  - Visa categories for LDC service providers
  - Lower visa fees, refunds, lower and/or smarter guarantees
  - Smarter procedures (South Africa – 5 days in Dakar)
A Few Nuggets from the Creek: Gambia

- Accountant, UK degree, (currently) managing partner of local branch of internationally renowned firm – wanted once to establish his own UK branch, was ready to invest (mode 3)
  - ‘Investor visa’ required input of GBP 200’000 (now 1 mio)
  - Too much for a bona fide LDC Mode 3 provider (who needed a Mode 4 business visitor access)
- What could realistically help? E.g.
  - Lower thresholds for LDC investors
A Few Nuggets from the Creek: Zambia, Lesotho, Nepal

• Hydropower training in mode 2, installation and maintenance services in mode 4
• Insurance in mode 3 (MGen -> yesterday)
• Accountancy training (incl. exams & certification) in mode 1
• Other training/education in mode 2
• But Issues:
  – Recognition issues in accountancy
  – Capital and residency/nationality requirements in insurance (→ yesterday)
  – Portability of student financing (stipends)
A Few **Nuggets** from the Creek: Zambia, Lesotho, Nepal

- Nurses in mode 4
- Architects, engineers and construction companies in modes 3 and 4
- Mining-related service providers in mode 3 and 4
- But Issues:
  - Adaptation courses unnecessarily lengthy (e.g. language) and expensive (costs of living) – scrubbing, adapting, flexibilizing procedures could help
  - Nationality, local partner, local content requirements, often via procurement rules, tender specs
  - Forms of establishment (local partnerships), import duties on equipment, mode 4 access for technicians and craftsmen
So:

Room for Intelligent, Feasible, Acceptable Preferences?

You tell me!
Discussion

What’s your favourite LDC issue? Your favourite preference?

Send us a mail!

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Reflection 1: Who could, who should grant preferences?

- Recall: All Members are covered
- Important: (Most) services preferences are not aid, and preference grantors are not donors.
  → Avoid dichotomy “LDCs–Donors” – intuitive but misleading!
- Preferences will often be most useful in the context of geographic proximity (incl. for Mode 1) and may be a supplementary tool for regional integration
- Even LDCs themselves may be interested and willing to grant preferences
  → Systemic Note 1: Selective market opening / regulatory relaxation can be an attractive trial/pilot for any Member!
Reflection 2: Why This is Not (Primarily) About Margins

- Services are different, services trade barriers are different!
- Unlike tariff preferences, services preferences rarely create quantifiable “margins”
  - (some may, e.g. quotas for mode 4)
- Preferences (esp. LDC prefs) will often enable or facilitate effective market entry (first rungs of the ladder)

→ Systemic Note 2: Selective market opening / regulatory relaxation can be an attractive trial/pilot to test national flexibilities → good for the system as a whole.
Reflection 3: (Actual) Preferences v. (Only) Commitments

- Many PTA “preferences” only reduce the “water” between GATS commitments and the applied regime – what you get is still MFN treatment, just more secure.
- The Waiver covers actual preferential treatment (“applied regime”) – when MFN is actually breached.
- No need for the Waiver if a Member just wants to treat others better than promised in GATS commitments.
- Applying the Waiver means more than concluding a PTA (more in unilateral applied reality, but less legal commitment)

→ Systemic Note 3: Services preference mean actual liberalization, unlike most commitments → good exercise for the system as a whole.)
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How to Make it Work? Some Reflections

• What we need, in a nutshell:
  – Understand LDC interests
    • Which services LDCs export/could export
    • Which (market access/regulatory) obstacles they face
    • What preferences could help them
  – Understand Feasibility
    • What can potential preference grantors do
    • What will they likely not do
  – Generate political will & momentum
  – Secure results
How to Make it Work? Some Reflections for LDCs & Friends

- Concretize interests & demands
  - Systematic approach – looking for barriers/challenges & the meaningful preference
    1. Identify actual and potential services exports
    2. Identify relevant regulatory/administrative challenges (barriers)
    3. Design smart, targeted preferences - creativity & fine-tuning is paramount!
How to Make it Work? Some Reflections for potential pref. granting Members (= All!)

- **Identify and concretize potential preferences** - check e.g.:
  - Any RTA-based preferences? Could some/all of them be expanded to LDCs?
  - Any national preferences? Some/all expandable to LDCs?
  - Any admin/regulatory issues service providers have complained about? Can some be relaxed on a selective (LDC-only) basis?
  - Any taxes/charges that could be reduced for LDC providers?
  - Any support system that can be expanded to cover LDC services/providers?
  - Any other support that can be provided?
- **Again: Creativity and fine-tuning is key**
Discussion

What’s your (least) favourite LDC issue? What your preference? Send us a mail!

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