



MULTILATERAL TRADE NEGOTIATIONS AND LLDC: A HANDBOOK FOR NEGOTIATORS AND PRACTITIONERS



2015

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Table of Contents

ABBREVIATIONS AND ACRONYMS	7
ACKNOWLEDGEMENTS.....	13
INTRODUCTION TO THE HANDBOOK.....	14
I. MULTILATERAL TRADE NEGOTIATIONS AND LLDCS	32
I.1. INTRODUCTION AND POLITICAL ECONOMY OF MULTILATERAL TRADE NEGOTIATIONS	32
I.2. INTRODUCTION TO THE WTO.....	35
I.3. NEGOTIATION PROCESSES.....	38
I.4. NEGOTIATION ROUNDS IN THE WTO.....	43
I.5. LLDC INTEREST AND COALITIONS IN THE DOHA ROUND	49
I.6. LLDC POSITIONS IN MULTILATERAL FORA	58
I.7. REGIONAL TRADE AGREEMENTS AND THE MULTILATERAL TRADE NEGOTIATIONS.....	61
II. ACCESSION TO THE WTO AND LLDCS	64
II.1. INTRODUCTION	64
II.2. BENEFITS FOR LLDCS FROM ACCESSION TO THE WTO	65
II.3. PROCESS OF ACCESSION.....	67
II.4. TIMEFRAME FOR THE LLDC OBSERVER COUNTRIES	69
II.5. CONCLUSIONS	72
III. MULTILATERAL NEGOTIATIONS FOR TRADE IN GOODS	74
III.1. INTRODUCTION	74
III.2. GENERAL AGREEMENT ON TRADE AND TARIFFS (GATT 1994)	74
III.3. NON-AGRICULTURAL MARKET ACCESS NEGOTIATIONS.....	77
<i>III.3.1. Background to NAMA</i>	<i>77</i>
<i>III.3.2. NAMA Negotiations.....</i>	<i>77</i>
<i>III.3.3. Negotiations on Tariffs and LLDCs.....</i>	<i>83</i>
III.4. SPECIAL AND DIFFERENTIAL TREATMENT	84
<i>III.4.1. Background to Special and Differential Treatment</i>	<i>84</i>
<i>III.4.2. Market Access Preferences</i>	<i>86</i>
<i>III.4.3. A note on preference erosions.....</i>	<i>89</i>
<i>III.4.4. Technical Assistance</i>	<i>89</i>
<i>III.4.5. Trade Negotiations on SDT and LLDCs</i>	<i>93</i>
III.5 RULES OF ORIGIN	94
<i>III.5.1. Background to Rules of Origin</i>	<i>94</i>
<i>III.5.2. Doha Round on Rules of Origin.....</i>	<i>95</i>
<i>III.5.3. Trade Negotiations on Rules of Origin and LLDCs</i>	<i>96</i>
III.6 SANITARY AND PHYTOSANITARY STANDARDS (SPS)	96
<i>III.6.1. Background to Sanitary and Phytosanitary Standards.....</i>	<i>96</i>
<i>III.6.2. Special and Differential Treatment in the field of SPS.....</i>	<i>98</i>
<i>III.6.3. Trade Negotiations in SPS and LLDCs</i>	<i>100</i>
III.7 TECHNICAL BARRIERS TO TRADE (TBT)	101
<i>III.7.1. Background to Technical Barriers to Trade</i>	<i>101</i>
<i>III.7.2. Doha Round Negotiations on Technical Barriers to Trade</i>	<i>102</i>
<i>III.7.3. Trade Negotiations on TBT and LLDCs.....</i>	<i>103</i>
III.8 CUSTOMS AND TRADE FACILITATION	104
<i>III.8.1. Background to Trade Facilitation</i>	<i>104</i>
<i>III.8.2. Doha Round and WTO Agreement on Trade Facilitation</i>	<i>105</i>
<i>III.8.3. Special and Differential Treatment in the Agreement on Trade Facilitation.....</i>	<i>106</i>
<i>III.8.4. Trade Negotiations on Trade Facilitation and LLDCs.....</i>	<i>108</i>

III.9 SAFEGUARDS	109
III.9.1. <i>Background to Safeguards</i>	109
III.9.2. <i>Use of Safeguards by LLDCs</i>	113
III.9.3. <i>Doha Negotiations on Safeguards</i>	113
III.9.4. <i>Trade Negotiation on Safeguards and LLDCs</i>	115
III.10 SUBSIDIES AND COUNTERVAILING MEASURES	116
III.10.1. <i>Background to Subsidies and Countervailing Measures</i>	116
III.10.2. <i>Special and Differential Treatment for subsidies</i>	117
III.10.3. <i>Doha Round and SCM</i>	117
III.10.4. <i>Trade Negotiation on Subsidies and Countervailing Measures and LLDCs</i>	120
III.11 SOCIAL AND ENVIRONMENTAL STANDARDS	120
III.11.1. <i>Negotiations on Labour Standards</i>	121
III.11.2. <i>Negotiations on Environmental Goods and Services</i>	123
III.11.3. <i>Trade Negotiations on Social and Environmental Standards and LLDCs</i>	125
III.12 OTHER TRADE RELATED AREAS OF INTEREST TO LLDCS NEGOTIATED IN THE DOHA ROUND.....	125
III.12.1. <i>Public Stockholding for Food Security</i>	125
III.12.2. <i>Export Taxes</i>	126
IV. MULTILATERAL NEGOTIATIONS FOR TRADE IN SERVICES	130
IV. 1. INTRODUCTION.....	130
IV. 2. BACKGROUND ON NEGOTIATING SERVICES IN THE WTO	130
IV.2.1. <i>The genesis of the GATS</i>	130
IV.2.2. <i>The main issue areas of the negotiations</i>	133
IV.2.3. <i>General Agreement on Trade in Services</i>	134
IV.2.4. <i>Structure of the GATS</i>	140
IV.3. CURRENT NEGOTIATIONS ON TRADE IN SERVICES: THE DOHA ROUND.....	151
IV.3.1. <i>The mandate</i>	151
IV.3.2. <i>LDCs in the DDA services negotiations</i>	154
IV.3.3. <i>Negotiating areas and outcomes</i>	155
IV.4. SECTOR INTERESTS AND ISSUES	158
IV.4.1. <i>Transport Services</i>	160
IV.4.2. <i>ICT Services</i>	167
IV.4.3. <i>Tourism Services</i>	171
V. CROSS-CUTTING NEGOTIATION AREAS.....	184
V.1. TRADE RELATED INTELLECTUAL PROPERTY RIGHTS (TRIPS).....	184
V.1.1. <i>Background to Trade Related Intellectual Property Rights</i>	184
V.1.2. <i>TRIPS Agreement</i>	185
V.1.3. <i>Special and Differential Treatments for TRIPS</i>	186
V.1.4. <i>TRIPS and Access to Medicines</i>	188
V.1.5. <i>Trade Negotiations on TRIPs and LLDCs</i>	188
V.2. RULES ON REGIONAL TRADE AGREEMENTS	189
V.2.1. <i>Background to the Rules on Regional Trade Agreements</i>	189
V.2.2. <i>Interaction between RTAs and the MTNs</i>	190
V.2.3. <i>GATT provisions for RTAs</i>	191
V.2.4. <i>Doha Negotiations on Rules on Regional Trade Agreements</i>	191
V.2.5. <i>Negotiations of Rules on Regional Trade Agreements and LLDCs</i>	192
VI. POLICY OPTIONS FOR LLDCS IN THE MTNS	194
VI.1. INTRODUCTION.....	194
VI.2. PREPARING FOR THE NEGOTIATIONS	195
VI.3. PARTICIPATING IN THE NEGOTIATIONS.....	200
VI.4. AFTER THE NEGOTIATIONS.....	202

List of Tables

Table 1. Overview of Key WTO Agreements	35
Table 2. Key Agricultural Outcomes from the Uruguay Round	45
Table 3. Summary of key GATT Articles.....	75
Table 4. Proposals under NAMA at different stages of the Doha Round.....	80
Table 5. World Bank costs of projects relating to capacity building in SPS.....	100
Table 6. Quick Guide to the GATS	136
Table 7. Summary of GATS Commitments made by LLDCs for Transport Services.....	164
Table 8. Summary of GATS Commitments made by LLDCs for Computer and Related Services.....	171
Table 9. Summary of GATS Commitments made by LLDCs in the Tourism sector.....	177
Table 10. LLDC Resources in Geneva.....	197
Table 11. Perceived Negotiation Interests for LLDCs	201

List of Figures

Figure 1. Geographical Distribution of LLDCs.....	14
Figure 2. Economic Vulnerability and Export Instability, 2012	15
Figure 3. Total GDP of LLDCs at current prices, 2000-2020	16
Figure 4. Investment as a share of GDP in 2014.....	17
Figure 5. Trade to GDP in percentage in selected economies, 2013	18
Figure 6. LLDC increase in exports of goods and services 2000-19	19
Figure 7. Trade to GDP and cost of exporting, 2013	20
Figure 8. Days to export, 2005-14	21
Figure 9. LLDC exports of products according to degree of technology embodiment	22
Figure 10. Structure and Processes for building a Sustainable Impact Assessment (SIA).....	39
Figure 11. LLDC membership of Negotiation Structures in the WTO.....	57
Figure 12. LLDC Major Regional Integration Efforts	63
Figure 13. WTO Accession process for LLDCs.....	70
Figure 14. Average MFN unweighted Bound Rates	77
Figure 15. Application of Swiss Formula to Simulated Tariff Rates.....	84
Figure 16. Aid for Trade Commitments in US\$ Billions	91
Figure 17. Aid for Trade Disbursements in US\$ Billions	92
Figure 18. Success factors for Aid for Trade Capacity Building Support	92
Figure 19. Notification Process for LDCs in the WTO Trade Facilitation Agreement	107
Figure 20. Initiation of Safeguard Instruments by WTO members	113
Figure 21. SSM Proposal in the Doha Round.....	114
Figure 22. FTAs with labour provisions	122
Figure 23. Restrictiveness of Trade in Transportation Services in selected LLDCs.....	162

List of Boxes

Box 1. Economic Rationale to Multilateral Trade Negotiations	33
Box 2. Principles for undertaking a SIA.....	38
Box 3. Inter-Agency Coordination for Trade Negotiations - Case of Botswana	40
Box 4. Uganda's experience in Multilateral Trade Negotiations.....	42
Box 5. Negotiation Strategies.....	43
Box 6. Malawi's Participation in the WTO	49
Box 7. Cotton-4 Negotiation Success	54
Box 8. Regional Integration and MTNs - Case of Zambia	58
Box 9. Case Study on Mongolia's post accession implementation difficulties after joining the WTO.....	66
Box 10. Observership and Application for Membership to the WTO	67
Box 11. Duty Free and Quota Free Access to LDCs in 2012.....	88
Box 12. Types of Rules of Origin	94
Box 13. Nepal's Implementation of the Agreement on SPS.....	99
Box 14. WTO Agreement on TBT.....	102
Box 15. SACU LLDCs and their experience with Trade Facilitation Measures.....	105
Box 16. What is a subsidy?	116
Box 17 Types of Export Subsidies and Treatment in the WTO.....	118
Box 18. Regulation of Labour Standards	121
Box 19. Economic Rationale for Export Taxes	127
Box 20. Types of Export Restrictions	128
Box 21. Single Undertaking	135
Box 22. The four modes of supply in practice	143
Box 23. Establishing a GATS Enquiry Point.....	146
Box 24. GATS negotiations on disciplines in domestic regulations.....	147
Box 25. Request and Offers.....	153
Box 26. Timeline of Trade in Services Negotiations under the Doha Round	157
Box 27. Benefits in negotiating transportation agreements.....	161
Box 28. Tourism Satellite Accounts	175
Box 29. Balancing the rights and obligations between users and owners of IPRs.....	187
Box 30. How to prepare for WTO Negotiations	198

ABBREVIATIONS AND ACRONYMS

A4T	Aid for Trade
ACP	African, Caribbean and the Pacific
AD	Antidumping
ADB	Asian Development Bank Institute
AFTA	ASEAN Free Trade Area
AGOA	African Growth and Opportunity Act
AMA	Agricultural Market Access
AMS	Aggregate Measure of Support
APEC	Asia - Pacific Economic Cooperation
APTA	Asia Pacific Trade Agreement
ASCM	Agreement on Subsidies and Countervailing Measures
ASEAN	Association of South-East Asian Nations
ATC	Agreement on Textiles and Clothing
ATF	Agreement on Trade Facilitation
BATNA	Best Alternative To a Negotiated Agreement
BIS	Bank for International Settlements
BPO	Business Process Outsourcing
ARV	Antiretroviral
CAN	Andean Community (<i>Comunidad Andina</i>)
CARICOM	Caribbean Community
CAREC	Central Asia Regional Economic Cooperation
CRNM	CARICOM Regional Negotiating Machinery
CEFTA	Central European Free Trade Area
CEMAC	Economic Community of Central African States (<i>Communauté Economique et Monétaire de l'Afrique Centrale</i>)
COO	Certificate of Origin
COMESA	Common Market for Eastern and Southern Africa
CPC	Central Product Classification
CTH	Change in Tariff Heading
CTS	Council for Trade in Services

DAC	Development Assistance Committee
DC	Developing Countries
DDA	Doha Development Agenda
DFQF	Duty Free and Quota Free
DSB	Dispute Settlement Body
DIT	Development of International Trade
EAC	East African Community
EBA	Everything but Arms
EACU	East African Customs Union
EAEU	Eurasian Economic Union
EC	European Commission
ECO	Economic Cooperation Organization
ECOWAS	Economic Community of West African States
EFTA	European Free Trade Association
EIF	Enhanced Integration Framework
EPA	Economic Partnership Agreement
EU	European Union
FANs	Friends of Anti-Dumping Negotiations
FAO	Food and Agriculture Organization
FDI	Foreign Direct Investment
FOF	Friends of Fish
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Trade in Goods
GDP	Gross Domestic Product
GNS	Group of Negotiations on Services
GMM	Generalized Method of Movement
GSP	Generalised System of Preferences
GTI	Greater Tumen Initiative
GVCs	Global Value Chains
HDI	Human Development Index
HS	Harmonized System

ICT	Information, Communication Technology
IFC	International Finance Corporation
ILO	International Labour Organization
ICTSD	International Centre for Trade and Sustainable Development
IMF	International Monetary Fund
IPR	Intellectual Property Rights
IP	Intellectual Property
ISDS	Investor State Dispute Settlement
ITC	International Trade Centre UNCTAD/WTO
ITCD	Information Technology and Communications Division
ITT	International Think Tank for LLDCs
IITC	Inter-Institutional Trade Committee
KPO	Knowledge Process Outsourcing
LAIA	Latin American Integration Association
LCCs	Least Connected Countries
LDCs	Least Developed Countries
LLDCs	Land Locked Developing Countries
LPI	Logistics Performance Index
MERCOSUR	Southern Common Market (Mercado Común del Sur)
MFN	Most-Favoured Nation
MTTI	Ministry of Tourism, Trade and Industry
MTN	Multilateral Trade Negotiations
MTS	Multilateral Trading System
MFTR	Memorandum of Foreign Trade Regime
NAMA	Non-Agricultural Market Access
NAFTA	North American Free Trade Agreement
NCTPN	National Committee on Trade Policy and Negotiations
NEER	Nominal Effective Exchange Rate
NGO	Non-Governmental Organization
NGR	Negotiating Group Rules
NGMA	Negotiation Group on Market Access
NSA	Non-State Actors

NT	National Treatment
NTB	Non-Tariff Barriers
NWGT	National Working Group on Trade
ODA	Official Development Assistance
OECD	Organization for Economic Cooperation and Development
PPP	Purchasing Power Parity
PPM	Production Processes and Methods
OSCE	Organization for Security and Cooperation in Europe
PSD	Private Sector Development
PTA	Preferential Trade Agreement
RAM	Recently Acceded Member (to the WTO)
R&D	Research and Development
RCA	Revealed Comparative Advantage
REC	Regional Economic Committee
REER	Real Effective Exchange Rate
REI	Regional Economic Integration
RGFs	Really Good Friends
ROO	Rules of Origin
RTA	Regional Trade Agreement
SACU	Southern African Customs Union
SADC	Southern African Development Community
SATCC	Southern African Transport and Communications Commission
SAD	Single Administrative Document
SAFTA	South Asian Free Trade Area
SAPTA	South Asian Preferential Trade Agreement
SCM	Subsidies and Countervailing Measures
SDT	Special and Differential Treatment
SIA	Sustainable Impact Assessment
SIDS	Small Island Developing States
SME	Small and Medium-sized Enterprise
SPS	Sanitary and Phyto-Sanitary
SSG	Special Agricultural Safeguards

SSM	Special Safeguard Mechanisms
STRI	Services Trade Restriction Index
STS	System of Tourism Statistics
SVE	Small and Vulnerable Economies
TBT	Technical Barriers to Trade
TISA	Trade in Services Agreement
TNC	Trade Negotiations Committee
TPP	Trans-Pacific Partnership
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Intellectual Property Rights
TRTA	Trade Related Technical Assistance
TSA	Tourism Satellite Account
TTIP	Transatlantic Trade and Investment Partnership
UK	United Kingdom (of Great Britain and Northern Ireland)
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and Pacific
UNIDO	United Nations Industrial Development Organization
UN-OHRLS	United Nations Office of the High Representative for the Least developed countries, Landlocked developing countries and Small island developing states
UNWTO	United Nations World Tourism Organization
UR	Uruguay Round
US	United States of America
WAEMU	West African Economic and Monetary Union
WCO	World Customs Organization
WEF	World Economic Forum

WPGR	Working Party GATT Rule
WIPO	World Intellectual Property Organization
WPDR	Working Party on Domestic Regulations
WTO	World Trade Organization

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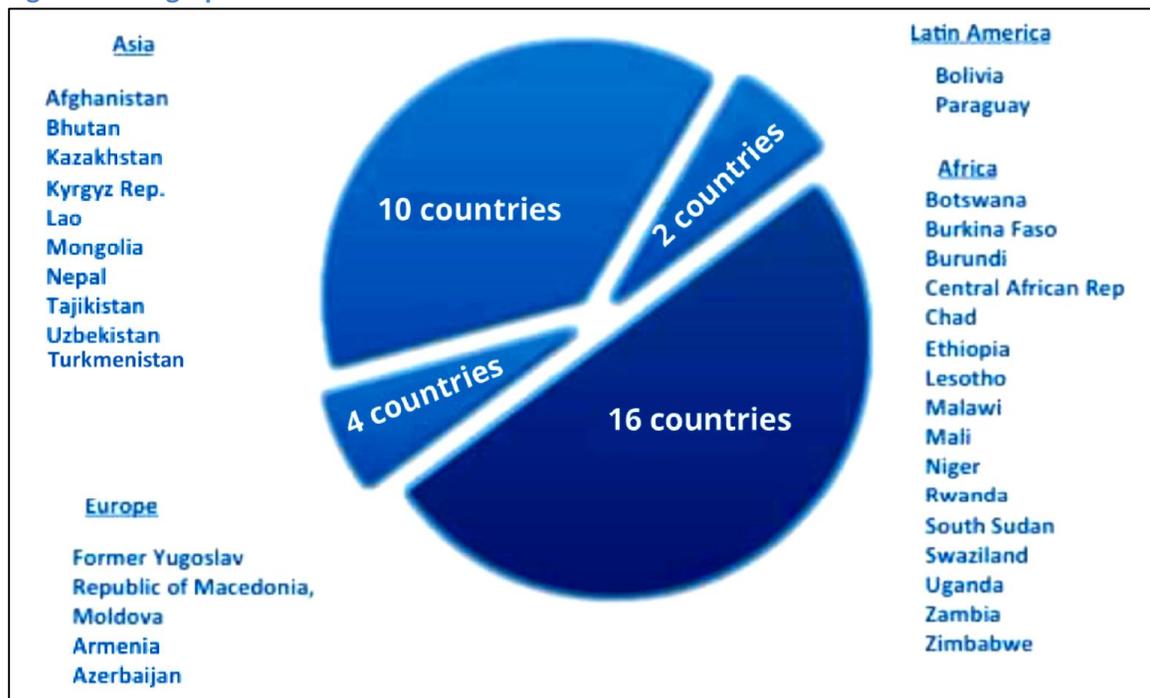
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Any errors remaining in the handbook are the author's own.

INTRODUCTION TO THE HANDBOOK

There are thirty-two countries which are classified as Land Locked Developing Countries (LLDCs), of which half are located in Africa, and another two fifths in Asia. A mere two of the countries are located in Europe and another two in Latin America (Figure 1). Half of all LLDCs are categorised as Least Developed Countries (LDCs). While they all share a common comparative disadvantage due to being landlocked, LLDCs are confronted by various geographies and realities affected by political relations with, and the transit infrastructures of, neighbouring countries, as well as the degree of social, political and economic stability of bordering countries.

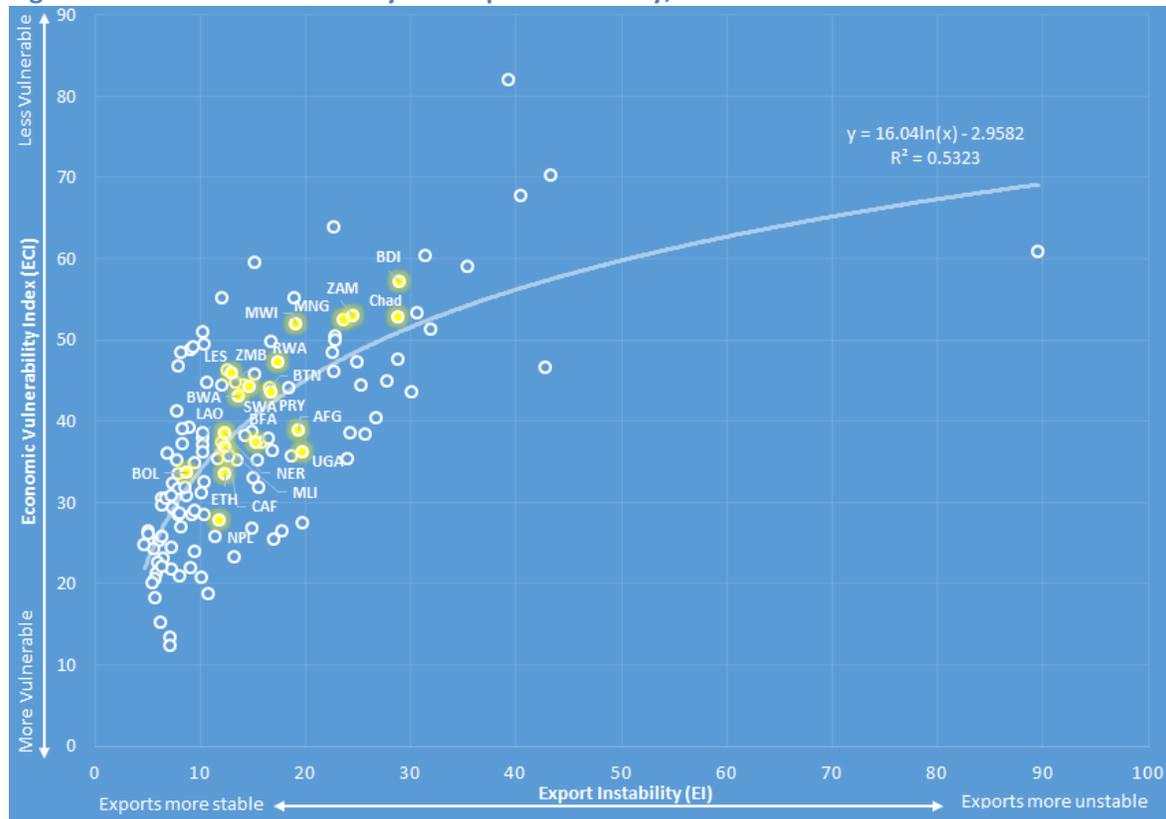
Figure 1. Geographical Distribution of LLDCs



The economic vulnerability of LLDCs against that of developing countries in general is presented in Figure 2. Each country (LLDCs are in yellow) is plotted according to its individual level of vulnerability and according to the stability or instability of its exports. Economic vulnerability is defined as the relative risk posed to a country's development by exogenous shocks (e.g. remoteness and environmental, economic, and migratory risks,). The level of risk depends on the characteristics of the country concerned (e.g. that country's export concentration, the growth trend of exports of goods and services, agricultural production trends, share of population living in vulnerable regions, etc.), the magnitude and frequency of exogenous shocks, and the country's ability to adapt to such shocks (related to the population size and whether they have been victims

of natural disasters)¹. Export Instability is defined as volatility (measured by standard deviations) of export earnings from a long-term trend, using regression analysis. In analysing the degree of vulnerability and export instability of LLDCs, we note the diversity of underlying characteristics facing LLDCs and that some are far more vulnerable than others. Some of these countries have been affected by wars and unrest, while in other cases, countries have inherited weak institutions and inflationary policies, which are responsible for exacerbating their marginalisation from the world economy.

Figure 2. Economic Vulnerability and Export Instability, 2012



Source: Author based on data from UN Development Policy Analysis Division

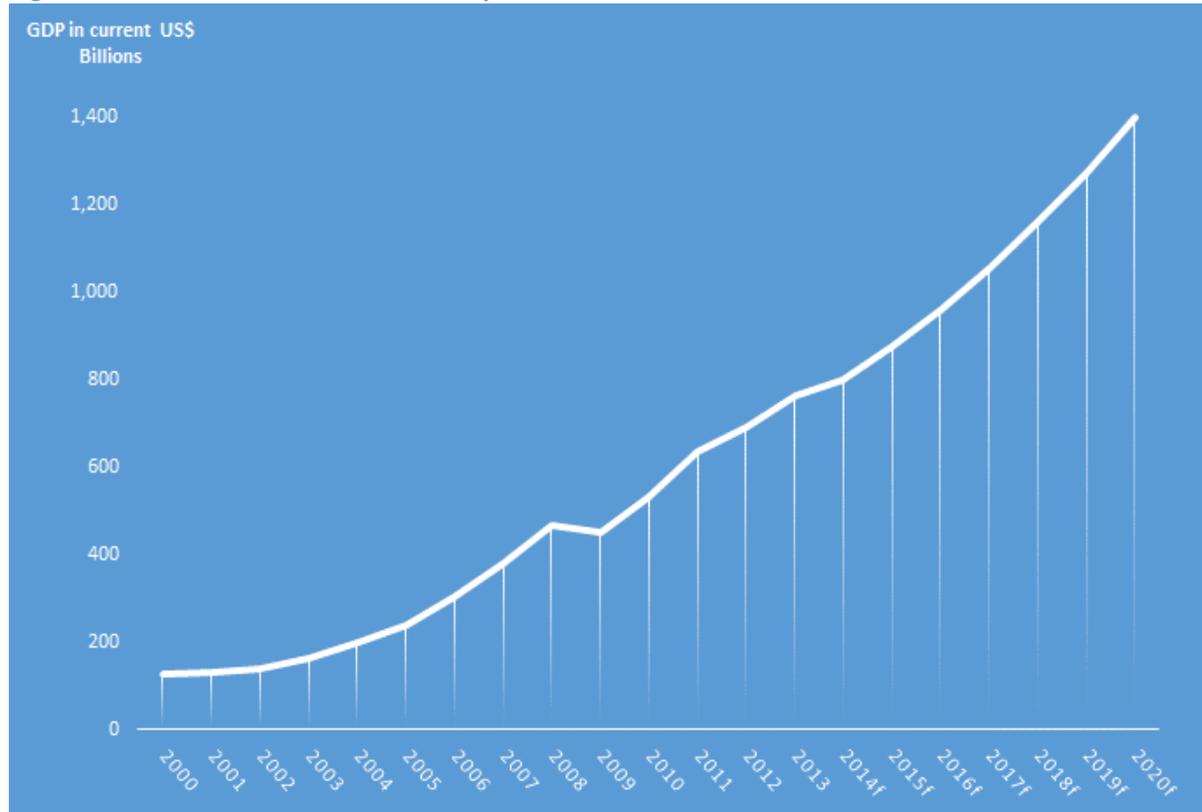
Numerous studies have highlighted the relative disadvantages experienced by land-locked developing countries in participating fully in the world economy². Overall, LLDCs have experienced rapid growth since 2000, something which is expected to continue into the next decade. Meanwhile, the economies of LLDCs doubled between 2000 and 2005. The same economies more than doubled in size again between 2005 and 2010, despite experiencing slight dips during the

¹ UN Development Policy Analysis Division, Methodological Notes.

² A useful reference in this regards is from Faye, M. L., McArthur, J.W. Sachs, J. D. & Snow, T. (2004). The Challenges Facing Landlocked Developing Countries. *Journal of Human Development*, Vol 5, No.1, Carfax Publishing: March; Chowdury, A. K. & Erdenebileg, S. (2006). *Geography against development: A case for landlocked developing countries*. UN-OHRLLS: New York

global economic crisis of 2007-08, as a result of a contraction in international demand, decreased investment and commodity price falls. Then, between 2010 and 2015, LLDCs witnessed their economies grow by two-thirds. This remarkable pattern of economic growth is currently projected to continue until 2020 (Figure 3).

Figure 3. Total GDP of LLDCs at current prices, 2000-2020



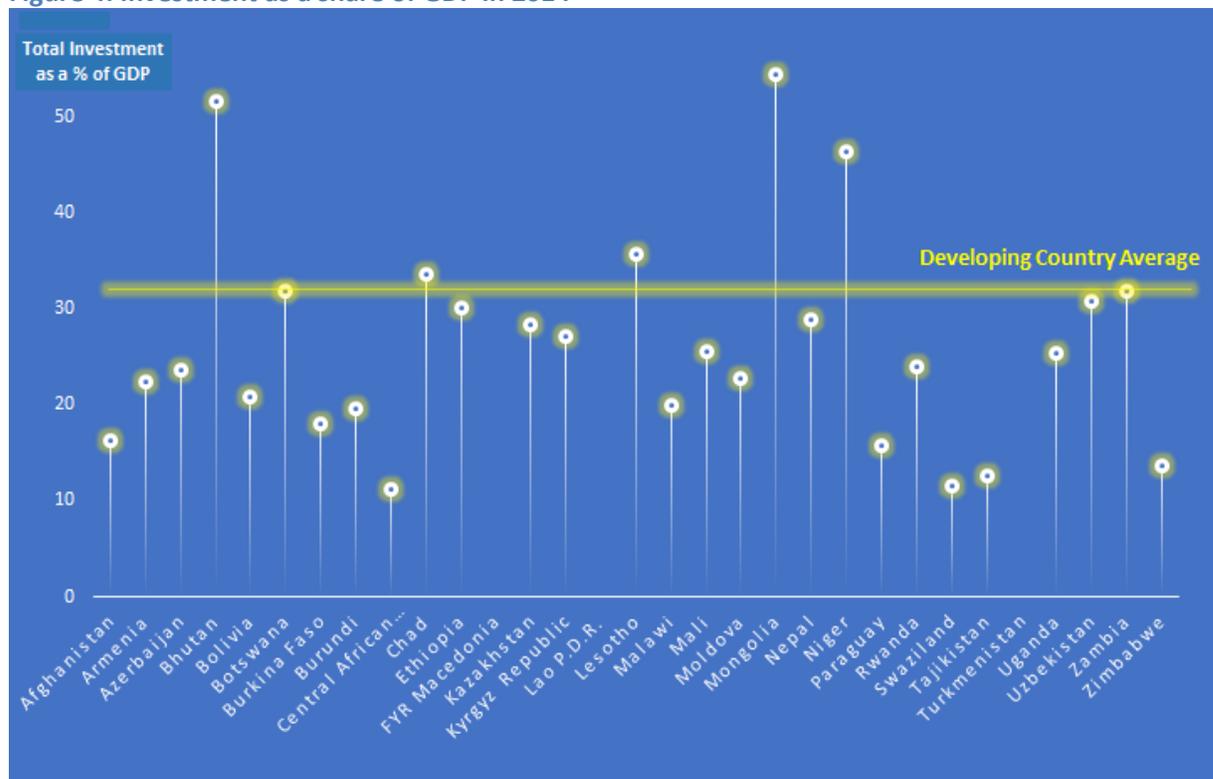
Source: Author projections for 2020; Data from IMF (2014) WEO, October

The phenomenal rate of economic growth experienced by the LLDC group masks wide differences amongst the different countries. Kazakhstan’s economy, for example, is 130 times larger than the smallest economy amongst LLDCs. Kazakhstan has also experienced one of the most rapid growth rates in the group. Azerbaijan experienced the strongest performance of all LLDCs. For some economies, in particular the top 10, the level of growth is so significant that the pursuit of economic growth alone should not be a policy primacy, but rather development ambitions (social, environmental and stabilization objectives) would be more relevant. For other LLDCs, there is still clearly a need for more buoyant economic growth to lift populations out of poverty.

Investment levels are relatively low in the majority of LLDCs, and much lower than the average rates in developing countries. There are only five countries which recorded a higher than average

investment to GDP ratio, often due to large mining or infrastructure projects rather than investment in productive sectors. The list of countries with a ratio of investment to GDP below 20% include Afghanistan, Burkina Faso, Burundi, Central African Republic, Paraguay, Swaziland, Tajikistan and Zimbabwe (Figure 4). These levels of investment are much below the levels required to transform their economies to compete globally and align their national quality and innovation infrastructure in line with other emerging market economies. Investment is sometimes focused on a handful of sectors rather than being across sectors, which limits the benefits and potential for the economies to grow. As mentioned earlier, the economic vulnerability index is also greatly influenced by the instability of exports which in turn are rendered more unstable by the very concentrated nature and the composition of the export basket of most LLDCs.

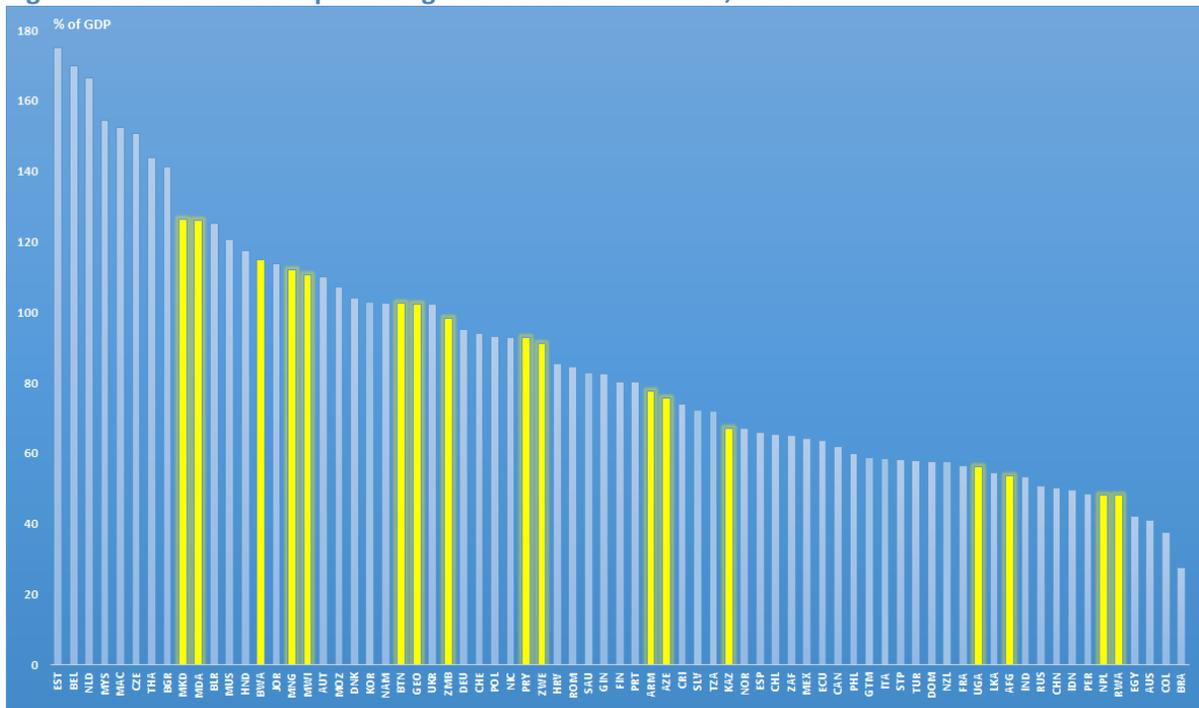
Figure 4. Investment as a share of GDP in 2014



Source: Author based on data from World Bank WITS

LLDCs often have relatively low levels of trade openness (as measured by the size of trade flows to GDP), have highly concentrated levels of RCA (Revealed Comparative Advantage) in a few sectors and typically experience low export survival rates in non-commodity exports. In comparison to other countries in the world, the ratio of trade to GDP is nevertheless variable (Figure 5).

Figure 5. Trade to GDP in percentage in selected economies, 2013

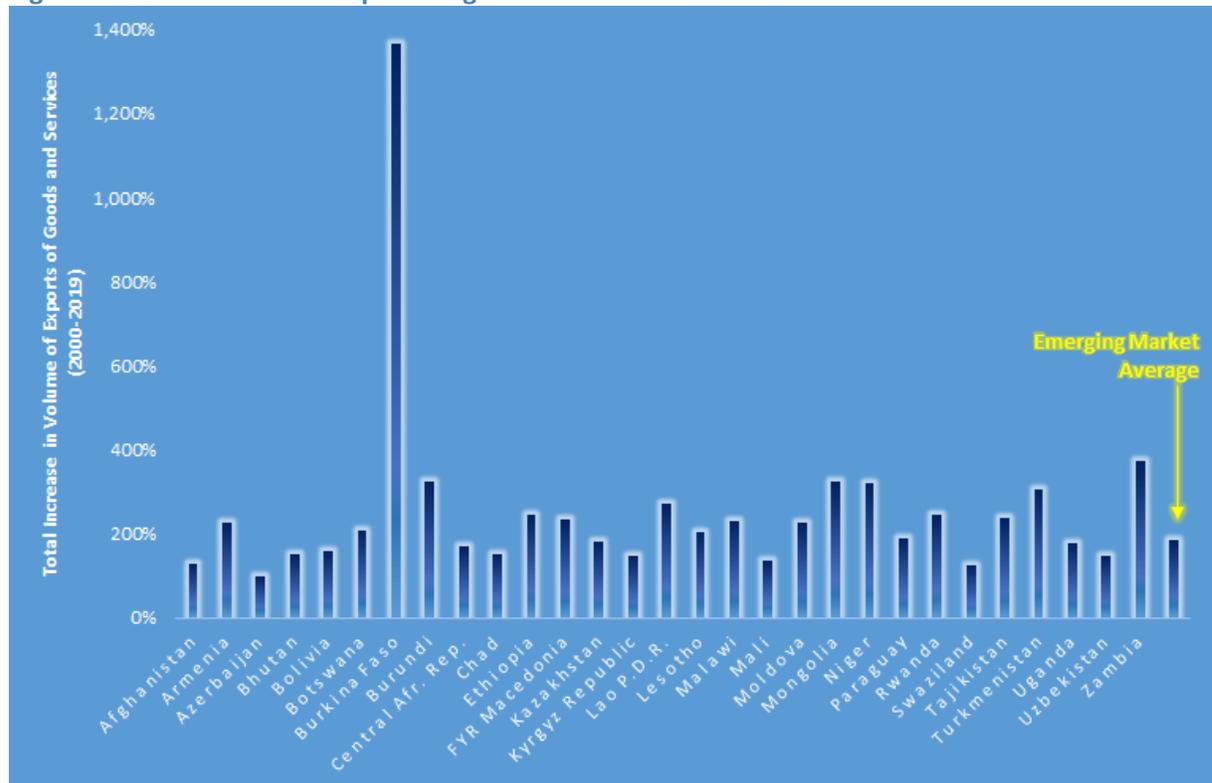


Note: LLDCs are shaded in yellow; Source: World Bank World Development Indicators

Trade openness is often, but not always, associated with higher levels of per capita income. As economies grow, they tend to become more competitive and engage in international trade so as to overcome the limited size of their domestic market. However, the causation between trade openness and economic growth is not necessarily one way but usually presents strong reverse causation. Trade is the engine of development and development can be the engine of trade.

LLDCs have recorded strong performances in trade in goods and services (Figure 6). Countries which outperformed the emerging market average, such as Armenia, Burundi, Ethiopia, Former Yugoslav Republic of Macedonia, Lao, Lesotho, Malawi, Moldova, Mongolia, Niger, Rwanda, Tajikistan, Turkmenistan and Zambia, achieved this due to growth in a handful of industries, such as mining and the textiles, clothing and footwear industries for goods, and travel and tourism services for services.

Figure 6. LLDCs increase in exports of goods and services 2000-19



Source: Author based on IMF (2014) WEO, October

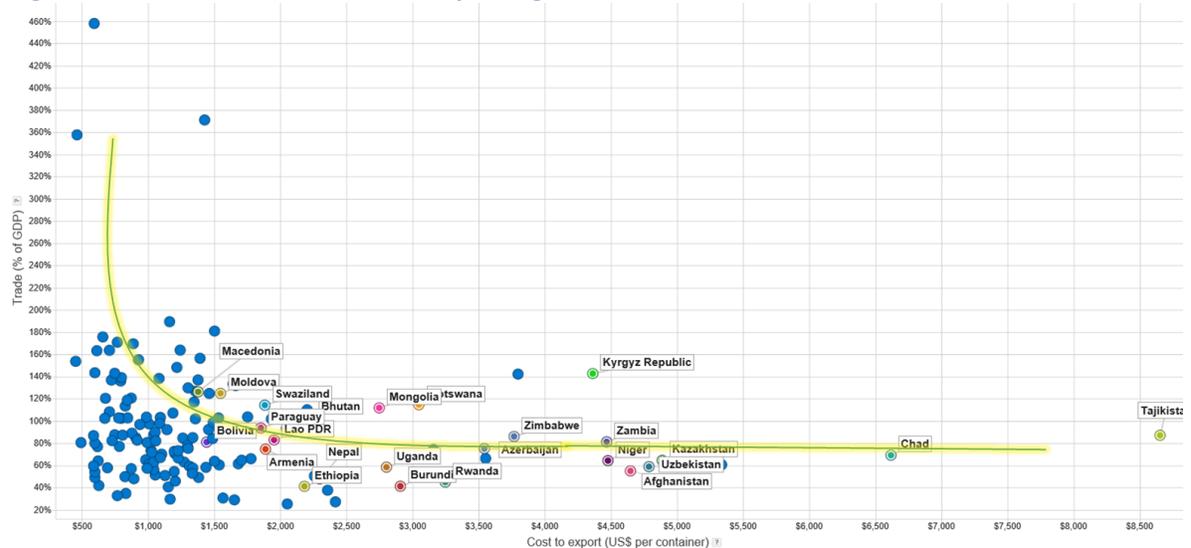
There is a strong negative correlation between the cost of exporting and the level of trade for countries. This is explicitly shown in Figure 7. The level of trade is greater where the cost of trade is lower. The relationship between trade and export costs is not strong when the level of export costs are low, but is far more acute as the cost of a container increases to prohibitive levels, such as is the case for Tajikistan, Chad, Uzbekistan, Afghanistan and Kazakhstan, which range from \$4,500 to \$9,000 per container.

Economic geography has been explicitly singled out for being a strong explanatory variable in the variations in economic growth in developing countries. When controlling for other economic factors, econometric results have shown that a country which is landlocked has a much higher likelihood to be constrained in economic growth than a country which is not landlocked. The methodology used for most of these studies is a standard multi-country or region growth gravity equation which regresses exogenous factors such as landlockedness, belonging to an FTA, distance, sharing common borders, languages, and endogenous factors, such as GDP and population size³. These studies highlight the inherent isolation caused by inadequate transport infrastructure and cumbersome transit procedures, which combine to reduce the ability of LLDCs

³ See Srinivansan (1986); Collier and Gunning (1999), Dollar and Kraay (2003), Sachs (2008) and Friberg and Tinn (2009)

to engage in international trade. These studies emphasise the link between high transportation costs and reduced incentives to trade⁴.

Figure 7. Trade to GDP and cost of exporting, 2013



Source: World Bank Development Indicators 2014

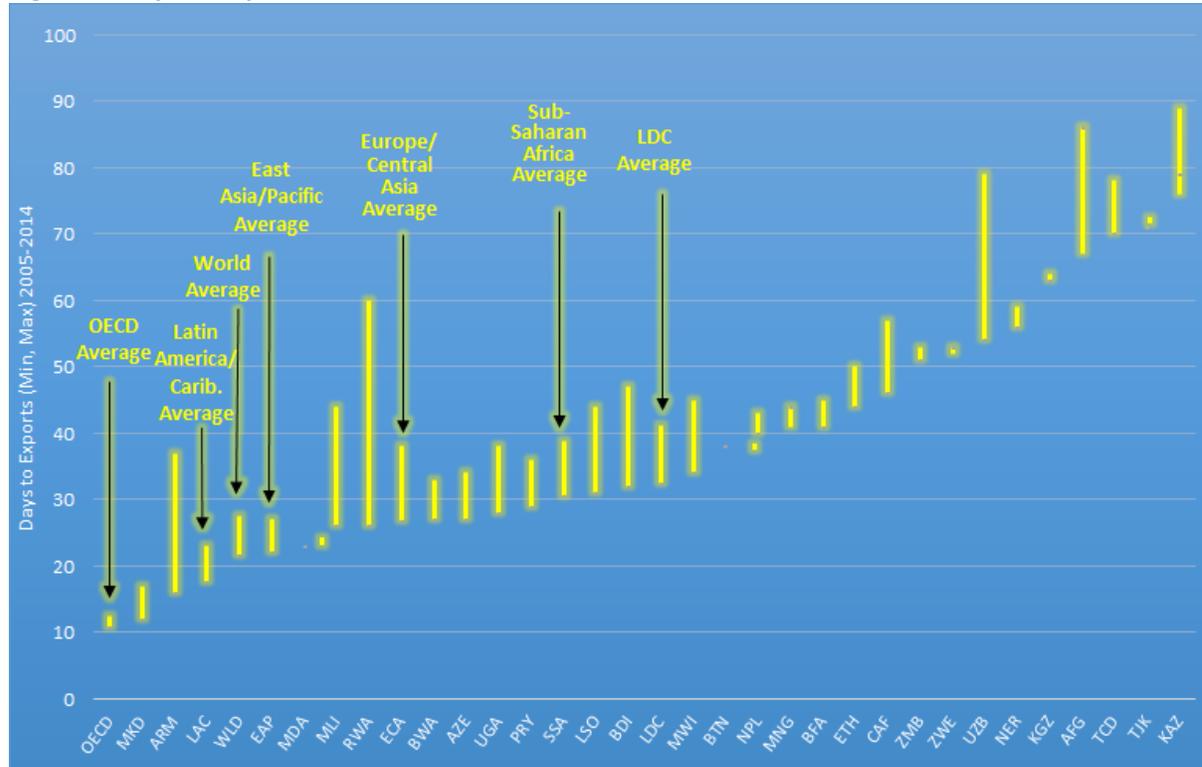
Not only are LLDCs positioned far along the cost axis, in comparison to other countries, they also tend to record long lead times for exporting (Figure 8). Over half the LLDCs record longer lead times to export than the LDC and Sub-Saharan African averages. Nevertheless, there are some countries which, through effective trade facilitation measures, have managed to be competitive with the OECD average and in a much better position than most regional averages. For example, in Former Yugoslav Republic of Macedonia, Armenia and Moldova, the time to export can reach a similar duration as advanced economies.

However, it is noteworthy that the duration has shortened considerably between 2005 and 2014, such that in the case of Armenia, for example, authorities managed to reduce the average time to export from 37 days in 2005 to just 16 in 2014. Rwanda also made tremendous progress in reducing the time to export from 60 days to 26 days, primarily through improved trade facilitation measures. Mali is also an example, having reduced the time to export from 44 days to 26. While these time lags remain significant, they drastically cut the uncertainty, reduced the cost and increased the ability to trade in perishable goods or tap into supply chains. At the same time,

⁴ See Chowdhury, A. K. & Erdenebileg, S. (2006). *Geography against Development: A Case for Landlocked Developing Countries*. United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS); Faye, M. L., McArthur, J.W., Sachs, J. D. & Snow, T. (2004). The Challenges Facing Landlocked Developing Countries. *Journal of Human Development* Vol. 5, No. 1, March; Kharel, P. & Belbase, A. (2010). Integrating Landlocked Developing Countries into International Trading System through Trade Facilitation, Asia Pacific Research and Training Network on Trade Working Paper Series, No. 84, September

other countries appear to have made little or no improvements in their trade facilitation environment.

Figure 8. Days to export, 2005-14



Source: World Bank World Development Indicators

A recent study⁵ estimated that the cost of being landlocked (holding all other factors constant) reduced the growth potential for countries by as much as 30% over the 2005-2010 period⁶, and around 15 to 30% for the great majority of LLDCs. Thus, there is compelling statistical and econometric evidence that the performance of LLDCs has been significantly below that of non-LLDCs using a range of tests.

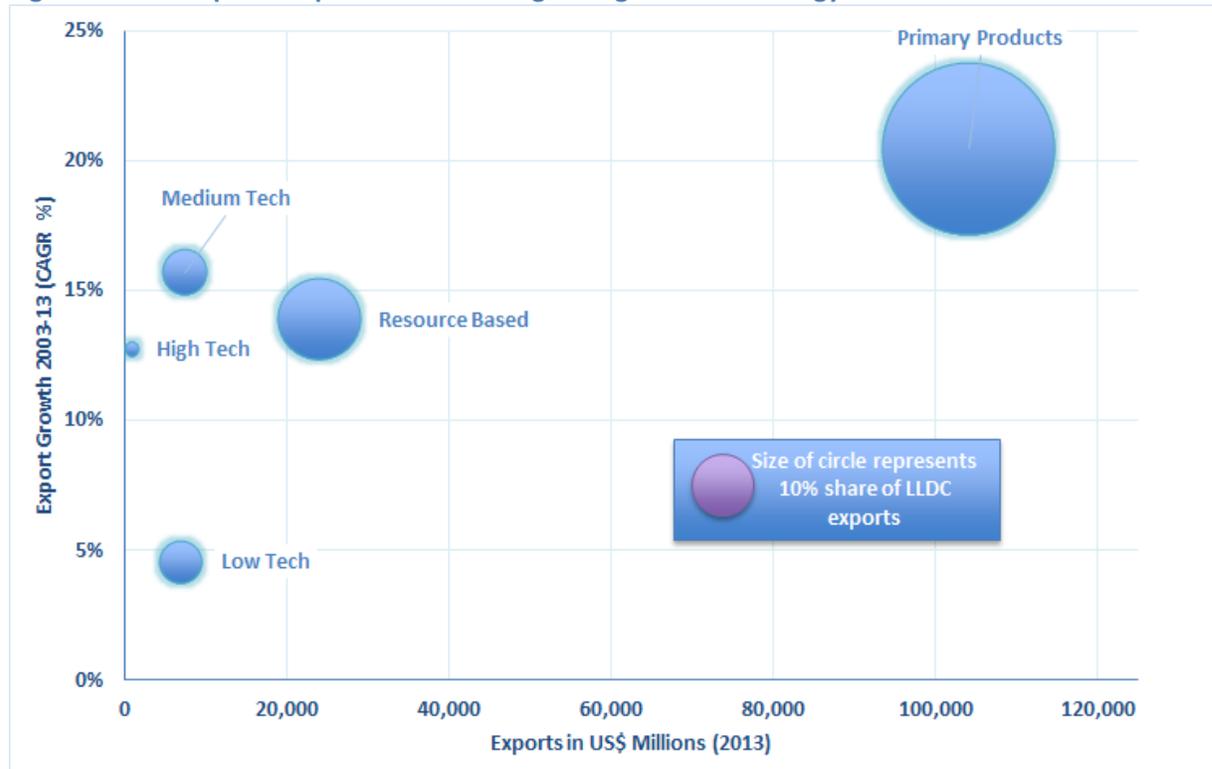
The LLDCs have also faced difficulties in moving into value added production and transition to production processes which require a relatively higher degree of technological embodiment. One can highlight this observation by plotting the product types exported by LLDCs on average according to the degree of technology embodied in exports (Figure 9). The size of the bubble represents the share of the product group in total exports for LLDCs. By far the greatest proportion

⁵ UN-OHRLSS (2013) use a Generalised Method of Moments (GMM) to estimate the effects of geography on growth.

⁶ According to the UN-OHRLSS (2013) nearly one third of the below equilibrium level of growth is explained by being landlocked despite the coincidental fact that most of these countries faced war or massively disruptive national policies, such as Central African Republic, Zimbabwe, Chad and Ethiopia.

of exports are in primary products, followed by resource based products. Growth per annum in the last decade of these two product groups has been significant and well above world trends for export growth. The share of high technology products is very small, while that of low technology products is low, based on past growth. Medium technology products have shown strong growth potential in the past and the share in total exports has been increasing.

Figure 9. LLDC exports of products according to degree of technology embodiment



Source: Author based on data from World Bank WITS

A 2014 study⁷ on the development economics of landlockedness suggests that LLDCs would strongly benefit from a multilateral agreement on trade facilitation, by tackling fees and transit procedures, as well as streamlining customs procedures and encouraging the publishing of regulations to guarantee transparency. The World Trade Organization (WTO) Agreement on Trade Facilitation (ATF) is specifically working on three objectives: to expedite the movement, release and clearance of goods, including goods in transit, by clarifying and improving the General Agreement on Tariffs and Trade (GATT) rules and its disciplines; and to enhance technical assistance and support for capacity building initiatives. The WTO recognises the special position and constraints facing LLDCs and a number of communications have been voiced by the LLDC Group with regard to trade facilitation.

⁷ UN-OHRLLS (2014). The development economics of landlockedness: Understanding the development costs of being landlocked

While problems of geography explain some of the difficulties faced by LLDCs, a growing body of econometric evidence explains why LLDCs sometimes perform less well than other equally disadvantaged, remote, inland regions of large countries. For example, poorly managed border agencies, cumbersome transit procedures, inefficient logistics systems and poor infrastructure substantially increases the cost of doing business. More recent evidence also supports the view that many LLDCs are disadvantaged by their own political economy and choices made in their own trade and investment policies⁸. For example, it has been observed that in many LLDCs there remains low levels of SME participation, a cumbersome business enabling environment prevails, a lack of adequate finance is available, restrictive market structures and weak competition policy are enforced, and low levels of public investment are recorded in areas such as technology, labour force skills, and critical infrastructure and utilities⁹.

There is, therefore, a need for LLDCs to create a more enabling environment for engaging in trade, facilitating investment, and for improving market access in third markets through the negotiation of FTAs¹⁰. In order to adopt new technologies and integrate into global supply chains, more relevant policies for landlocked countries need to be examined (through the lens of investment and trade agreements) so as to mitigate existing constraints caused by geography. A more concerted and coordinated effort in multilateral negotiations, and the implementation of pro-growth policies are expected to yield stronger trade performance and enable LLDCs to fully take advantage of multilateral and regional markets.

The policy choices made by countries can unlock the potential for LLDCs to better integrate into the world trading system. At the same time, the multilateral trading system, as embodied in the various agreements reached at through the efforts of Contracting Parties of the GATT (prior to 1994) and Member States of the WTO (since 1995), do not currently sufficiently take into consideration the special conditions of LLDCs and require investing substantial negotiation capital to influence the rules and the negotiation agenda. As is the case with other WTO Members, many LLDCs have taken up various negotiation positions with different coalitions in a bid to influence the negotiations. Chapter I focuses on Multilateral Trade Negotiations (MTN), the outcome of past negotiation rounds and the topics of the highest relevance to LLDCs in the current Doha Round. It closes with a look at the overlapping agendas in RTAs and MTNs and the way forward for LLDCs. Six LLDCs are currently negotiating accession to the WTO, while the remainder are negotiating the

⁸ Paudel, R. C. (2014). Economic Growth in Developing Countries: Is Landlockedness Destiny?. *Working Papers in Trade and Development*. Working Paper, NO. 2014/01. January. Australian National University.

⁹ Borchet, I. *et al* (2012). Landlocked or Policy Locked? How Services Trade Protection Deepens Economic Isolation. *Policy Research Working Paper*, 5942, World Bank, January; Carmignani, F. (2012) The curse of being landlocked: institutions rather than trade. *Discussion Papers in Economics*, No 2012-04, Griffith University, March.

¹⁰ A study has found that tariffs faced by countries are major predictor of the ability for LLDCs to export. See Kharel, P. & Belbase, A. (2010). Integrating Landlocked Developing Countries into International Trading System through Trade Facilitation, Asia Pacific Research and Training Network on Trade Working Paper Series, No. 84, September

Doha Round. In Chapter II, we provide a review of the accession process, what it means for the LLDC in question, and make recommendations on the best way forward.

LLDCs interests in the negotiations cannot only be defensive or reactive, but must also be offensive. An area where LLDCs were aggressively negotiating for better conditions was in the negotiations for an ATF. Export interests require the dismantling of trade barriers not only in goods but also in services, which are far more restrictive in nature than in the case of goods. Other trade matters which restrict the potential to export include the dispute settlement mechanism and the difficulties in applying trade remedies, Trade Related Intellectual Property Rights (TRIPS), non-tariff barriers (NTB), food security, industrial development concerns (export taxes), subsidies, etc. Tariff barriers have fallen significantly though tariff peaks on sensitive products constrain export growth in key sectors, and the application of tariff escalations remain a major barrier for export-led industrialisation in developing countries. Moreover, behind the border restrictions, such as those linked to the legislative and regulatory conditions of markets, have a major impact on trade flows, often much larger than tariffs alone.

Chapters III and IV will be devoted to introducing key concepts for negotiating trade in goods and services. International economic cooperation has fostered major improvements in market access conditions and as a result, barriers at the border have been drastically reduced and the unilateral granting of preferences has benefitted many developing countries. However, other trade related areas also impact on developing countries, including Trade Related Intellectual Property Rights, Labour Standards, Trade Related Investment Measures, Dispute Settlement procedures and the application of trade remedies, Rules of Origin, Special and Differential Treatment, Aid for Trade and the Singapore Issues. Chapter V includes sections which are cross-cutting to services and goods, namely on Trade Related Intellectual Property Rights (TRIPS) and rules on regional trade agreements.

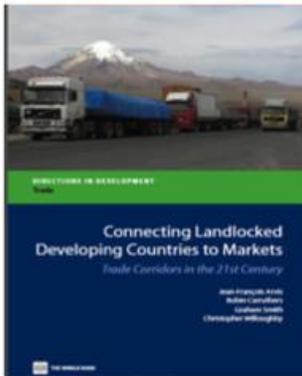
International Trade Agreements and the WTO agreements in particular have become increasingly complex, widened in scope and cover a number of new generation issues. Developing countries have a wide spectrum of needs and interests, which sometimes positions them against the negotiation of some areas in the WTO. Developing countries in general, and LLDCs specifically, find it challenging to cover all the negotiation issues and build coalitions in the WTO. They are also to a certain extent pulled by their commitments in regional trade agreements, as well as the agenda and preparations for regional negotiations. We present suggestions for preparing for negotiations in Chapter VI.

The handbook is aimed at introducing policy makers in LLDCs to prepare for multilateral negotiations by providing a background of the different negotiation topics discussed at the multilateral level and their relevance to LLDCs. The users of the manual will be first and foremost the negotiators and their technical teams in LLDCs. Ministry officials in charge of trade and in line ministries should also find elements of the handbook useful to grasp key concepts and turn the

challenge of negotiations in favour of LLDCs. Finally, Non-State Actors must participate more actively in the institutional framework which prepares for negotiations. Currently, this is not the case in even the most advanced LLDCs. Non-State Actors, which include private sector organisations and non-governmental organisations, are the ultimate beneficiaries of the outcome of negotiations and as such need to be better integrated in the impact assessments decision making and rules making process.

A range of relevant handbooks, books and manuals exist, which are directly relevant to analysing the issues for Multilateral Negotiations. Overleaf, we present in summary format recent key resources available on LLDCs and the MTN. These publications would be useful for the reader in order to delve more deeply into certain topics whilst remaining non-technical in nature.

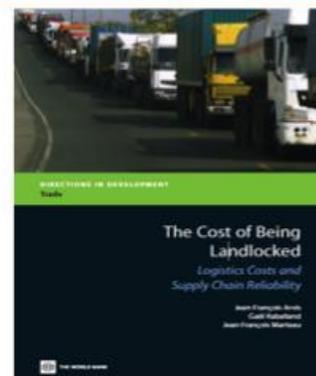
Major Recent Handbooks and Reports specific to LLDCs



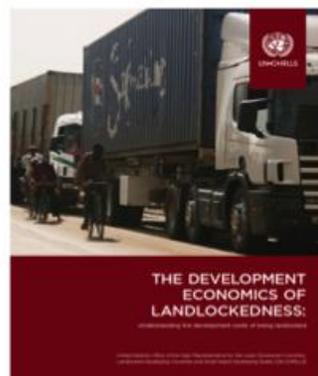
Publisher: World Bank, 2011
Summary: Reflects on policies that address the performance of trade and transport corridors and that improve the access of landlocked developing countries with a particular focus on transit regimes and related procedures and cross-border regulation of transport services. It is intended for policy makers in LLDCs and in transit countries.



Publisher: UNOHRRLLS, 2013
Summary: Report on the Brainstorming Meeting on the Priorities of a New Development Agenda for the Landlocked Developing Countries which discussed key development challenges and needs of the LLDCs and identifies the priorities of a new development agenda for the LLDCs.



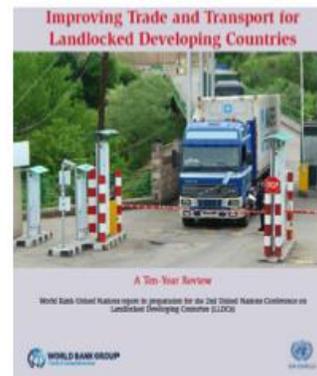
Publisher: World Bank, 2010
Summary: Studies the causes and the structure of logistics costs, using micro level analysis of the cost, time, and reliability of international trade supply chains. It is aimed at policymakers & analysts interested in identifying measures to enhance the performance of international supply chains in LLDCs.



Publisher: UNOHRRLLS, 2014
Summary: Analyses the impact of landlockedness on the development prospects of LLDCs. The study assesses the impact of landlockedness on the overall development performance on a large number of economic, institutional, and social indicators; uses an econometric approach; and proposes recommendations for LLDCs.

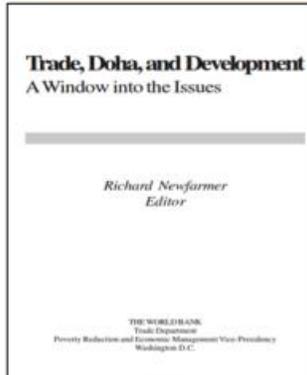


Publisher: World Bank, 2007
Summary: Assesses the impact of internal infrastructure and landlockedness on Central Asian trade. Study highlights that: 1) transit corridors are regional public goods and should be managed through international cooperation; & 2) countries should diversify their transit corridors to prevent the creation of monopoly positions in transit & bottleneck points.



Publisher: World Bank, 2014
Summary: Provides an analysis of the current situation, constraints, priorities, and discusses potential solutions to reducing LLDCs' access costs. It reviews the key access policies in the Almaty Programme of Action framework that include infrastructure, transport and logistics services, regional integration, trade and transit facilitation.

Major Recent Handbooks and Reports specific to Negotiations



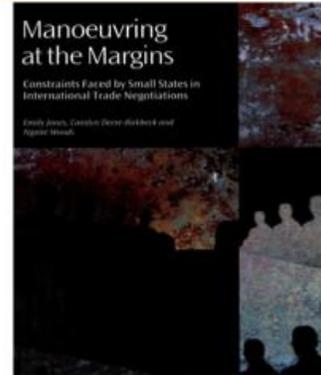
Publisher: World Bank, 2006

Summary: Series of trade notes to analyse Doha, development and trade related issues including "aid for trade". All the materials in this volume pertain directly to the issues at stake in the WTO ministerial meetings in Hong Kong.



Publisher: World Bank, 2002

Summary: A guidance on the design of trade policy reform, survey of key disciplines and the functioning of the WTO and a discussion of issues and options that confront developing countries in using international cooperation to improve domestic policy and obtain access to export markets.



Publisher: Commonwealth Secretariat, 2010

Summary: Assesses the nature and extent of the constraints that inhibit Small Vulnerable Economies (SVE) from achieving desired negotiating outcomes by reviewing the existing state of knowledge. Focuses on address constraints faced by SVEs in trade negotiations.



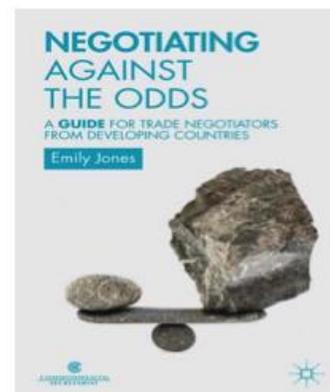
Publisher: Mayur Patel, 2007

Summary: The importance of developing country coalitions as an integral, and much neglected, part of the governance of the trading system. It argues that the pooling of bargaining resources has improved the technical and lobbying capacity by which developing countries engage in the WTO.



Publisher: UNCTAD, 1999

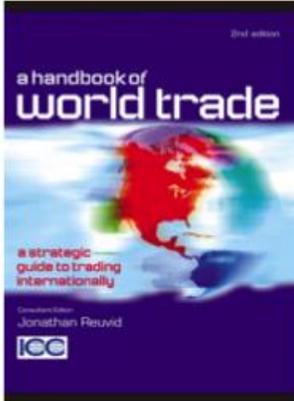
Summary: TF guidance tool for LDC negotiators complementing the need to create a network of trainers and a network of trade information dissemination within the countries to ensure the sustainability and upgrading of knowledge on the multilateral trading system (MTS) as a prerequisite for informed participation of the LDCs.



Publisher: Commonwealth Secretariat, 2013

Summary: Draws on experiences of more than 100 developing country negotiators and insights of leading academic studies and brings together practical advice and lessons on ways to negotiate effectively with larger parties, and avoid common pitfalls.

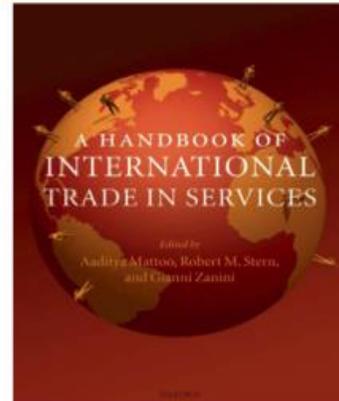
Major Recent Handbooks and Reports specific to the MTN



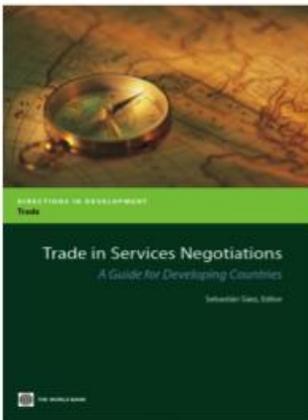
Publisher: Jonathan Reuvid, 2004
Summary: Offers practical business guidance to companies seeking to expand their international trading activities and to provide a comprehensive background briefing on the evolution of the World Trade Organization (WTO) and its leading role in the development of freer global markets within the framework of WTO rules.



Publisher: UNCTAD/ITCD, 2001
Summary: Part of a series of publications aimed at assisting exporters, producers and government officials to utilise the trade opportunities available under the various GSP schemes available from the European Community, Japan, the United States and Canada.



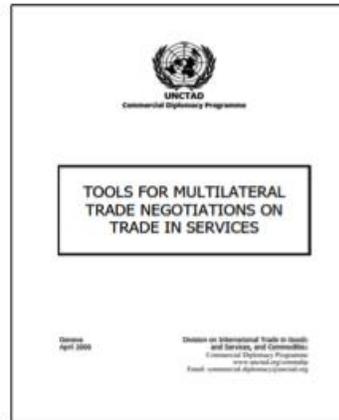
Publisher: Aaditya Mattoo et al (Eds) (OUP), 2008
Summary: A guide on trade in services building on previous services sector work, and is the result of collaboration between sector experts and trade experts. It provides an overview of the findings of theoretical and empirical research at the World Bank and other stakeholders.



Publisher: World Bank, 2010
Summary: A conceptual framework for trade policy making and negotiation and practical tools that may be used to guide negotiations on policies that affect the trade and investment in services. Aims at helping policy makers, especially in the LDCs address the complexities of the organization, formulation, and implementation of trade reforms.

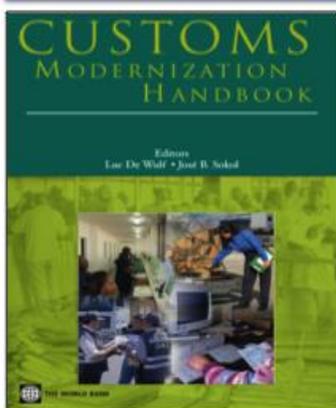


Publisher: WTO, 2005
Summary: Explains the GATS to an interested person with little or no knowledge of the agreement. It provides a better understanding of GATS and the challenges and opportunities of the ongoing negotiations and can also serve as a useful guide for experienced practitioners working in services sectors.

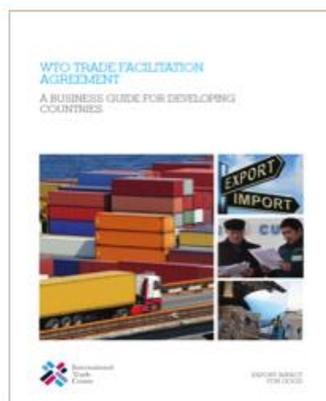


Publisher: UNCTAD, 2000
Summary: This is a course/module outline of the Commercial Diplomacy Programme that encompasses two inter-linked and mutually supportive areas of activity: training for trade negotiators of developing countries and economies in transition; and research and analysis on international trade issues.

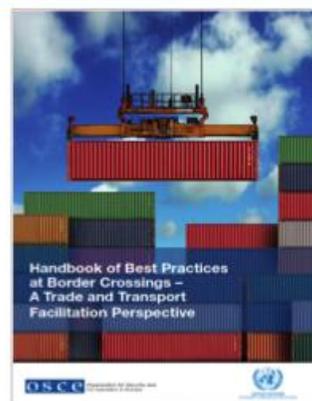
Major Recent Studies and Reports specific to Trade Facilitation (1)



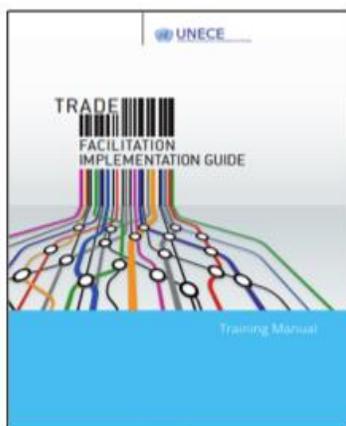
Publisher: World Bank, 2005
Summary: Provides guidance to the many organisations and individuals involved in the preparation and implementation of customs modernisation projects by drawing on the lessons learnt from past successes and failures. It is aimed at policymakers & stakeholders in the design and implementation of custom matters.



Publisher: ITC, 2013
Summary: Explains the significance of the WTO ; gives an overview of the main provisions; explains how it is intended to ease border controls for business, and how business can influence the way governments implement TFA obligations and commitments.



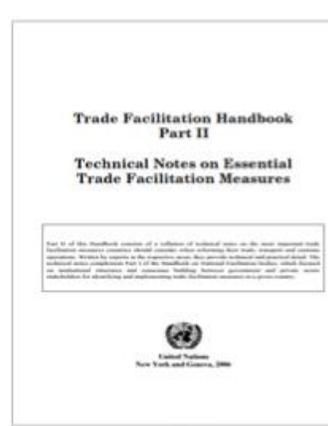
Publisher: OSCE/UNECE, 2012
Summary: Provides pragmatic advice regarding the development of new border-related policies and the introduction of new best-practice procedures and technologies is complemented with actual operational examples for OSCE participating States/UNECE Member States.



Publisher: UNECE,
Summary: Presents a variety of concepts, standards and recommendations that can simplify trade throughout the international supply chain, and sets out implementation approaches and methodologies, and introduces the available instruments for applying the facilitation measures under discussion at the WTO.

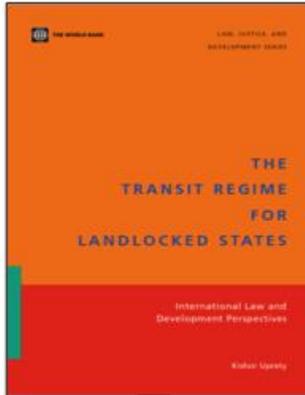


Publisher: UNCTAD, 2006
Summary: The handbook covers Trade Facilitation issues and is a guide for countries to improve their Customs administration and trade logistics services. It is expected to assist governments and traders in operating national committees in support of domestic trade facilitation reform.



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Major Recent Studies and Reports specific to Trade Facilitation (2)



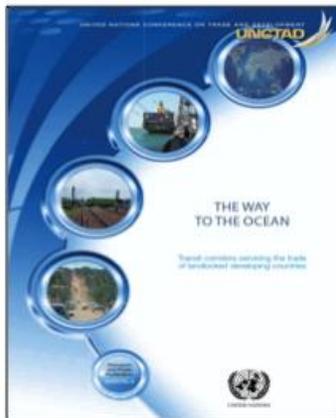
Publisher: World Bank, 2006
Summary: Reviews the evolution of the regime of landlocked States, with special attention to the link between international law and development and provides a detailed historical account of the legal, and to some extent the political, relations of landlocked and transit countries and examines the difficulties the countries have faced.



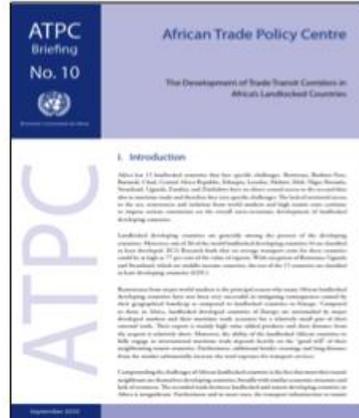
Publisher: Mongolia; UNDP; UNCTAD; Paraguay; UNOHRLLS, 2007
Summary: A pre-conference document on the key issues to foster constructive discussion and dialogue among LLDCs and transit countries during the conference on trade issues negotiations in Ulaanbaatar, Mongolia in 2007.



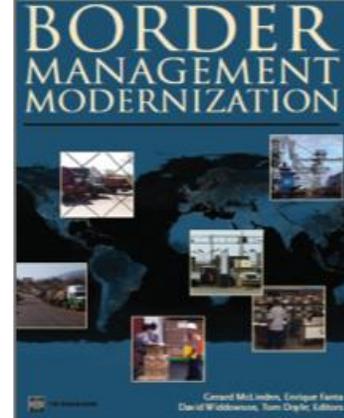
Publisher: Mongolia; UNDP; UNCTAD; UNOHRLLS, ITT-LLDCs, 2014
Summary: The report of the High-Level International Workshop "The WTO Agreement on Trade Facilitation: Implications for LLDCs" held in Ulaanbaatar, Mongolia, 2-3 June 2014.



Publisher: UNCTAD, 2013
Summary: A look at selected East African transit corridors which provide access to seaports as gateways to link LLDCs with overseas trading partners and suggests complimentary courses of action to improve transit transport efficiency and sustainability.



Publisher: ATPC/UNECA, 2010
Summary: Looks at the development of trade transit corridors in Africa's LLDCs with the focus on implementing the Almaty Programme of Action to address the special needs of LLDCs within a new Global Framework For Transit Transport Cooperation for LLDCs and Transit Developing Countries .



Publisher: World Bank, 2011
Summary: Summarised guidance on what constitutes good practices in border management—looking beyond customs clearance, and provides general guidelines that can be used to better understand the complex border management environment and the interdependencies and interrelationships.

Major Recent Studies and Reports specific to Trade Facilitation (3)



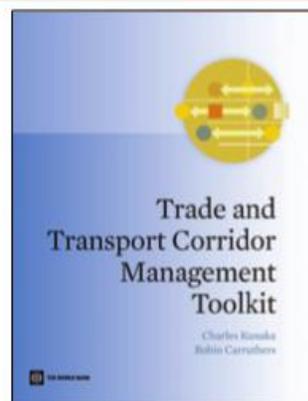
Publisher: ADBI, 2014

Summary: A discussion of trade facilitation in the context of enhancing trading links between South and Southeast Asia, in a manner understandable to the non-specialist. Paper identifies the scope of trade facilitation and profiles the current overall situation in the two regions.



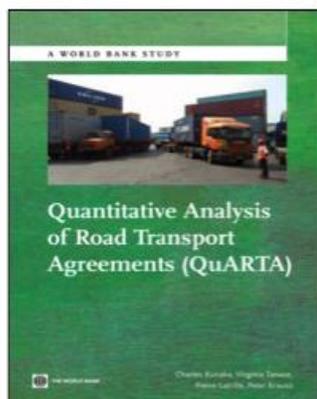
Publisher: WTO, 2005

Summary: A Trade Facilitation Support Guide prepared for and on behalf of the World Bank to assist Developing and least-developed WTO Members to effectively participate in the WTO Trade Facilitation negotiations as agreed at the Group's meeting of 13-14 June 2005.



Publisher: World Bank, 2014

Summary: The Toolkit comprises 13 modules on; how to carry out a corridor diagnostic – on infrastructure, regulatory, and institutional framework for a corridor; specific corridor components by explaining how performance can be improved through targeted interventions.



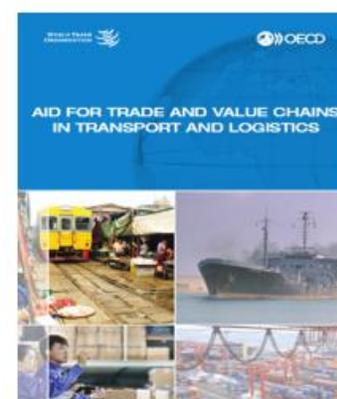
Publisher: World Bank, 2013

Summary: Proposes methodologies for identifying the defining characteristics of regional road transport agreements and the implications they may have on market integration. Its results identifies general patterns about bilateral agreements on road freight transport and how they work in practice.



Publisher: World Bank, 2014

Summary: Logistics Performance Index (LPI) measures the on-the ground efficiency of trade supply chains, or logistics performance. The LPI and its components help countries understand the challenges that they and their trading partners face in making their national logistics perform strongly.



Publisher: WTO & OECD, 2013

Summary: The study covers issues in Transport and logistics and its importance in the global value chains (GVCs) sector. It address the vital role played by the sector in connecting countries, spreading technology, and promoting best practice around the world.

I. MULTILATERAL TRADE NEGOTIATIONS AND LLDCs

I.1. Introduction and Political Economy of Multilateral Trade Negotiations

Multilateral trade negotiations began on a formal basis after the Second World War amongst a small group of countries interested in setting standards for progressively liberalising international trade. These negotiations, which took place in Bretton Woods, were initiated by the U.S. and the United Kingdom, also became important elements in establishing the GATT in 1947, which emerged from these negotiations, and which became the focal point for industrialised countries to engage in market access negotiations¹¹. From the Bretton Woods negotiations also emerged two other institutions: the International Monetary Fund (IMF) and the World Bank (WB). Successive rounds of primarily tariff-focused negotiations led to major market openings. The Uruguay Round is the latest in multilateral trade negotiations to be successfully concluded and resulted in a series of new agreements that extended the reach of the Multilateral Trading System (MTS). As negotiations evolved, the scope of the agreements moved from pure considerations of tariff and border measures to behind the border and trade-related measures, such as technical barriers to trade (TBTs), subsidies, trade related intellectual property rights (TRIPS), trade related investment measures (TRIMS) and services (General Agreement on Trade in Services-GATS). The Uruguay Round comprised 123 countries when it was concluded.

Trade negotiations, while primarily conducted for economic purposes, have political economy foundations and implications. In particular, there are both international and domestic political economy considerations when engaging in trade negotiations. At the domestic level, the negotiations help push through reforms which would otherwise be difficult without the trade-offs gained from other party commitments. For example, a government may want to make a concession, perhaps in one sector because of its economic benefits, but vested interests may oppose reforms and therefore, politically, it would find it difficult to undertake the reforms.

Liberalising a sector may also be negotiated if it can leverage another WTO Member to open up their markets. Reform in politically-sensitive sectors are thus more feasible when negotiated as part of a global package with multiple trade-offs. This is one reason why the negotiations have become wider in scope and more complex. At the same time, widening the scope too much can make the negotiations too complex for some countries to reach consensus and can lead to a breakdown.

Although economic theory generally proves that countries are better off by liberalising their economies in order to find a more optimum allocation of resources, many countries continue to

¹¹ Hoekman, B. M. & Kostecki, M. M. (2009). *Political Economy of the World Trading System. The WTO and Beyond*. Oxford University Press. Third Edition

refrain from liberalising because of political economy consideration and because the adjustment costs can be extremely severe and lead to imbalances in the short run. Assumptions are often made that markets are working under perfect competition conditions, where factors of production can freely move to changes in demand and supply, something which is rarely observed in reality. Box 1 highlights the reasons why multilateral trade negotiations are a forum which acts as a public good to resolve a prisoner's dilemma.

The theory of the optimal tariff¹² states that a large country can exploit its market power in international trade by ameliorating its terms of trade through unilaterally restricting its exports or restricting its imports¹³, since a large country can manipulate world prices. If a large country restricts imports, this will depress world prices for a good, thereby making the country's terms of trade¹⁴ improve. Thus, the theory of the optimal tariff addresses the possibility that countries with market power can manipulate the terms of trade in their favour at the expense of their trading partners.

Box 1. Economic Rationale to Multilateral Trade Negotiations

While from an economic standpoint, unilateral liberalisation can make sense - since liberalisation reduces distortion in the economy and raises welfare, in reality countries maintain protectionism for a variety of political economy considerations. Multilateral trade negotiations are explained by the fact that countries require such a forum in order to escape a terms-of-trade driven prisoner's dilemma. This idea builds on the optimal tariff argument. In the case of two symmetrical countries and two symmetrical industries, trade flows in one direction in one of the industries and in the other direction in the other industry. Both countries have an incentive to impose an optimal tariff in their respective import-competing industry in order to gain at the other country's expense. The optimal import tariff of a large country is therefore positive, since the terms-of-trade gain dominates the deadweight loss for a sufficiently small tariff. One country's terms-of-trade gain is the other country's terms-of-trade loss, so that the optimal tariff is a beggar-thy-neighbour policy.

As a result, countries have an incentive to maintain protectionism even if both countries could benefit from reciprocal trade negotiations as a result of incentives for cooperative tariff setting. According to Bagwell and Staiger (2011), "the purpose of negotiations is to give foreign exporting governments a voice in the trade policy choices of their trading partners, so that tariffs can be reduced to internationally efficient levels."

Governments care about the political as well as the efficiency consequences of trade policies. When negotiating trade agreements, governments aim to maximise national welfare subject to the political constraints under which governments operate, which is that of being re-elected.

¹² Johnson, H. G. (1954). Optimum Tariffs and Retaliation. *Review of Economic Studies*. Vol 21, No.2. Oxford University Press.

¹³ Limão, N. (2005) Optimal tariffs. *Durlauf, S. N. & Blume, L. E. (eds) The New Palgrave Dictionary of Economics*. Palgrave Macmillan. 30 March

¹⁴ Terms of trade are defined as the ratio of the export unit price to the import unit price. For calculation and interpretation issues, see Reinsdorf, M. B. (2009). Terms of Trade Effects: Theory and Measurement. *Bureau of Economic Analysis Working Papers*. WP2009-01. US Department of Commerce. October

Governments thus respond to the demands of individuals and firms who provide the votes and the funds for their election. They may negotiate for trade policies so as to maximise a weighted sum of the contributions offered by individuals and firms and their likelihood of being re-elected. Tariffs are chosen to balance the demand and supply of protection in the political market, much as prices balance demand and supply in the goods market. When governments set their trade policies non-cooperatively, each party neglects the impact of its policies on factor owners and politicians abroad. Higher tariff rates emerge in those industries that are politically organized, all else equal¹⁵.

Successful MTNs may help governments to foster the political support needed to implement a freer trade policy since it is mutually beneficial to all parties. The political economy of trade negotiations is thus concerned with increasing both the political and economic bargaining power in the multilateral setting. This is especially important in the case of small countries. Significant attention is paid to the tensions and complementarity between the “new” and more “open” regionalism of the 1990s and multilateral trade negotiations under the WTO¹⁶.

Since the end of the Second World War and the formation of the WTO in 1995, the world has witnessed a vigorous revival of regional economic cooperation¹⁷. Multilateral negotiations involve concessional negotiations on different packages that include market access, transit regimes for access to transit corridors by forging mutually beneficial arrangements¹⁸.

LLDCs often have significant challenges in negotiating with transit countries, which at times may be not just one, but two countries. For example, Rwanda has to negotiate with both Kenya and Uganda to access the port of Mombasa. These negotiations are more complex when LLDCs have to negotiate with coastal countries that may have their own political, military, social or economic agendas, such that this imposes costs. Negotiators, therefore, have an interest in working within multilateral frameworks, which are transparent, equitable and ideal for resolving disputes, rather than having to negotiate on a bilateral basis.

Effective and sustainable international co-operation must build on a predictable institutional framework that embodies a pre-commitment by governments to a certain policy stance¹⁹. International economic policy is not only about eliminating trade protection, since the treatment of international capital flows and exchange-rate policies also exert a strong influence on outcomes. According to the WTO, governments engage in trade negotiations in order to reap the

¹⁵ Grossman, G. M., & Helpman, E. (1995). Trade wars and trade talks. *Journal of Political Economy* Vol. 103 No. 4. University of Chicago

¹⁶ Gómez-Mera L., & Barret B. (2012). *Critical Debates: The Political Economy of Preferential Trade Agreements - Latin America and Beyond*. University of Miami

¹⁷ Gómez-Mera, L. & Barret, B. (2012). *ibid*

¹⁸ Arvis, J-F., Carruthers, R., Smith, G. & Willoughby, C. (2011). *Connecting Landlocked Developing Countries to Markets: Trade Corridors in the 21st Century*. World Bank

¹⁹ WTO, 2007. World Trade Report 2007: Sixty Years of the Multilateral Trading System: Achievements and Challenges

benefits of free trade for consumers and are willing to offer access to their markets in order for their exporters to benefit from other free markets.

This chapter introduces key aspects relating to trade negotiations in a multilateral setting, including the types of negotiations, the formation of alliances and coalitions, the WTO and multilateral rounds of trade negotiations, and the interaction between regional trade agreements and the WTO.

I.2. Introduction to the WTO

The Marrakesh Agreement establishing the WTO provided for a single institutional framework to complete the Uruguay Round. Its structure is headed by a Ministerial Conference meeting at least once every two years. A General Council oversees the operation of the agreements and ministerial decisions on a regular basis. This General Council acts as Dispute Settlement Body and Trade Policy Review Mechanism, which concerns itself with the full range of trade issues covered by the WTO, and has also established subsidiary bodies such as a Goods Council, a Services Council and a TRIPS Council.

The WTO framework ensures a “single undertaking approach” to the results of the Uruguay Round — thus, membership in the WTO entails accepting all the results of the Round without exception. The key agreements under the purview of the WTO are presented in Table 1. The GATT and GATS are presented separately in chapters IV and V. We present in this section an overview of the other key agreements of table 1.

Table 1. Overview of Key WTO Agreements

	Goods	Services	Intellectual Property
Basic Principles	GATT 1994	GATS	TRIPS
Associated Documents	Other goods agreements and annexes	Services annexes	
Market Access Commitments	Countries' schedules of commitments	Countries' schedules of commitments and MFN exemptions	
Conflict Resolution	Dispute Settlement Mechanism		
Transparency	Trade Policy Reviews		

Source: www.wto.org

Dispute settlement

Whenever countries have a conflict of interpretation of the trade rules, they are advised to resolve problems amongst themselves first. However, dispute settlement consultations are also offered by the WTO under the dispute settlement mechanism. Before the Uruguay Round, a dispute settlement procedure existed under the system of GATT, but it was slow and quite ineffective, due to the rule of “positive consensus”.

A major change in the process pertains to the ruling procedure: a country which is losing a case can no longer block the adoption of the ruling, while the previous system required unanimous approval from WTO members. Without appeals, the approximate time for a dispute ruling to be adopted takes 1 year from the consultation stage to the report being adopted. If there is an appeal, it can extend that time frame by more than three months.

Thus, the agreement established from the Uruguay Round has better defined stages, increased discipline in relation to the time taken to solve a case, and flexible deadlines along the settlement process. All member governments of the WTO are represented in the Dispute Settlement Body.

The key stages of a dispute settlement procedure are to begin with a first stage of consultations which can take up to 60 days in order to settle the problem amongst the parties, sometimes under the mediation services of the Director General of the WTO, if requested. A second stage of up to 45 days begins if the first stage failed. In this stage, an *ad hoc* panel is appointed, which will be the one in charge of issuing the findings. The panel is established from a list of possible panellists provided by the WTO. If no agreement regarding the panellists is achieved, the WTO Director General can be requested to appoint them. Either side is entitled to make an appeal, which can then uphold or modify or reverse the panel’s legal findings. Appeals can last up to a maximum of 90 days. If the Appellate Body (AB) report is adopted by the DSB, the defending party must bring its policy in line with the report. If the winning party, after the losing party modifies the measure, is not satisfied with the modification, it can start the DSU Article 21.5 procedures. A panel and an appeal process, with shorter terms, take place, in order to determine if the new or modified measure is consistent with the WTO. Afterwards, if the losing party does not bring the measure into conformity with the WTO, retaliation can take place.

Trade Policy Reviews

One of the major tasks of the WTO is to monitor national trade policies and ensure they are aligned to international obligations. As a result, the WTO mandated the Trade Policy Review Mechanism (TPRM) to cover a review of all domestic policies related to trade in goods, trade in

services and intellectual property. The objectives of the TPRM²⁰ include facilitating the smooth functioning of the multilateral trading system by enhancing the transparency of Members' trade policies²¹.

The Trade Policy Review Body (TPRB) carries out the review based on the statements offered by the WTO Member under review and the WTO Secretariat's Trade Policy Review Division. The Division collects all the data and facts for the Secretariat report. The Secretariat's report contains key information on the economic situation of the member, trade performance and orientation, the institutional framework, the market access commitments and observed practice, behind the border measures, and a review of other trade related legislation and policies.

The four biggest Members in terms of their share in world trade, i.e. the EU, US, Japan and China, are examined approximately once every two years. The next 16 countries in terms of their share in world trade are reviewed every four years. Finally, the remaining countries are reviewed every six years, with the possibility of a longer interim period for the least-developed countries.²²

TRIPS

Areas such as intellectual property have been given increased consideration in recent decades. Thus, the TRIPS Agreement was negotiated during the Uruguay Round and implemented in January 1995. This currently stands as the most comprehensive multilateral agreement on intellectual property. This agreement offers more intellectual property rights protection to WTO Members, while giving the latter freedom to decide how to implement the provisions in the agreement.

The TRIPS agreement has three main features:

- Standards - the agreement offers a minimum standard of protection to all members on intellectual property;
- Enforcement - the agreement deals with the procedures related to administering intellectual property rights; and
- Dispute settlement - among WTO Members in relation to differences or conflicts with regard to the application of the TRIPS rights and obligations.

²⁰ Marrakesh Agreement, Annex 3.

²¹ WTO (2015). *Trade Policy Reviews: Brief Introduction*. www.wto.org

²² *Ib.*

WTO Trade Rounds

Negotiations at the WTO take place in Rounds of trade negotiations established under the GATT 1947 system. Trade rounds, though often lengthy in order to be concluded, have an advantage in that they offer a package approach to trade negotiations that can be more fruitful than single issue negotiations. The size of the package can mean more benefits as participants can seek and secure advantages across a wide range of issues. In other words, “agreement can be easier to reach, through trade-offs — somewhere in the package there should be something for everyone”²³. While package negotiations offer more benefits, single-sector talks were concluded successfully in 1997 on basic telecommunications, information technology equipment and financial services.

Greater description of the Latest Rounds is given in the sections below.

I.3. Negotiation Processes

Prior to negotiations, it is important to first of all establish the Best Alternative to a Negotiated Agreement (BATNA). In order to do so, a full analysis of the political, legal, economic, social and environmental implications of an agreement need to be undertaken. The European Union favours a methodology developed during its negotiations with ACP countries in the framework of the Economic Partnership Agreements. The different steps involved in this approach, called a “sustainable impact assessment” (SIA) are outlined in Figure 10 and the principles for undertaking such assessments are presented in Box 2.

Box 2. Principles for undertaking a SIA

The methodological approach for impact assessments must be based on the following principles:

- **Impartiality and independence** of the analysis process from the programming and implementation functions;
- **Credibility** of the analysis, through the transparent process, including wide dissemination of results by appropriately skilled and independent experts;
- **Participation of stakeholders** in the process, to ensure that different perspectives and views are taken into account; and
- **Usefulness and relevance** of the evaluation findings and recommendations, through timely presentation of relevant, clear & concise information to decision makers.

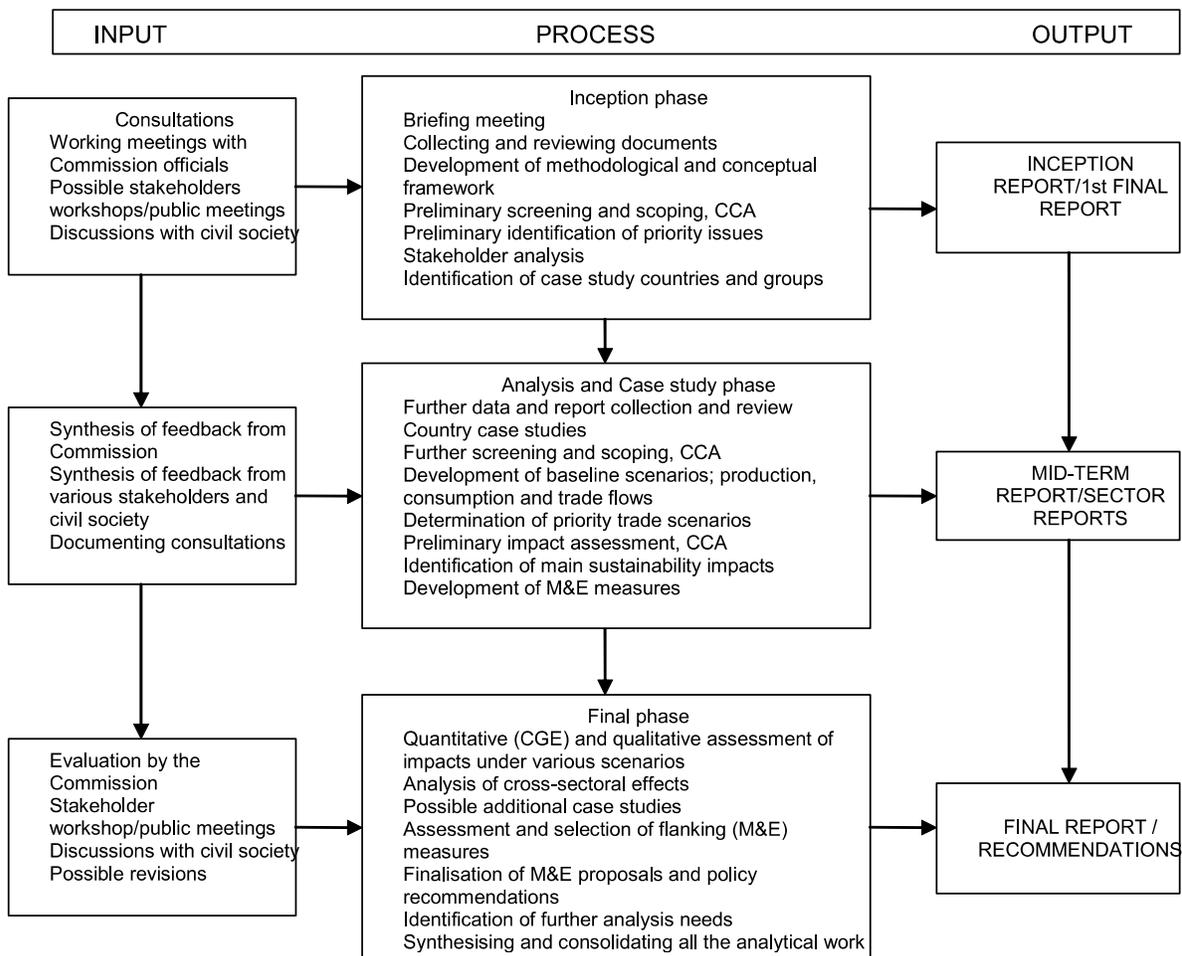
Source: Baker, P. (2015). Quantifying the Effects of Free Trade Agreements. *International Trade and Investment Review*. Vol.1 No.1. International Economics

An essential element in the preparation of negotiations relates to stakeholder consultations. Many LLDCs neglect this aspect and are left with agreements which do not reflect the needs or

²³ WTO (2015). Understanding the WTO: The GATT years: from Havana to Marrakesh. www.wto.org

ambitions of the private sector and, more importantly, lack the ownership to be implemented. Box 3 illustrates the difficulties of stakeholder involvement in preparing for trade negotiations in the case of Botswana.

Figure 10. Structure and Processes for building a Sustainable Impact Assessment (SIA)



Source: EC (2006). *Handbook for Trade Sustainability Impact Assessment*. European Commission. March

Once analytical preparations (such as the SIA approach) are made to ensure that it is of interest to engage in negotiations, negotiations theory is conceptualised within the following core phases of the policy cycle – **agenda setting, analysis, formulation, implementation, and evaluation**²⁴.

²⁴ FAO (2008). *Negotiation Theory and Practice – A Review of the literature*. FAO Policy Learning Programme. EASYPol module 179

Box 3. Inter-Agency Coordination for Trade Negotiations - Case of Botswana

Challenges Faced- Under the Ministry of Trade and Industry, the Department of International Trade (DIT) is responsible for foreign trade policy, including coordination of WTO negotiations. Botswana's foreign trade has traditionally been determined by the SACU agreement in which SACU member states surrendered their tariff setting powers to South Africa, which has traditionally formulated and co-ordinated SACU's trade policy. Interviews with stakeholders revealed criticism in the efficiency of managing Botswana's foreign trade portfolio, especially WTO matters.

One consequence of the signing of preferential trade agreements for Botswana is the additional costs arising from undertaking all the necessary legal and administrative requirements to fully implement the agreements. Botswana has not always been able to implement all the commitments, as a result in particular of a limited technical capacity related to the commitments which it signed up for, insufficient human resources to administer the rules or change existing legislation, weak coordination systems between ministries which would be involved in the implementation of agreements, a non-existent monitoring mechanism for reviewing existing commitments and their application, a weak response rate from stakeholders for reporting non-compliance and almost no statistical data analysis of trends to invoke appropriate trade defence measures when required, as opposed to instruments which are inconsistent with Botswana's obligations undertaken at the WTO and in other trade agreements. Botswana's use of trade defence instruments, namely anti-dumping, safeguards and countervailing measures, must be coordinated and agreed to at the SACU level, thereby limiting its flexibilities to apply such measures.

Negotiating capacity: Botswana experienced great difficulty in effectively participating in the WTO processes due to a shortage of staff with limited knowledge of the multilateral trading system. **Analytical capacity:** Botswana needs to carry out careful analytical work that identifies policy issues and its interests in the Doha Declaration. **Involvement of all stakeholders:** The mechanisms for intra-government coordination is weak in Botswana and the countries position at the WTO is formulated through ad hoc non-inclusive consultative processes. **Competing negotiation agendas:** While Botswana is engaged in regional negotiations (with SACU and SADC), it is also engaged in the Trans-continental FTA Negotiations, Tripartite EAC-COMESA-SADC negotiations, and the Economic Partnership Agreements with the EU. The DIT is overwhelmed by the sheer volume and complexity of negotiations

The absence of political leadership was another factor that has led to a lack of interest in the WTO issues mainly due to the frequent change of portfolios of Ministers of Trade who do not hold their positions long enough to appreciate trade and WTO issues. For example, six ministers handled the trade portfolio between the Singapore Ministerial and the Cancun Ministerial. A National Committee on Trade Policy and Negotiations (NCTPN) was established as an inter-ministerial and public-private group to feed consensus into the negotiations, although the momentum has faltered and capacity in the NCTPN is weak.

Lessons learnt: Weaknesses within the Ministry of Trade and Industry in Botswana seemed to be the root cause of the absence of formal and effective domestic inter-agency co-ordination. It is therefore important that structures are created that will address the problem. These will include: improving capacity within the trade-related ministry; improving inter-governmental consultation; and improving consultation with other stakeholders. Investing in resources for the department in charge of negotiations is essential to leverage benefits from negotiation rounds, as well as monitor the implementation of agreements.

Source: Baker, P. (2014). *Action Plan for Capacity Building of both the Trade Facilitation Advisory Group and National Committee on Trade Policy and Negotiations*. CDE. August; Mbekeani, K. K. (2005). *Inter-Agency Policy Co-ordination in Botswana*. Gallagher, P., Low, P. & Stoler, A. L (eds) *Managing the Challenges of WTO Participation*. Cambridge University Press

The first step to negotiations is **agenda setting**. This involves selecting and putting choices on the table that can set the tone and framework for the intended outcome(s) to be reached. Agenda setting is important as it helps to either inform or to restrict policy-makers from thinking about a given area in accordance with issues recognised as pertinent for discussion and providing input. It is a vital phase of the policy making process that often times can induce disagreements among parties. Skilled negotiators can make a difference in shaping the process and overcoming hurdles that result in disagreements during the agenda setting stage.

In the **analysis** phase, “policy makers have to navigate through a complex array of issues in which the relevant actors often comprise an increasingly diverse mix of influential parties”²⁵. The analysis of policy options, beneficiaries and distributive effects from the outcome of a negotiated agreement are all part of the analysis phase.

The **formulation** phase involves effective negotiators identifying and drawing together parties essential to an issue area, creating an information sharing forum, uncovering interests, and defining policy options. After the identification of policy options, stakeholders and policy makers in the negotiations will go about the business of debating the merits of competing solutions and options. It is often an area of difficulty for LLDCs to manage the process of institutional strengthening (see Uganda’s experience in Box 4). At this stage, a formula that addresses the concerns central to the agenda’s issues needs to be identified.

Policy makers are left with the task of producing an agreement that is legitimately perceived and **implemented** by authorities. The implementation phase is often the most difficult for LLDCs.

The last stage of the policy development is the **evaluation phase**, which involves evaluating whether the negotiated outcome and policy design was effectual in resolving or tackling the identified problem. It addresses policy effectiveness and importance on the ground. This is also an area of weakness for LLDCs which do not undertake a pro-active review of the agreements to identify weaknesses and areas for improvement.

Negotiation is seen as “a process of combining conflicting positions into a common position, under a decision rule of unanimity”²⁶.

²⁵ FAO (2008), *ibid*

²⁶ Kissinger, H. A. (1969). *Nuclear Weapons and Foreign Policy*. W.W. Norton, New York, USA

Box 4. Uganda's experience in Multilateral Trade Negotiations

Challenges Faced by Uganda: The preparations of all trade negotiations are supervised and coordinated by the IITC (Inter-institutional Trade Committee (IITC)), which is comprised of government institutions, the private sector, academia and civil society organizations) during a consultative process. The MTTI (Ministry of Tourism, Trade and Industry) which chairs the IITC, acts as the chief negotiator and coordinates, supervises and represents Uganda throughout its trade negotiations. But as the IITC is not formally established, it is not backed up financially and instead relies on donor funds. Efforts have been made to formally establish the IITC and involve it in all trade negotiations. However, due to a lack of funds, low levels of technical knowledge and poor negotiating skills, the implementation of this strategy has been hindered. Negotiators should be funded by the government and not by foreign donors since there may be a chance of delay in the funding which might restrict the former's attendance to the negotiations. Moreover, the IITC cannot effectively help in the formulation of national negotiating positions since they do not have access to reliable information. Uganda also does not have a specialist in the legal department of the Ministry. This is a drawback for them since they are not fully aware of the legal implications which the trade agreements may entail.

Lessons Learnt: Uganda's main national objective had been to reduce poverty ever since the Poverty Eradication Plan was developed in 1997 and, as a result, trade issues were not taken into much consideration. Hence, the government should mainstream trade strategies which would enable it to benefit from trade opportunities in negotiations. The negotiating members of trade bodies in missions should be provided with technical expertise in order that they are able to multitask several issues and update the MTTI as well.

Source: Rudaheranwa, N. & Atingi-Ego, V. B. (2005). Uganda's Participation in WTO Negotiations: Institutional Challenges. *Gallagher, P., Low, P. & Stoler, A. L (eds) Managing the Challenges of WTO Participation*. Cambridge University Press

Successful negotiations involve setting good strategies and tactics on how to manoeuvre and tackle the divergent issues at play. A *strategy* is a careful plan or method for achieving an end (see Box 5 for negotiation strategies). A *tactic* on the other hand refers to the skill of using available means to achieve an end. Strategies and tactical approaches to negotiations presuppose negotiations as zero-sum game transactions, that is, contests over a limited or fixed amount of some mutually desired benefit in which one person's gain results in another person's loss. This follows the distributive approach to negotiations. Other approaches view negotiations as mutually beneficial, with all parties becoming better off after negotiations – this is the integrative approach, MTNs follow this context.

There are different schools of thought regarding the approach to negotiations. Four approaches stand out: "Negotiation as puzzle solving, negotiation as a bargaining game, negotiation as organisational management and negotiation as diplomatic politics."²⁷ Different approaches are explained below, however, in practice most negotiators use a combination of approaches to negotiations in order to gain the most from each.

²⁷ FAO (2008), *ibid*

Box 5. Negotiation Strategies

Negotiations requires strategies. Game theory was developed to model potential negotiation outcomes, based on interests. A game of incomplete information is a game where the players do not have common knowledge of the payoffs from one strategy over another. According to Jonathan Levin (2002), this model is important in capturing many economic situations, where a variety of features may not be commonly known to all players. Among the aspects of the game that the players might not have common knowledge of are: Payoffs, who the other players are, what moves are possible, how outcome depends on the action. What the opponent knows, and what he knows I know etc.

Levin provides examples to elaborate the incomplete information model: (1) in price or quantity competition, firms might know their own costs, but not the costs of their rivals; (2) firms investing in R&D might know how their project is coming along, but have no idea who else is working on the same problem; (3) the government may design the tax code not envisioning what ploys people will come up with to avoid taxes; (4) countries may negotiate climate change agreements having different beliefs about the costs and benefits of global climate change; (5) plaintiffs may offer settlements to defendants not knowing what sort of case the defendant will be able to bring to court, or what sort of case the defendant thinks the plaintiff will be able to bring.

Negotiation is a process that can be approached in different ways and whose success lies on how well a negotiator is prepared. But the key to negotiating a beneficial outcome is the negotiator's ability to consider all the elements of the situation carefully and to identify and think through the options. As common interests have brought the parties to the negotiating table, participants can benefit from trying to capitalise on the common ground that has brought them together. Negotiators have an opportunity to craft a mutually beneficial solution if they look at each side as partners rather than as opponents.

I.4. Negotiation Rounds in the WTO

Uruguay Round

The Uruguay Round, the 8th round of multilateral trade negotiations (MTN), was launched in Punta del Este, Uruguay, in September 1986 and negotiations were concluded in December 1993. The Round led to the creation of the Agreement establishing the World Trade Organization, or Marrakesh Agreement. The signatures of the Agreement were made at the Ministerial Conference in Marrakesh in April 1994. The Round took twice as long as planned. The Round covered the widest ever scope of trade policy areas, making it one of the most comprehensive trade agreements ever negotiated. The main objectives of the Round were to²⁸:

²⁸ WTO (1986). *Draft Ministerial Declaration*. GATT, Prep.Com(86)W/47/Rev.1. 28 July

- bring about further liberalisation and expansion of world trade to the benefit of all countries, especially the less-developed contracting parties, including the improvement of access to markets by the reduction and elimination of tariffs, quantitative restrictions and other non-tariff measures and obstacles;
- strengthen the role of the GATT, improve the multilateral trading system based on the principles and rules of the GATT and bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;
- increase the responsiveness of the GATT system to the evolving international economic environment, by facilitating necessary structural adjustment, enhancing the relationship of the GATT with the relevant international organizations and taking account of changes in trade patterns and prospects, including the growing importance of trade in high technology products, serious difficulties in commodity markets and the importance of an improved trading environment providing, inter alia, for the ability of indebted countries to meet their financial obligations;
- foster concurrent cooperative action at the national and international levels to strengthen the inter-relationship between trade policies and other economic policies affecting growth and development, and to contribute towards continued, effective and determined efforts to improve the functioning of the international monetary system and the flow of financial and real investment resources to developing countries.

A major achievement of the UR was a 40% average cut in tariffs in industrial products (from 6.3% to 3.8%) from Developed Countries, which were mainly phased in over five years from 1 January 1995. The UR also led to a cut in tariff peaks, such that the proportion of imports into Developed Countries from Developing Countries facing tariffs rates of more than 15% declined from 9% to 5%. In 1997, 40 countries agreed to create the plurilateral Information Technology Agreement in order to eliminate import duties and other charges on an MFN basis for such products by 2000 (by 2005 for a few developing countries). Those 40 Members accounted for more than 92% of world trade in information technology products. Another major accomplishment of the UR was tariff bindings, whereby Developed Countries increased tariff bindings from 78% of product lines to 99%. For Developing Countries, bindings increased from 21% to 73%.

In agriculture, tariffs on all agricultural products were bound and almost all import restrictions were converted to tariffs. In addition, countries made commitments to reduce and bind domestic support measures and export subsidies for agricultural products. See Table 2 for a summary of the key outcomes from the Uruguay Round in the areas of agricultural market access and rules on domestic support and subsidies.

Other major achievements in the field of goods included the following two agreements – the WTO Agreement on TBTs and WTO Agreement on SPS Measures. There was also an agreement to phase out the quotas in textiles under the WTO Agreement on Textiles and Clothing (ATC). Finally, new disciplines were agreed upon in the areas of import licensing procedures, rules for valuation of goods at customs, pre-shipment inspection, rules of origin and trade related investment measures.

Table 2. Key Agricultural Outcomes from the Uruguay Round

	Developed Countries	Developing Countries
	Phase in over 6 years 1995-2000	Phase in over 10 years 1995-2004
Tariffs		
Average cut for all agricultural products	-36%	-24%
Minimum cut per product	-15%	-10%
Subsidies		
Total Aggregate Measure of Support cut (base period 1986-88)	-20%	-13%
Export subsidies	-36%	-24%
Subsidised Quantities (base period 1984-90)	-21%	-14%

Note: AMS – Aggregate measure of support
Source: WTO

Beyond the field of goods, the UR also had a successful outcome in setting rules for disciplines in trade in services. Another major achievement was reached in concluding a WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). From a systemic point of view, one of the most important achievements was the refined dispute settlement mechanism.

Developing Countries, and LLDCs in particular, benefitted little from the Uruguay Round since the preferential treatment agreed for LLDCs has been implemented in a limited way and preferential margins have become eroded. Difficult rules on SPS and TBT, as well as subsidies and tariff escalation and peaks, also limited the potential for many LLDCs to take advantage of improved market access conditions after the Uruguay Round. While LLDCs as such are not recognised as a special group to benefit from a waiver of the MFN principle, LDCs do benefit from such a waiver. The WTO came up with a “Comprehensive and Integrated Plan of Action for LDCs”, which allowed Members to better open their export markets.²⁹ But yet again the results were mitigated. The US and EU did not agree on the requests to grant Developing Countries further market access for textiles and clothing exports. The following year, a ‘high level meeting’ on LDCs was held to help

²⁹ WTO (1997). *Comprehensive and Integrated WTO plan of action for the Least-Developed Countries*. Adopted on 13 December 1996 Preamble. WT/MIN (96)/14. WTO

implement the WTO Action Plan. The high income countries were invited to propose how they could help increase market access to LLDC products. The WTO continues to address many of the constraints facing Developing Country participation in the multilateral trading system in the Doha “Development” Round.

Doha Round

The Doha Round, launched in Qatar in November 2001, is the ninth and latest round of trade negotiations under the multilateral trading system auspices of the WTO. The aim of the Round was to bring about major reform in the international trading system through the introduction of lower trade barriers and revised trade rules, as well as give the Round a development dimension. The Doha Round or the Doha Development Agenda (DDA) can be considered as being the main negotiation focus of the WTO. The November 2001 declaration of the Fourth WTO Ministerial Conference in Doha “provides the mandate for negotiations on a range of subjects and other work including issues concerning the implementation of the present agreements”.³⁰ Trade negotiations take place in the Trade Negotiations Committee (TNC) and its subsidiary committees. Other work under the work programme take place in other WTO Councils and Committees. The Doha Declaration organises work on negotiations and other tasks and sets dates and deadlines by which various contentious issues are to be agreed or resolved. Originally, the Round was due to be concluded no later than 1 January 2005, a date which was rescheduled owing to failures experienced in the Cancun Ministerial meeting (2003). The date was rescheduled to no later than 31 December 2005 at the Hong Kong Ministerial Conference, but the negotiations are still on-going as major controversial issues have not been settled.

The mandate of the TNC was set by Ministers at Doha in November 2001 and subsequently set out in the Ministerial Declaration - Paragraphs 45 to 52, to supervise the overall conduct of the negotiations by establishing appropriate negotiating mechanisms and supervise the progress of the negotiations. Other specific functions are set out elsewhere in the Declaration, such as in relation to implementation issues.

The Trade Negotiations Committee adopted the following structures³¹:

- the agriculture and services negotiations to be pursued in Special Sessions of the Committee on Agriculture and the Council for Trade in Services, respectively;
- negotiations on market access for non-agricultural products to take place in a Negotiating Group on Market Access to be created;

³⁰ WTO (2015). How the Doha negotiations are organised.

³¹ WTO (2002). *Statement by the Chairman of the General Council*. TN/C/1/ 4 February

- negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits under the Agreement on Trade-Related Aspects of Intellectual Property Rights to take place in Special Sessions of the TRIPS Council, while other issues in paragraphs 18 and 19 of the Doha Ministerial Declaration relating to TRIPS will be addressed in regular meetings of the TRIPS Council on a priority basis;
- negotiations on WTO rules to take place in a Negotiating Group on Rules to be created;
- negotiations on improvements and clarifications to the Dispute Settlement Understanding to take place in Special Sessions of the Dispute Settlement Body;
- negotiations on trade and environment to take place in Special Sessions of the Committee on Trade and Environment; and
- negotiations on outstanding implementation issues to take place in the relevant bodies in accordance with the provisions of paragraph 12 of the Doha Ministerial Declaration and of the Decision on Implementation-Related Issues and Concerns of 14 November 2001.

The DDA's negotiating principles broadly explain the principles under which negotiations at the WTO are to be undertaken. The principles are set out in paragraphs 47 to 52 of the DDA and include: Single undertaking virtually every item of the negotiation is part of a whole and indivisible package and cannot be agreed separately. "Nothing is agreed until everything is agreed"; participation in the negotiations is open to all WTO Members and to observer governments negotiating or intending to negotiate membership, but decisions on the outcomes is only open to WTO Members; negotiations have to be transparent; the special and differential treatment principle for developing and least developed countries has to be fully taken into account; sustainable development aspects have to be identified, debated and reflected in the negotiations; and aspects that do not involve negotiations also have to be accorded a high priority in the negotiations.

The Hong Kong Ministerial meeting of 2005 yielded little progress, except for strong language relating to making the Doha Round a Development Round for developing countries. Least Developing Countries were also permitted a "free negotiation round" by opting out of any commitments in the Round. The Agenda was focused on Agricultural Market Access (AMA), Non-Agricultural Market Access (NAMA) and, to a lesser extent, trade in services. A new schedule was set for 2006. Difficulties remained in reaching a common agreement on the scope and modalities of AMA and NAMA, services were dropped altogether from the negotiations, as were other trade related areas. Subsequent re-scheduling took place and the last Ministerial Meeting was held in Bali in December 2013. Although minor in comparison to the ambitions set at the launch of the Doha Round, the most significant achievements to date relate to the progress made in setting

targets for trade related assistance (under the umbrella of Aid for Trade) and a breakthrough in the Agreement on Trade Facilitation.

The main issues at stake responsible for stalling the negotiations were calls for reforms in agricultural subsidies (particularly in the EU and the USA). There was also strong disagreement with regard to the flexibilities applied and the formulas used for cutting industrial tariffs. Divergences of opinion also existed with regard to the treatment of non-tariff barriers, rules of origin, and special and differential treatment. Calls had also been made to improve developing countries' access to global markets for their exports.

The July 2008 negotiations broke down after failing to reach an agreement on agricultural import rules. Negotiations, mostly between the USA, China, and India, were held at the end of 2008 in order to agree on negotiation modalities but there has been no significant progress in the negotiations since then. Finally, a breakthrough occurred in 2013 at the Bali Ministerial Meeting when Member States agreed in principle on an Agreement on Trade Facilitation. The Agreement on Trade Facilitation was subsequently adopted in November 2014.

Some of the difficulties in reaching consensus in the WTO relate to the growing number of parties undertaking negotiations and the desire and need for a single undertaking. The number of topics proposed for negotiations at the start of the Doha Round was also overwhelming for many countries. The balance of negotiation power has also shifted in favour of developing countries as a result of the growing importance of developing countries in international trade. Another factor which has complicated the Doha Round is the increased predominance of Regional Trade Agreements (RTAs) as a way to circumvent bottlenecks in the Doha Round.

Moreover, against the backdrop of the global economic and financial crisis of 2007/8, protectionist tendencies have emerged. The global economy has witnessed the imposition of new trade restrictions (tariff and non-tariff measures), particularly in G20 countries and the slow removal of existing restrictions.

As stated by UNCTAD, tensions between globalisation and national and regional development interests underlines the need to seek new ways of fostering multinational consensus on trade liberalisation and development.³²

³² UNCTAD (2012). *Evolution of the international trading system and its trends from a development perspective*. Note by the UNCTAD secretariat

Box 6. Malawi's Participation in the WTO

The Challenges faced by Malawi - Malawi is one of the poorest countries in the world, and has faced real challenges and constraints in fully engaging in multilateral negotiations. Malawi has made tremendous trade liberalisation efforts since the mid-1980s, although tariffs still remain an important trade policy tool. As Malawi engaged in multilateral negotiations, it faced a lack of a cohesive interaction among stakeholders, faced concerns about the large financial costs that come with compliance to WTO rules, and capacity constraints arising from trade negotiations. It also faced supply-side constraints, trade distorting subsidies and high tariffs by developed countries on products of interest to Malawi, all of which created an unfair playing field in trade.

Lack of trained manpower and a national quality infrastructure to address NTBs was also identified as a challenge hindering Malawi from venturing into exporting processed agricultural products. Trade ministries and institutions are also understaffed, while the staff in place has no understanding of WTO rules and issues. Malawi lacks representation in Geneva. This makes the ministry in charge of trade unable to obtain all the information on issues discussed in WTO meetings in Geneva. There is, therefore, need for financial and trade-related technical assistance from donors to meet the cost of compliance with WTO commitments.

Lessons learnt - Malawi's experience has highlighted that the cost of compliance with WTO commitments is certainly a major issue for Malawi and many LDCs. It calls for more financial resources to assist in the compliance process. There is also need to bring trade into the development agenda by linking sector-specific trade policies with development strategies and objectives, as well as linking donor assistance to trade. Developing countries should also reduce high tariffs and trade distorting subsidies. Other lessons learnt include the need to extend tariff bindings beyond agriculture to the manufacturing sector; increase programmes to enhance the participation of the private sector and other stakeholders so that supply-side constraints are addressed; and most importantly, to make sure they have representative missions at the WTO.

Source: Kandiero, T. (2005). Malawi in the Multilateral Trading System. *Gallagher, P., Low, P. & Stoler, A. L (eds) Managing the Challenges of WTO Participation*. Cambridge University Press

I.5. LLDC interest and coalitions in the Doha Round

Trade remains one of the key issues for LLDCs and international institutions are continuing their efforts to support trade facilitation and promotion. The WTO continues to play its leading role of promoting the integration of LLDCs into the multilateral trading system, strengthening the Aid for Trade programme, and facilitating trade negotiations. The WTO recognises the special position and constraints faced by LLDCs in trade facilitation and is working through complementary negotiating tracks that have three objectives: to expedite the movement, release and clearance of goods, including goods in transit, by clarifying and improving the GATT rules and the disciplines; to enhance technical assistance; and support for capacity building initiatives.

Trade agreements have emerged as the key driver of the global organisation of production, investment and trade, and of the commercial success and economic welfare of nations. Trade agreements now address a wide range of domestic regulatory measures, and all other measures affecting international commerce. This has made negotiating and managing a country's

participation in trade agreements an increasingly important but a challenging task for LLDCs who lack the capacity to effectively negotiate with their developed counterparts in the multilateral setting and their transit regimes at the regional level.

The most common and effective way of participating in the WTO is through coalition building. Coalition groups often speak with one voice using a single coordinator or negotiating team. LLDCs belong to a number of major coalition groups of the WTO³³. These include: ACP; African group; Asian developing members; APEC; ASEAN; EU; MERCOSUR; G-90; Least developed countries (LDCs); Small, vulnerable economies (SVEs) — agriculture; Small, vulnerable economies (SVEs) — non-agricultural market access (NAMA); Small, vulnerable economies (SVEs) — rules; Recently acceded members (RAMs); Low-income economies in transition; Cairns group; Tropical products group; G-10; G-20; G-33; Cotton-4; NAMA 11; ‘Paragraph 6’ countries; Friends of Ambition (NAMA); Friends of Anti-Dumping Negotiations (FANs); Friends of Fish (FoFs); ‘W52’ sponsors; and Joint proposal. There is also the Groups in the Agriculture negotiations; Groups in the non-agricultural market access; Groups in the rules negotiations; and Groups in the TRIPS negotiations.

There is no formal LLDC coalition group or negotiating team at the WTO, although LLDC representatives do meet in Geneva to discuss issues of common interest and occasionally prepare position papers. Some LLDCs are also not members of the WTO but belong to Regional Economic Commissions and/or negotiate bilaterally with other WTO members. LLDCs that are not members of the WTO include Afghanistan, Azerbaijan, Bhutan, Ethiopia, Kazakhstan and Uzbekistan, but all have observer status and are negotiating their accession to the WTO. The Asuncion platform, the Almaty Programme of Action and the Vienna Plan of Action for LLDCs are examples of common communications made by LLDCs. The LLDC group also appointed Paraguay as their coordinator in matters regarding multilateral negotiations.

Typology of Coalitions

In terms of composition, there are at least three kinds of groupings among countries in the WTO context: a) issue-based coalitions (e.g., the G-20, the G-33, the NAMA-11, the Core Group on Trade Facilitation); b) characteristic-based or like-minded groups, such as groups of countries with similar levels of development or weight in world trade (e.g., the Least Developed Countries (LDC) Group, the Small Vulnerable Economies (SVE) Group, and the G-77/China); and c) region-based groupings (e.g., the African Group, the African, Caribbean, and Pacific (ACP) Group, EU, the Group of Latin American countries (GRULAC)). Notably, there are also groupings that combine developed and developing countries (e.g., the Cairns Group and the Friends of Fish).

The purpose of coalitions varies considerably. Some groups focus on advocacy and lobbying on broad political priorities, whereas others are targeted negotiating groups keen to advance deal-

³³ WTO, 2015. Negotiation Groups in the WTO

making on specific topics. Some groups are single-issue coalitions whereas others advance a broad set of priorities and political perspectives. Yet, other groups form to respond to a specific threat and dissolve after a certain period.

Negotiating strategy also differs between coalitions. The strategy adopted may be defensive (e.g., blocking) or offensive, or it may focus on a single-issue versus a wide variety of cross-cutting issues. In some cases, the purpose of groupings is not to advance specific proposals in negotiations, but rather to defend broad principles or to provide a regional view on particular issues (such as the choice of Chairs for WTO negotiating groups). Historically, many developing country coalitions have pursued 'distributive' negotiating strategies (where the focus is getting or protecting the largest possible segment of a given 'pie' of potential trade benefits). More recently, there are cases where a more 'integrative' approach is being explored (e.g., where the focus is on collaborating to explore possibilities to increase the overall size of the pie and to find solutions that yield improvements for all parties).

The internal functioning and degree of formality of developing country groupings also varies and evolves over time. Some of this variation derives from differences in the purpose of particular coalitions. In some cases, coalitions have multiple purposes and so the internal mechanisms used are not always effectively aligned with the kinds of goals to which the coalition aspires, particularly where distinct purposes are not well clarified within the group. Variables include the selection process and criteria for leadership of coalitions, the approach to representation (e.g., whether representatives are given a negotiating mandate on behalf of the group), internal coordination mechanisms, and the degree of efficiency in nominating focal points and discerning issues of importance to the group. The degree of substantive support received by a coalition also differs. Support may be received from the WTO Secretariat, from one of the members of the coalitions, or it could come in the form of research support from non-government organisations (NGOs), research institutes, and academics, or through financing from an international donor.

Effectiveness of coalitions

Across coalitions, effectiveness in negotiations varies. This section reviews diverging perceptions on the effectiveness of three different kinds of coalitions: issue-based coalitions, characteristic-based groupings and regional groupings.

Issue-based coalitions

It is a widely held perception that issue-specific coalitions are most effective in the negotiations because shared interests make it easier to reach a consensus among members. Among the range of issue-based coalitions at the WTO, the Group of 20 and the Cairns group stand out as those most cited as examples of effective coalitions. In the following, we review the perceptions on the G20, the SVE group, being directly relevant to LLDCs, and the Cotton-4.

The G20, formed in 2003, comprises 23 developing countries pressing for ambitious reforms of agriculture by developed countries with some flexibility for developing countries. The G20 consolidated its influence by being specific about its position on negotiating issues (i.e., by regularly contributing specific negotiating proposals) and significantly recast the agenda of the WTO's agriculture negotiations. It is recognized as having access to considerable technical expertise and resources. The G20's negotiating capacity has been bolstered by strong and consistent Brazilian leadership, access to technical expertise (particularly through think-tanks and research institutes in Brazil), enjoy the perception that it has well researched positions, actively inputs into proposals from coalition members, and uses regular, well-organized meetings at the technical, head of delegation and political levels. A further bolstering force is that the G20 combines countries with considerable size and significant international trade presence. The engagement of Brazil and India, for instance, in the coalition has prompted efforts to merge their offensive and defensive agricultural interests into a joint negotiating position. The weight of the coalition's membership as a whole has helped them to counter pressures on Members to leave the group (ensuring, for instance, that the group did not collapse after the 2003 Cancun Ministerial Conference).

The G20 also includes countries with different levels of development, and some with apparently diverging or uncertain interests in the coalition's agenda. A positive view on this heterogeneity is that the group has worked to bridge differences among its members and thus to contribute to the search for an outcome to negotiations suitable for all members. But the G20 also faces challenges. The diversity among G20 members is perceived by some delegations and experts to undermine the potential for cohesion and ultimately for influence on negotiations. The G20's effectiveness as a strategic, lobbying coalition in the agenda-setting phase of negotiations may be difficult to match in the end-game of negotiations, when countries come closer to having to make binding, individual trade commitments. In this regard, skeptics argue that the group has faced difficulties in influencing the final details of negotiations because it has been unable to reach internal consensus on several key technical issues as negotiations have advanced. Skeptics also note that despite efforts at internal coordination within the G20, coherence and accountability have been harder to maintain as negotiations progress. Already, there has been evidence that the coalition has difficulty in ensuring that powerful leaders, like Brazil, represent G-20 interests in addition to their national interests in small group WTO negotiations.

The SVE group has three different sub-groups that examine different issues, one on agriculture (which consists of 14 members); one on non-agricultural market access (NAMA) (which consists of 19 members); and one on rules (which consists of 14 members). The SVE group designates focal point coordinators that follow particular issues and attend issue-specific meetings on their behalf. Like other groups, the SVE group faces challenges of coordination and leadership, including problems of uneven participation in group meetings and inadequate follow-up communication between focal point coordinators and other group members. Assessments of the SVE group's

effectiveness varies. The clearest sign of success is that the SVE group has successfully advocated for the inclusion of SVEs as a particular category of country across the Doha Round negotiating texts. However, the expansion of the “small islands developing states” (SIDS) group into a “small vulnerable economies” group highlights both the tensions and opportunities that can arise between the effort to achieve concrete interest-based outcomes and the pressures to expand the overall size of a coalition. On the one hand, some SVE negotiators believe that the expansion of the coalition to include non-island states undermined its effectiveness, most significantly because the meaning of “smallness” in the context of some non-island states is difficult to define and defend. While the decision to increase group membership can boost political weight within the context of WTO negotiations, where the membership is too extensive, it could be contested by other WTO Members.

Another risk is that the range of competing interests within the group may also make concessions from other WTO Members to the group more costly. On the other hand, several SVE delegates have a strong belief in their own success, particularly when measured in terms of WTO recognition of their special status without creating a sub-category and the incorporation of special provisions for SVEs in various draft modalities produced during the Doha negotiations. Interestingly, these successes could be attributed, at least partly, to the flexible definition of the group, which means that the actual composition of SVE group was different in various negotiating areas (as described above). As such, it can be argued that enlarging the group beyond small island states and making the composition flexible allowed the group to get the necessary recognition, as well as special and tailored treatment in different negotiating areas.

The success of the “Cotton-4”, comprised of four small West African countries (three of which are LLDCs – Burkina Faso, Chad and Mali), at propelling the issue of cotton subsidies onto the Doha Round agenda has been widely discussed in the literature (the following box summarizes the group’s lessons). The effort to combine individual efforts to advocate cutting cotton subsidies gave the issue greater political weight than if one country had worked alone. The initiative was also bolstered by successful outreach to garner support from ACP countries, African states and other LDCs, as well as from emerging states such as Argentina, Brazil and India and groups such as the G20, the G90 and the Cairns Group. The outcome led to provisions for adjustment assistance, and assurances of “more to come”, although the “Cotton-4” countries have not yet secured any concessions from the United States in terms of reduced subsidies. Indeed, skeptics argue that to date, despite the political attention to the issue, the Cotton 4 countries have not obtained any meaningful reduction in subsidies and there is no certainty about the level of ambition that will be achieved in the final Doha deal, if indeed there is one.

The experience of the Cotton-4 highlights the importance of exploring how success in agenda setting can be translated to success in securing actual commercial benefits from more powerful trading partners. It also raises the question of whether the successful aspects of the Cotton-4’s strategy are replicable by other countries. In addition, the case of the Cotton-4 also highlights that

for some of the poorest and weakest participants in the trading system, the importance among national political goals of achieving any influence on negotiations, even if only in the agenda-setting stage, may be very high. As noted in the Box below, the Cotton-4 used the Doha negotiations “to reinforce their diplomatic presence in Geneva, acquire new negotiation skills, strengthen their own coordination mechanism and shape their role and place within the negotiation process.” Indeed, in judging the effectiveness of developing country coalitions, while ultimate impact on negotiations is clearly the highest prize to be won, the mere fact of being noticed, heard and taken seriously in international negotiations may be a significant achievement for the foreign policy of some countries, with the positive ramifications experienced well beyond the trade arena.

Box 7. Cotton-4 Negotiation Success

The cotton case allowed the Cotton-4 (Benin, Burkina Faso, Chad and Mali) to learn from the system and the system to learn from the Cotton-4. Achievements have been fourfold:

- Cotton-4 countries have been able to draw attention to the issue of cotton and they have received aid money for their cotton sectors
- The Cotton-4 has become an established coalition within the Doha talks. The Cotton-4 representative has a seat in agriculture-related green room meetings (The Green Room refers to a process, rather than a specific location, in which heads of delegation seek consensus informally under the chairmanship of the Director-General) and the Cotton-4 coordinator is part of mini-ministerial meetings
- Doha Development Agenda (DDA) will not be concluded without any commitments being made on cotton. There have been so many statements on cotton by the Director General and other major players within the WTO system that the system itself would lose face without a result on cotton
- The Cotton-4 has shown that poor developing countries can use the system and have an impact on the multilateral trading system.

The Cotton-4 used these long years of negotiation to reinforce their diplomatic presence in Geneva, acquire new negotiation skills, strengthen their own coordination mechanism and shape their role and place within the negotiation process.

Today, there is no certainty that Doha will deliver for the African cotton producers nor if, or when the negotiations will conclude. However, two things are currently true. First, there will be no result of the Doha negotiations without addressing the cotton issue. Second, a meaningful and substantial result in the cotton negotiations is only possible if cotton subsidy reform is embedded in a larger effort to reform agriculture subsidies in rich countries.

Source: Fairtrade Campaign (2010)

Characteristic-based coalitions

Among characteristic-based coalitions, the effectiveness of very large and broad coalitions, such as the G77/China, the G90 and the G110, has been considered by observers highest in terms of political statements and advocacy on broad principles, such as the importance of addressing development priorities in the Doha Round. Indeed, when some groups based on common

characteristics take a strong position on more specific issues they can also be effective. For example, the LDC Group, which combines the WTO's 32 poorest members, is considered to have sufficiently specific goals and strong commonly agreed positions on certain key issues to effectively maintain pressure for attention to them (e.g., on S&D treatment, duty-free/quota-free market access, extension of the LDC deadline for implementation of the TRIPS Agreement). In this regard, the LDC group has been a useful vehicle for boosting the legitimacy of specific negotiating objectives such as attention to S&D treatment for LDCs. Within the LDC group, leadership is rotated among group members that are willing and able to provide the necessary human, administrative, and logistical resources in their missions in Geneva. Typically, the ambassador of the country acting as the coordinator, supported by their Geneva-based staff, takes responsibility for the organization of group meetings and the task of coordinating the overall actions and positions of members. The LDC group also selects "issue focal points" that are willing and able to take the lead on specific negotiating issues. The selected country then assigns one of their technical-level experts or delegates in the Geneva missions to take charge of suggesting, formulating and organizing group positions and actions. In recognition that members of the LDC group are at a considerable disadvantage in WTO negotiations, the LDC Group receives some direct support from the WTO Secretariat. This may include a WTO Secretariat staff member assisting the LDC Group during their meetings to take-minutes, or assisting them with analysing specific negotiating issues. The LDC group also draws on support from the secretariats of other groupings they belong to (such as the ACP group), organizational support from the WTO Secretariat, and technical advice and support from Geneva-based organizations such as UNCTAD, the International Centre for Trade and Sustainable Development (ICTSD), the South Centre, and the Swiss aid organization IDEAS Centre.

Regional Groupings and coalitions

The strengths of regional groups as a means of enhancing negotiation leverage derive from common histories, shared cultures and similar development levels. Weaknesses include divergent member interests, overlapping membership across sometimes competing coalitions, and limited experience in collective negotiations with external actors. Regional groupings often struggle, for instance, to find sufficient commonality of interest to present a compelling position to negotiating partners.

The Caribbean region is perceived by negotiators from a range of other small states as having relatively effective regional co-ordination for trade negotiations at the regional and multilateral level. The Caribbean Community (CARICOM) has been active in multilateral trade negotiations since 1997 through the CARICOM Regional Negotiating Machinery (CRNM). The CRNM has 12 members and negotiates across the range of WTO issue areas, with particular emphasis on the need for special and differential treatment for small economies in the agricultural negotiations. The CRNM provides policy advice and leads the region's negotiating team, which comprises CRNM technical officials, ambassadors and senior officials from member states, and independent

experts. The negotiating team is overseen by trade ministers from Member countries. Alongside praise for the Caribbean region's strategy for coordination, however, there have been concerns that technical oversight of the CRNM from trade ministers is relatively weak and that the accountability of the CRNM negotiating team to member states is constrained by the varying capacity of individual CRNM member states to provide input. In the absence of clear positions from member states, there have been concerns that the CRNM and wider negotiating team have had to rely on their own discretion and views in formulating negotiating positions and strategies. Furthermore, the EU and other external donors finance a significant portion of the core budget of the CRNM, reinforcing concerns about inadequate accountability to member states. The CRNM was restructured into the Office for Trade Negotiations (OTN) to address some of these concerns.

Two other important examples from the GATT/WTO history of small groups of countries cooperating to share the responsibility for coordinating and covering the various activities, and to speak with one voice whenever possible are the Nordic Group³⁴ and the ASEAN Group. Both groups had two motivations for cooperation: to raise the political profile and political strength of the participants (make them more interesting to deal with), and to economise on the use of the limited number of delegates resident in Geneva and available to work on GATT/WTO activities. The Nordic Group achieved considerable success in cooperation/coordination on both non-binding and binding issues³⁵, the high degree of homogeneity in economic outlook being an important factor behind this success.

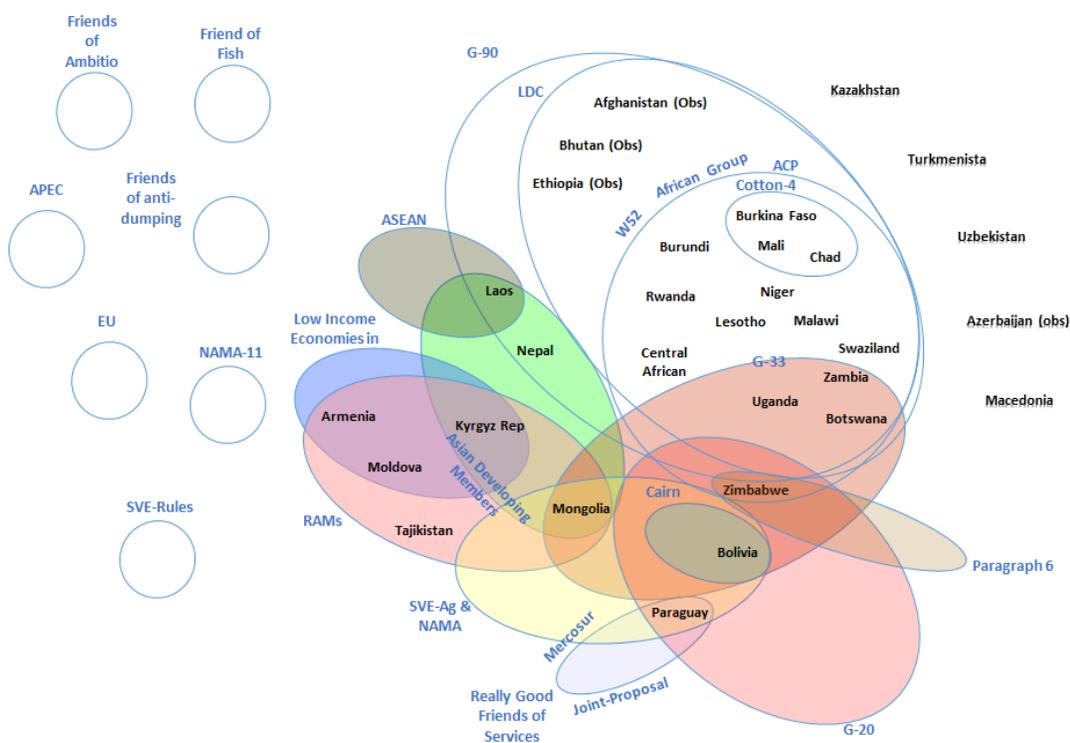
The ASEAN Group has achieved a good degree of cooperation/coordination on non-binding issues, but their success on binding issues has been reported to be rather modest. The principal factors that contributed to the success of the two groups included: the collective political need and will to cooperate based on national interests; parallel economic and trade interests; relatively open economies; geographic proximity; a catalyst event; historical political/cultural affinity; cultural values which contribute to less confrontational relations, especially values that stress tolerance; a tradition of cooperation in the region on a range of issues, based on like-mindedness and mutual trust; a cooperative institutional structure that links the capitals and encourages and supports cooperation on a range of issues that extends beyond trade-related policies (cooperation among the Nordics and within ASEAN is not limited to cooperation on GATT/WTO activities); and a shared perception that trade and trade policy are important for the pace of economic development, and that by acting collectively the members will have more political clout in the GATT/WTO. For both groups, negotiating rounds were a catalyst for cooperation. For the Nordic countries it was the Kennedy Round, and for ASEAN it was the Uruguay Round, plus the preparations for the 1996 Singapore Ministerial.

³⁴ The Nordic Group ceased to function when Finland and Sweden joined the EU.

³⁵ Cooperation on "non-binding" issues is easier since it involves "general positioning" on which the group can take a position without there being a risk that one or more members would eventually have to change national laws/practices in some trade-related area. "Potentially binding" issues are those, which could progress to the point that national laws/practices would have to be changed to bring them into line with GATT/WTO rules/procedures.

Twenty-six of the thirty-two LLDCs are members of the WTO, while the rest are observers and negotiating accession to the WTO. LLDCs have made declarations during the Doha Round, although no specific negotiating position other than broad statements has been communicated by an LLDC Group. The LLDCs have instead been splintered across a variety of negotiating groups, representing the variety of negotiating interests across the members. Some countries belong to no coalition group (such as Uzbekistan), while others (such as Zimbabwe) belong to seven coalition groups (Figure 11). Box 8 illustrates how the RTAs can be leveraged to advance positions in the WTO and prepare negotiation positions.

Figure 11. LLDC membership of Negotiation Structures in the WTO



Source: Author based on WTO website

Box 8. Regional Integration and MTNs - Case of Zambia

Challenges Faced: While participation in regional economic communities (RECs) could have hampered participation in the WTO, the experience of Zambia illustrated how it has aided. Zambia is a member of the COMESA and the SADC. As an LLDC Zambia has encountered great difficulties in its participation in international trade negotiations. Yet, in spite of serious capacity constraints, it has so far managed to remain a committed player due to the support it receives from its membership in regional communities and from donors, and that has enabled it to reform its policy-making process and institutions. The ministry in charge of trade faces serious human resource constraints, in particular at the technical level. Consultation with public and private-sector stakeholders used to be organized in an ad hoc fashion, but since June 2004 a National Working Group on Trade (NWGT) has been established to coordinate trade issues with the private sector. Regional organisation can support the preparatory work of their member states in the co-ordination of trade capacity building programmes, the organization of regional workshops, and the elaboration of technical documents among other initiatives. In **COMESA**, Ministerial conferences, and high-level meetings that bring together trade experts and stakeholders have been organized on trade and WTO issues with the purpose of providing a broad overview of the state of the WTO negotiations, and when appropriate, to formulate recommendations. In **SADC**, trade issues have traditionally received less attention than in COMESA, as SADC has a broader mandate, encompassing development and political dimensions. Zambia has received limited but useful support from both COMESA and SADC. One of the main benefits of COMESA and SADC WTO-related activities has been the engagement process they have generated. Regional and national officials alike recognize that bringing national officers, diplomats and ministers together to provide general input on WTO matters has contributed to raise the political profile of WTO, and more generally trade matters.

Lessons Learnt: The main lesson learnt is that the regional dimension has not frustrated efforts to prepare for and conduct WTO negotiations. Both regions have been conducting numerous useful activities to support and coordinate the participation of their member states: studies, reports, meetings, training and so forth. However, at least in the case of Zambia, the type of support provided often remains too general, with not enough specific technical relevance for member countries' specific interests to significantly inform their domestic positions on WTO matters. Common strategic interests take form within WTO coalition groupings rather than heterogeneous regional groupings. Another important lesson is that regional groupings can play a much needed role in the WTO preparations through indirect means.

Source: Bilal, S. & Szepesi, S. (2005). How regional economic communities can facilitate participation in the WTO: the experience of Mauritius and Zambia. *Gallagher, P., Low, P. & Stoler, A. L (eds) Managing the Challenges of WTO Participation*. Cambridge University Press

1.6. LLDC Positions in Multilateral Fora

In 2003, the International Ministerial Conference in Almaty, decided on the Almaty Declaration and **Almaty Programme of Action (APoA)**, a ten-year programme that had established seven areas as priority in developing infrastructure and maintenance. Those broad areas comprise rail and road transport, ports, inland waterways, pipelines, air transport and communications (UN-OHRLLS, 2007). This programme was designed for the benefit of LLDCs and transit countries and highlights the need for assistance from donors in order to be implemented. In 2005, Trade Ministers from LLDCs agreed to the 'Asuncion Platform', which is a common platform for the benefit of LLDCs in the WTO negotiations.

At the Ninth Annual Ministerial Meeting of LLDCs in 2010, the Ministers were unanimous in acknowledging that progress has been made by LLDCs following the implementation of the Almaty Programme of Action. There have been improvements in trade facilitation, transport infrastructure, ODA and debt relief allocation. LLDCs have also recorded better export

performance and economic growth. Thus, donor institutions and countries were encouraged to increase their support to LLDCs, so that the latter could be better equipped to deal with external shocks and impending challenges. The Ministers also suggested the importance of supporting the UN-OHRLLS to conduct studies for the benefit of LLDCs on topics including climate change, transport infrastructure and trade flows. Furthermore, there have been requests to donors for increased assistance and Aid for Trade to channel towards the achievements of the Millennium Development Goals.

The UN-OHRLLS recognised that through the Almaty Programme, the special needs of LLDCs have been better highlighted to the international community. This has brought increased support to LLDCs from development partners in areas such as infrastructure development and trade facilitation. However, LLDCs are still faced with some major challenges. One of the major hurdles faced by LLDCs in participating more actively in international trade is the high transport costs. Furthermore, neighbouring countries of LLDCs are often themselves poor and unstable, so they make little investments in regional infrastructure and trade facilitation. LLDCs are also unable to sustain positive economic growth due to lack of export diversification, low human resource development and limited movement up the value chain. The lack of financial resources is also a determining factor in LLDCs' inability to implement the Almaty Programme.

In March 2013, several stakeholders met in New York to review the Almaty Programme and to come up with a **New Development Agenda for LLDCs**. A critical new element was the focus on the development of productive capacities in LLDCs in line with their locational constraint, which was finally reflected in the Vienna Programme of Action. It was proposed that LLDCs should further promote the service industry, the private sector and regional cooperation. It was also agreed that the new measures should not only focus on increasing economic growth, but should also aim to boost socio-economic development through poverty reduction and employment creation. In the same vein, the following priorities for LLDC development were decided upon:

- Development of better infrastructure in sectors such as transport, energy and ICT
- Improvement in trade facilitation, legal and regulatory framework
- Giving a boost to trade through export diversification, capacity building and augmenting value added
- Encouraging structural change by promoting the private sector and trade and services, diversify the economy to increase resilience to external shocks
- Improvement of environmental sustainability to lessen vulnerability to climate change and other environmental issues
- Provision of international support through ODA, Aid for Trade and FDI
- Promoting better coordination among LLDCs through regional integration, International Think Tank on LLDCs, etc.

A comprehensive ten-year review Conference of the Almaty Programme of Action was held in November 2014 in Vienna. The Vienna Programme of Action for Landlocked Developing Countries for 2014-2014 was adopted in Vienna. The overarching goal of the new Programme of Action is to address the special development needs and challenges of landlocked developing countries arising from landlockedness, remoteness and geographical constraints in a more coherent

manner and thus contribute to an enhanced rate of sustainable and inclusive growth, which can contribute to the eradication of poverty by moving towards the goal of ending extreme poverty.

The **2014 Vienna Programme of Action** has focused its objectives in some similar areas as the 2003 Almaty Programme of Action, but also on new and emerging issues that were not covered in the APoA. The Vienna Programme of Action, will pay particular attention to the development and expansion of efficient transit systems and transport development, enhancement of competitiveness, expansion of trade, structural transformation, regional cooperation, and the promotion of inclusive economic growth and sustainable development to reduce poverty, build resilience, bridge economic and social gaps and ultimately help transform those countries into land-linked countries³⁶. International trade and trade facilitation is the third priority area of the Vienna Programme of Action.

Within this priority area, services are highlighted as important business enablers which can be cross cutting to enhance productivity and efficiency. Specific actions to be taken by LLDCs include (i) developing a national trade strategy based on comparative advantages and regional and global opportunities; (ii) integrating trade policies into national development strategies; (iii) promoting a better business environment so as to assist national firms to integrate into regional and global value chains; (iv) promoting policies to help national firms, especially small and medium-sized enterprises, to participate better in international trade; (v) leveraging bilateral and regional preferential trading arrangements with a view to broadening regional and global integration; and (vi) implementing policies and measures that will significantly increase economic and export diversification and value added. These actions would be highly relevant to improving the participation of LLDCs in the world trading system. The Vienna Programme of Action also calls on action from development partners in virtually all of the areas proposed above.

The actions proposed in the programme to be implemented by transit countries include: (i) promoting investment in LLDCs with the aim of strengthening their productive and trading capacity and supporting them in their participation in regional trade arrangements; (ii) improving market access for products originating from LLDCs, without arbitrary or unjustified non-tariff barriers that are not in conformity with the rules of the World Trade Organization; and (iii) carrying out joint studies with LLDCs on logistical competitiveness and logistical costs based on internationally recognized methodologies.

The Programme of Action also calls on cooperation amongst LLDCs, and in particular in supporting the International Think Tank for LLDCs. By 1 April 2015, only five countries out of 32 had ratified/accepted the “multilateral agreement on the establishment of an international think tank for LLDCs”.

³⁶ International think Tank for Land-Locked Developing Countries – <http://land-locked.org>

I.7. Regional Trade Agreements and the Multilateral Trade Negotiations

Free trade agreements (FTAs) play a major role and are prominent features in international trade. WTO Members are free to form and join any FTA, be it regional or bilateral (provided the formation is in accordance with the guiding rules or principles). Members participating in such arrangements must notify the WTO when new agreements are formed, as required under GATT 1994, Art. XXIV, and GATS Article V.

Regional Trade Agreements (RTAs) are reciprocal trade agreements between two or more partners. They include FTAs and Customs Unions (CU). RTAs can either be bilateral, plurilateral or multilateral. Preferential trade arrangements (PTAs) in the WTO are unilateral trade preferences. They include the GSP schemes, and other non-reciprocal preferential schemes granted a waiver by the General Council According to the WTO. RTAs have become increasingly prevalent since the early 1990s. As of June 15 2014, some 585 notifications of RTAs had been received by the GATT/WTO, and of these, 379 were in force. All RTAs notified to the WTO have the common aspect of being reciprocal trade agreements between two or more partners. The best known RTAs are: The European Union, The European Free Trade Association (EFTA), The North American Free Trade Agreement (NAFTA), The Southern Common Market (MERCOSUR), The Association of Southeast Asian Nations Free Trade Area (AFTA), and The Common Market of Eastern and Southern Africa (COMESA).

Under the Doha Declaration, WTO Members agreed to initiate negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to RTAs, taking into account developmental aspects. These negotiations take place within Negotiating Group Rules (NGR), which reports to the Trade Negotiations Committee (TNC).

While RTAs are important to the multilateral trading system, they cannot substitute it³⁷, as there are many issues which can only be tackled in an efficient manner in the multilateral context through the WTO. According to the Director General of the WTO, RTAs pre-date the multilateral system because they were the seeds which grew into the GATT, they co-exist with the multilateral system and can help build the edifice of global trade rules and liberalisation. Over 80% of notified RTAs are bilateral, but more and larger regional agreements are becoming common, especially among developing countries. Most RTAs today make deeper and more extensive commitments, and have moved beyond commitments on market access in goods. A major concern with some RTAs is that their geographical scopes tend to exclude the smallest and most vulnerable countries creating an advantage for those inside the grouping over those outside of it.

³⁷ WTO, 2014. Speech by the WTO Director-General Roberto Azevêdo on 25 September 2014 in closing the WTO Seminar on Cross-Cutting Issues in Regional Trade Agreements (RTAs)

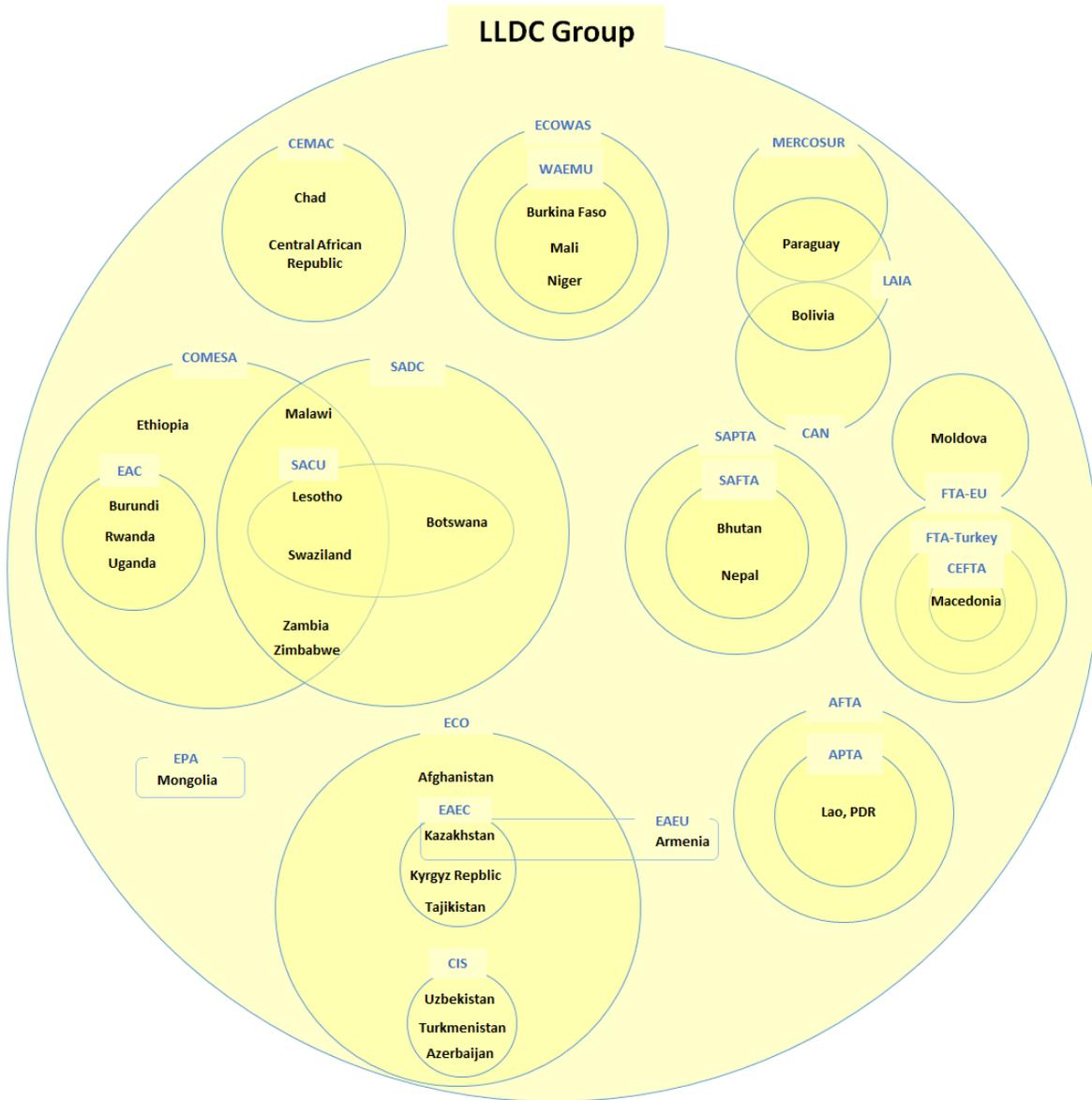
RTAs may be agreements between countries that do not necessarily belong to the same geographical region. The coverage of RTAs regarding preferential treatment varies from one RTA to another. Modern RTAs tend to go far beyond tariff-cutting exercises and provide for increasingly complex regulations governing intra-trade and often provide for regulatory framework. The most sophisticated RTAs go beyond traditional border measures and include regional rules on investment, competition, environment and labour.

RTAs include free trade agreements and customs unions, notified under Article XXIV: 7 of the GATT 1994, and paragraph 2 (c) of the Enabling Clause, and Economic Integration Agreements under Article V: 7 of the GATS. The increase in RTAs coupled with regional politics and the preferences shown for concluding bilateral trade agreements has produced the phenomenon of overlapping membership. According to the WTO, this is “because each RTA will tend to develop its own mini-trade regime” and different countries would wish to join the different RTAs within their geographical region.

Trade agreements have emerged as the key driver for the global organisation of production, investment and trade, and of the commercial success and economic welfare of nations. The success of multilateral agreements requires effective negotiations structures, effective negotiating strategies, and leverage coalition building to push through proposals. Trade agreements now address a wide range of measures, not only market access issues. This has made negotiating and managing a country’s participation in trade agreements an increasingly important but challenging task for LLDCs, which sometimes lack the capacity to prepare adequately for the negotiations and to prepare a coordinated position.

Moreover, regional integration initiatives of different LLDCs affects the policy space and the interests they have. Their main regional economic integration configurations are given in Figure 12 and show their overlapping and sometimes conflicting priorities.

Figure 12. LLDC Major Regional Integration Efforts



Source: Author

II. ACCESSION TO THE WTO AND LLDCs

II.1. Introduction

As of June 2015, six LLDCs were negotiating their accession to the WTO in order to benefit from the same advantages of the multilateral trading system as other LLDCs that are already Members of the Organization. These six countries are Afghanistan, Azerbaijan, Bhutan, Ethiopia, Kazakhstan and Uzbekistan. Kazakhstan was expected to obtain membership by mid-2015.

The accession process begins with the request for observer status, which is considered by the General Council. Approval of the request is not automatic and it may take several years in some cases if strong opposition is shown by some WTO Members given the consensus-based decision making practice of the WTO. When observership is granted, the observer Government acquires the right to attend all the formal meetings of all the committees of the WTO except the Committee on Budget, Finance and Administration. This is a valuable advantage since it allows observer governments to familiarise themselves with the functioning of the system, the substantive provisions of the legal instruments and all other conditions that are necessary to learn for their accession negotiations and future membership. The other advantage of the observer status is that it allows the governments concerned to benefit from technical assistance free of charge from the WTO, e.g. participation in training courses and the establishment of WTO Centres. Unlike in the GATT era, request for observer status entails the commitment of the requesting government that it will initiate accession negotiations within five years of becoming observer.³⁸

So far, eight LLDCs have acceded to the WTO and have been confronted with the challenge of implementing their WTO obligations and commitments:

- Armenia (2003),
- Kyrgyz Republic (1998),
- Lao P.D.R. (2013),
- Former Yugoslav Republic of Macedonia (2003)
- Moldova (2001),
- Mongolia (1997),
- Nepal (2004), and
- Tajikistan (2013).

The importance of acceding to the WTO is highlighted in this chapter, as well as the challenges of accession negotiations and implementation of the accession package commitments, policy

³⁸ Note that this requirement does not apply to the Holy See.

reforms and, in many cases, realization of competition. We also present in this chapter a short overview of the process and timelines for different LLDCs.

II.2. Benefits for LLDCs from accession to the WTO

LLDCs have applied for accession to the WTO precisely because of the benefits afforded by the Multilateral Trading System (MTS). There are numerous benefits arising from WTO membership, and we briefly present some of the main ones relevant to LLDCs currently outside of the WTO. It should be emphasised that there are also some inevitable trade-offs which need to be made in acceding to a rules based trading system, which will in one way or another limit the policy space available to policy makers, have some fiscal implications (including those generated by tariff revenue loss) and impose strict disciplines on the national trade regulations and legislations in place. Moreover, as with any agreement, implementing and monitoring its implementation requires additional human and financial resources, which are not always available to all countries.

A major benefit arising from accession is that it opens up guaranteed market access conditions on a non-discriminatory basis to 160 markets in the world³⁹. This in itself is a formidable incentive to join. For example, the Most Favoured Nation (MFN) provision under GATT 1994 Article I prevents WTO Members from discriminating between their WTO member trading partners. Therefore, if a special trade concession is given to one country then it must be applied to all the other countries as well so as to foster equality among all the nations. This is not the case for non-WTO LLDC members, which can be discriminated against⁴⁰.

Another major benefit derived from membership in the WTO relates to the predictable and transparent trading environment it attempts to achieve. Successive Rounds have not only been aimed at reducing tariffs, but also making the trade environment more transparent and predictable.

Accession to the WTO helps to push through trade reforms domestically and build the trade related institutional framework required for effective trade policy formulation and implementation. WTO accession does without doubt impose many challenges in terms of introducing new laws, setting up enquiry points and curbing non-WTO compliant trade practices.

The WTO is also one of the few multilateral organisations able to manage disputes arising between Member States and to have a relatively effective and enforceable dispute settlement mechanism, permitting countries to retaliate in the case that a respondent party fails to implement the recommendation arrived at from the Dispute Settlement Body (DSB).

³⁹ As of January 2015.

⁴⁰ See Chapter IV for analysis on permitted deviations from the MFN rule.

Another important advantage of joining the WTO as a developing country is obtaining access to technical assistance and training in trade related matters, as well as benefitting from aid for trade assistance.

There are conflicting studies with regard to the measurable economic benefits of joining the WTO. One study uses a gravity equation to estimate the trade augmenting impact arising from joining and found little evidence of this⁴¹, while another study finds the opposite effect for industrialised countries and minor effects for developing countries⁴².

Accession will inevitably impact countries differently depending on the level of implementation achieved, the quality and strength of the national institutions implementing and monitoring trade commitments, the strength of the private sector and macro-economic stability in particular, and a myriad of other factors such as whether investment was also sufficiently liberalized to benefit from FDI and technological spillovers (see Box 9).

Box 9. Case Study on Mongolia's post accession implementation difficulties after joining the WTO

Mongolia faced difficulty in complying with the WTO rules and commitments even after its accession to the WTO. This was mainly due to its strong degree of state control over the private sector, despite the country's transition from a planned economy to a market economy. Also, the country faced difficulties in appropriately regulating their trade regime, since the Government was not familiar with the WTO disciplines. Nearly one decade after acceding to the WTO, Mongolia still does not have a trade policy or trade law in place. The lack of knowledge on the principles of the WTO, as well as weak implementation and monitoring of the market access provisions, limit the benefit Mongolia could derive from its WTO membership. Domestic industries are confronted with WTO rules which are quite complex and are unable to comply with the WTO rules and at the same time take advantage of market access conditions in export markets. The weak implementation has led to a certain loss of confidence in the benefits of the WTO practices since no advancements had been made in provisions for landlocked countries in order to facilitate their transit of goods (up until the 2014 WTO Agreement on Trade Facilitation).

Another major issue which faced Mongolia is that it appeared to have negotiated its accession protocol without fully consulting the industries which would be most affected by the commitments taken. This was the case for the cashmere sector for example, whereby a binding and phasing out of export taxes was taken without due consultation of the industry.

There are currently many activities from such donors as the Asian Development Bank, the European Union and the European Bank for Reconstruction and Development, which precisely work on strengthening the trade policy framework and the private sector meso institutions.

Source: Author based on Baker, P. (2015). *Formulation Report for a Trade Related Assistance Project to Mongolia*. Europe Aid/127054/C/SER/multi, 11 March; Tsogtbaatar, D. (2005). *Mongolia's WTO Accession: expectations and realities of WTO Membership*. Gallagher, P., Low, P. & Stoler, A. L (eds) *Managing the Challenges of WTO Participation*. Cambridge University Press

⁴¹ See for example Rose, A. (2003). Which International Institutions Promote International Trade?. *CEPR Discussion Paper No. 3764*. CEPR

⁴² Subramanian, A. & Wei, S-J. (2003). The WTO Promote Trade, Strongly But Unevenly. *IMF Working Paper WP/03/185*, IMF

II.3. Process of accession

Accession to the WTO takes place through Article XII of the WTO Agreement and grants countries observation status to the WTO (see Box 10). A country wishing to join the WTO must apply formally through a submission letter, which is considered by the General Council of the WTO, which will in turn submit its findings to the Working Party, open to all WTO Members.

Box 10. Observership and Application for Membership to the WTO

Observer status for non-Member governments before application to accede

Non-WTO governments may become observers before they make an application to accede. However, there is no obligation to do so.

The procedures for observer status in the General Council and its subsidiary bodies make it clear that its purpose is “to allow a government to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO Agreement.” Under these procedures, communications from interested governments that have not yet applied to accede must “express an intent to initiate negotiations for accession to the WTO Agreement within a maximum period of five years, and to provide a description of their current economic and trade policies, as well as any intended future reforms of these policies”. The status is granted for five years and observer governments are expected to take a decision on accession within that period of time. It is however possible for an observer government that has not initiated a process of negotiation within that period to request an extension of its status as observer. Such a request is to be made in writing and be accompanied by a comprehensive, up-dated description of the requesting government’s “current economic and trade policies, as well as an indication of its future plans in relation to initiating accession negotiations”.

Observer status in the General Council carries with it certain rights and obligations. Observer governments have the right to observe formal meetings of the General Council and its subsidiary bodies, including accession Working Parties (with the exception of the Committee on Budget, Finance and Administration). Informal meetings, on the other hand, are held without observers in attendance. Observers have access to the main WTO document series and may also request technical assistance from the Secretariat in relation to the operation of the WTO system in general, as well as to negotiations on accession to the WTO Agreement.

Representatives of observer governments “may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to make proposals, unless a government is specifically invited to do so, nor to participate in decision-making”.

Observers have an obligation to make a financial contribution for the services provided to them of 0.015 percent of the total WTO budget, which is the same as the minimum annual contribution made by the smallest WTO Members. This amounted to about SFr 26,000 for the year 2006 (about US \$ 21,000).

Letter of application to the Director-General

Once a government has decided that it wishes to apply for membership to the WTO, it submits a communication to the Director-General of the WTO indicating its desire to accede to the WTO under Article XII. This communication takes the form of a letter from the government of the applicant.

There is no prescribed form but the communication needs to indicate that the applicant wishes to accede under Article XII of the Marrakesh Agreement establishing the WTO. The following text is necessary and sufficient.

Letter of application to accede

"I have the honour to inform you of the wish of [applicant A] to accede to the Agreement establishing the World Trade Organization and to the Multilateral Trade Agreements annexed thereto, in accordance with Article XII of the said Agreement."

Of course, applicants may wish to add further language. Some communications include a request that the application be circulated to all WTO Members and included for consideration on the agenda of an early future meeting of the WTO General Council.

The application is received by the Director-General and, in accordance with standard procedure, is circulated to all Members as the first in the series of formal documents relating to each accession.

Establishment of the Working Party and Terms of Reference

Once the General Council considers a request for accession and finds it acceptable, it establishes a Working Party to examine the application further. All Accession Working Parties have been given the same terms of reference.

Terms of Reference for Accession Working Parties

"to examine the application of the Government of [name of applicant] to accede to the World Trade Organization under Article XII and to submit to the General Council/Ministerial Conference recommendations which may include a draft Protocol of Accession."

After proposing the terms of reference, the Chairman then proceeds to invite the applicant to consult with the Accessions Division of the Secretariat as to the further procedures, in particular regarding the basic documentation to be prepared for the Working Party's consideration.

Source: www.wto.org/english/thewto_e/acc_e/cbt_course_e/c4s2p1_e.htm

Thereafter, a Memorandum on the Foreign Trade Regime (MFTR) must be submitted by the applicant government interested in joining the WTO and the latter's request should involve a detailed explanation of the trade regime in place. The MFTR will not only provide a description of the protective measures placed against imported goods, but also the restrictions placed on trade in services and investment, which typically include measures against foreign ownership or establishment in the financial sector, insurance, telecommunications and professional services and the regime in place.

The MFTR will also go into depth on a number of other areas of the economy which impact on international trade with that country, such as exchange rate management and controls, competition policy, intellectual property rights, investment policies, subsidies in agriculture and state owned enterprises (or market economy conditions).

The MFTR is circulated to all Members of the WTO who may make comment on it and raise questions to the applicant country. A working party (constituting of any of the interested WTO Members) will review and debate the MFTR and the possibility of a country's accession. This is

usually a lengthy process and one in which applicant countries typically have difficulty in answering. The questions usually concern differences which may exist in the legislation of the country and its compatibility with the WTO, or the procedures and steps required to undertake trade activities (e.g. licensing procedures, customs formalities, distribution structures, basis of SPS rules, etc.).

Once the WTO Members are satisfied and most of the questions have been answered, the accession country is requested to submit an initial offer which will at a minimum contain a detailed schedule of tariffs for goods, a commitment to bind its aggregate measures of support (AMS) to the agricultural sector and export subsidies, and prepare a schedule of concessions of market access for services.

Negotiations begin at a bilateral level between the country and WTO members which chose to do so. Aspects such as benefits that interested member countries could receive, the schedule of trade concessions or the commitment that the applicant country must accept is discussed among the interested working parties. The negotiations are not disclosed to the public and remain confidential until the accession package is agreed. Provided the Working Party is satisfied with the answers given, a report on accession which encompasses a brief statement about the negotiations, conditions to entry of the observer country, the Protocol of accession and the agreed schedules of commitments is prepared.

The accession package is sent for approval to the General Council who will in turn pass this over to the voting process at the Ministerial Conference. A majority of 2/3 votes is required in order to approve the entrance of a new Member to the WTO. However, all the decisions, including the accession of a new Member, are adopted following the consensus rule.

II.4. Timeframe for the LLDC observer countries

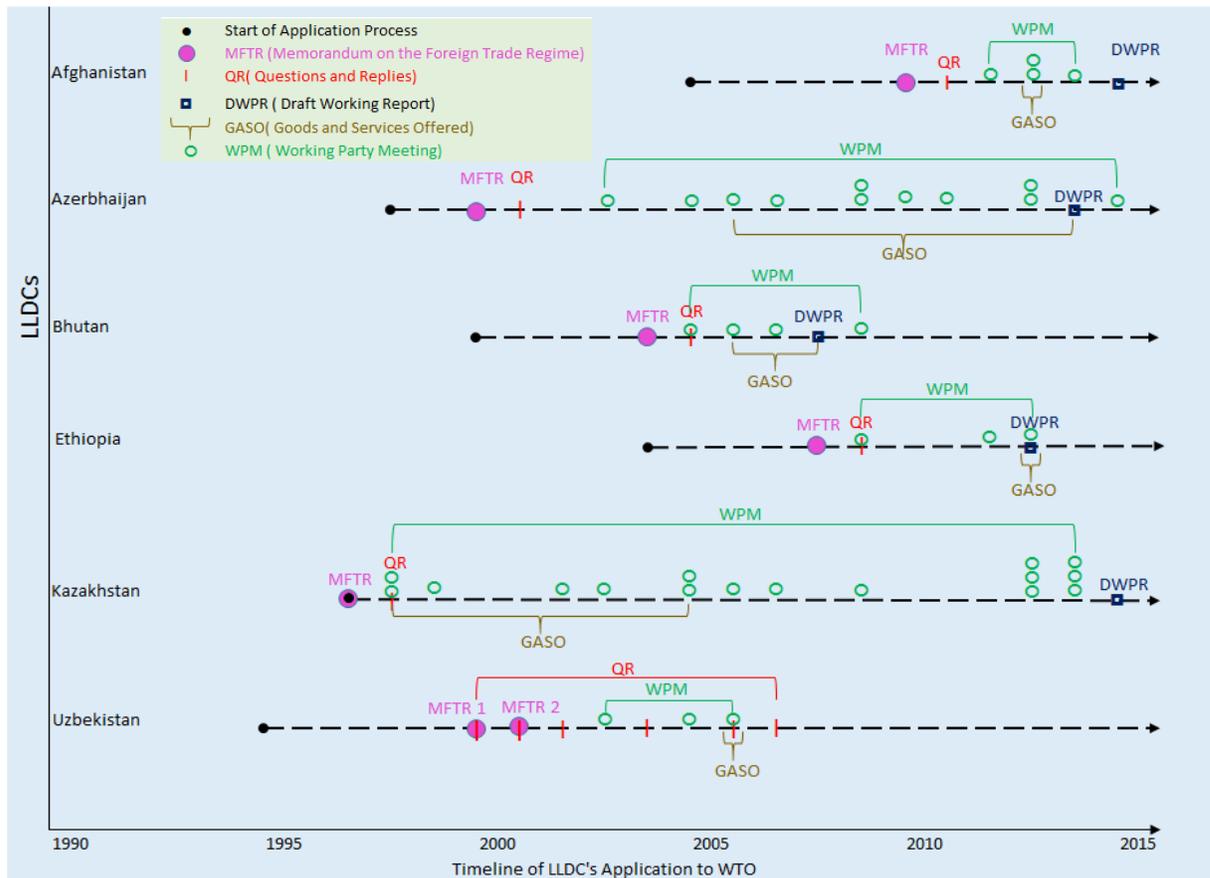
The timeline of the process is also inextricably linked to the level of political commitment, clarity and comprehensiveness of the MFTR, the length of the multilateral question/answers process and bilateral trade negotiations. The MFTR is often difficult to compile and countries are often opaque in the description of legislation and procedures, thereby increasing the number of questions raised.

The Protocol of Accession is specific to each applicant country⁴³ as it results from bilateral negotiations (sometimes complemented by plurilateral discussions) where applicant countries are expected to meet interested WTO Members' requests. **The results are then** "multilateralized",

⁴³ Michalopoulos, C. (2002). WTO Accession. Hoekman, B. Mattoo, A. & English, E. (eds) *Development, Trade and the WTO: A Handbook*, World Bank

i.e. all commitments are extended to all WTO Members on the basis of the MFN treatment principle. During those market access negotiations, some acceding countries attempt to maintain high levels of protection (or seen in another way, low levels of ambition) to maintain policy space, to give them more negotiation capital in future MTN Rounds and simply because domestic vested interests are strong. Other countries take a more ambitious stance, and offer quite liberal market openings, with full tariff bindings at low MFN rates. The fact that countries open up their markets leaves little to negotiate and speeds up the process. There is no “better” negotiation tactic and the accession package should ultimately fit a country’s domestic reform agenda and development objectives.

Figure 13. WTO Accession process for LLDCs



Source: Author based on www.wto.org

Many acceding countries, who joined the WTO after its establishment in 1995, have complained that the price of membership has been burdened with stringent conditions — at times exceeding those of existing members at similar levels of development. Indeed, it is a documented fact that accession commitments in terms of market access for goods and services sought from newly acceding countries – most of which are developing countries – have been increasing with time.

A factor that led to an increased price of membership in terms of higher level of market access commitments for both goods and services is that Uruguay Round commitments were negotiated on a reciprocal basis, i.e. commitments were exchanged between parties (even though there was no mathematical balance of the resulting commitments). In addition, the Uruguay Round was multilateral by nature, which means that countries were not negotiating in an isolated manner and could build coalitions to pursue their offensive or defensive commercial interests. In contrast, accession negotiations are by definition one-way negotiations, in which the acceding country has to “pay” in terms of tariff bindings for goods, and specific commitments on trade in services. An acceding country cannot ask anything in return. Another factor is that with time membership grows, and the later a non-WTO country starts its accession negotiations, the greater the number of WTO Members it has to satisfy.

There is also a perception that the price of joining the WTO now includes commitments that go beyond the Uruguay Round agreements. **The inclusion of “new” issues in accession commitments** (so-called WTO-plus commitments) is the result of two considerations.

First, the growing number of transitional economy countries wishing to join the WTO has prompted WTO Members to ask guarantees that their economic system is compatible with the free market based WTO, which led to demands e.g. on privatisation (Bulgaria), trading rights (China and Vietnam), domestic price controls (Bulgaria), product-specific transitional safeguard provisions, which can be more easily triggered than regular WTO safeguards (China), and special anti-dumping rules applicable against countries which are not considered market economies (China and Vietnam), etc.

Second, some key players of the WTO find accession negotiations to be a good terrain to pursue systemic interests, and to introduce new issues and new types of obligations in the system, which they could not do otherwise, i.e. to set precedents for attaining what they could not obtain through negotiations with fellow WTO Members. Often, such demands have no relationship whatsoever with any commercial interest in the acceding countries’ markets.

Additionally, acceding developing countries, and in particular the least developed ones among them, struggle with the administrative and political burdens of the design and implementation of the trade and domestic economic reforms that membership entails. Most developing countries lack the capacity to engage effectively in accession negotiations due to the absence of trained personnel, not to mention institutional and financial constraints.⁴⁴ Given the wide scope of the WTO agreements, accession related domestic consultations need to be extended to unusually large number of domestic stakeholders, which is a challenge for many trade administrations of

⁴⁴ Evenett, Simon and Primo Braga, Carlos A.: *WTO Accession: Lessons from Experience*, paper presented at the joint BMZ BMWA GTZ World Bank Conference on “Accession to the WTO: Country Experiences and Technical Assistance” in Berlin on 17 to 19 November 2004

LLDCs, and for small developing countries in general. A further issue is the low level of understanding of the extremely complex legal rules and procedures of the various WTO agreements, which is a challenge for both the participation in the accession negotiations and the subsequent implementation of the accession package through the necessary changes to domestic laws and regulations.

II.5. Conclusions

The level of ambition has increased with regard to the accession process. Countries are asked consistently to make higher levels of tariff bindings, lower MFN rates, and greater number of sectors listed in the schedule of concessions for trade in services. While founding members of the WTO have an average of 44 service subsectors (under the CPC services classification used by the WTO) committed to under the GATS agreement, accession countries are asked to commit to around 104 subsectors on average⁴⁵. The difficulties facing countries to accede to the WTO was even highlighted in the Doha Round and demands for increasing flexibilities for accession countries should be considered⁴⁶.

Owing to the significant demands made on accession countries, it requires strategic preparations to navigate the dynamic process of the working party for accession and the bilateral negotiation process. Countries need to study their needs prior to preparing for accession and identify precisely how accession would impact on their economy. For accession to take place, a high degree of liberalisation will be necessary and difficult domestic reforms will be necessary. This should be in the long-term interest of the country, but there will inevitably be adjustment costs that need to be carefully planned for. Also, the potential impact of failing to implement the commitments agreed upon would have serious consequences not just in terms of retaliation by other members but also for investment and the business community. Countries need to prepare, study and consult extensively prior to embarking on the accession process. The objectives need to be clearly established and the ownership of the process by the private sector should be strong.

Sharing of experience from recently acceded Members would be valuable for other LLDCs undergoing the accession process. Their experiences with bilateral negotiations, in shaping the agenda, in preparing their offer and requests, and in implementing the accession package of commitments and the various WTO requirements, would be particularly valuable for other countries facing similar challenges and facing similar policy questions.

⁴⁵ Evenett, S. & Primo Braga, C. A. (2006) WTO Accession: Moving the Goalposts?. *Newfarmer, R. (ed) Trade, Doha and Development: A Window into the issues*, World Bank; Grynberg, R., Ognitvsev, V. & Razzaque, M. A. (2002). Paying the Price for Joining the WTO: A Comparative Assessment of Service Sector Commitments by WTO Members and Acceding Countries. *Economic Paper 54*, Commonwealth Secretariat

⁴⁶ WTO (2004). *Doha Work Programme*, WT/L/579, WTO Secretariat

LLDCs WTO Members should support the accession process of other LLDCs in the WTO General Council or Ministerial Meetings. With the knowledge of the difficulties faced by LLDCs, and the importance of policy reforms, as well as the need for a predictable trading environment, LLDCs WTO Member States are well placed to know the importance of accession. They should support the WTO Doha Work with regard to flexibilities for LDCs (and demand the same for LLDCs). The flexibilities may relate to transition periods for implementing the different commitments, as well as additional technical assistance provisions and commitments.

Accession countries should empower the focal ministry in charge for trade to prepare and lead the accession process. Focal points in line ministries or an inter-ministerial coordination committee should be set up for the process. Dialogue and formally institutionalising a decision making technical working group with public and private sector representatives is also essential.

Finally, countries must also make better use of the technical assistance available to them and use it in a way that can support the decision making process to become more inclusive and improve the analytical work required to assess the regulatory and economic impacts arising from accession. Countries must assess what is the feasible adjustment period to implement the accession package, and the resources which will be allocated to that task.

III. MULTILATERAL NEGOTIATIONS FOR TRADE IN GOODS

III.1. Introduction

This chapter will begin by introducing the key concepts relating to trade in goods, including the concept of non-discrimination, transparency and predictability. The negotiation of trade in goods has evolved in scope from less complex tariff liberalisation measures to more complex issues, such as non-tariff measures, customs procedures, subsidies, food security, rules of origin and more recently, environmental goods. We will explore the key provisions of the WTO, namely Most Favoured Nation (MFN), National treatment (NT), trade facilitation measures, and modalities for liberalising agricultural and non-agricultural products.

We will provide an overview of achievements reached in the latest MTN round of negotiations and will focus on key areas of interest to LLDCs in the field of goods, including the WTO Agreement on Trade Facilitation. Other areas of specific interest to LLDCs include disciplines on food stock piling and food safety interests, trade defence instruments, export taxes (for industrial promotion), Sanitary and phytosanitary standards (SPS) and Technical Barriers to Trade (TBT) agreements, trade in environmental goods, labour standards, and some technical areas like Rules of Origin, Rules on GATT Article XXIV (on RTAs), safeguards, and subsidies.

III.2. General Agreement on Trade and Tariffs (GATT 1994)

The types of policy instruments which are trade distorting are those which either involve a direct effect on quantities traded (called quantitative restrictions, such as quotas or voluntary export restraints), or those which have a direct effect on prices (such as customs duties or levies). A third type of instrument may indirectly affect price or quantities, or both (such as subsidies). The general principle of the GATT is to reduce trade distortions in the multilateral trading system, which are considered welfare reducing at a global scale.

The GATT agreement attempts to impose disciplines on the application of trade policy instruments in a manner which does not restrict their usage or the policy discretion of countries, but rather ensures transparency and uniformity in their application. Countries are however, through accession to the WTO, or through various trade rounds, called upon to make binding commitments that do limit their policy space. Such binding commitments are taken in the context of the multilateral trade negotiation rounds and must be implemented.

The GATT 1994 was negotiated during the Uruguay Round and is comprised of four parts. Part I covers Article I and II and established the concept of non-discrimination and the schedule of concessions. Part II covers Articles III through XXIII and established the concept of National Treatment, and, broadly, the use of non-tariff measures and trade remedies. Part III covers Articles XXIV through XXXV and deals primarily with free trade areas and customs unions, renegotiation of tariffs, accession, amendments, withdrawal, non-application, which have been since overridden by other Agreements negotiated after the Uruguay Round. Part IV covers Article XXXVI to XXXVIII related to the treatment of developing countries and special provisions aimed at advancement in those countries. It also incorporates joint actions to collaborate for the advancement of Developing Countries.

A key principle in the GATT is the **Most Favoured Nation** (MFN) principle, which states that like products made in one country should be treated no less favourably than a product made in a third country⁴⁷. A general rule of “likeness” of products is that products are classified under the same tariff heading using the harmonised system (HS) of trade classification. However, it is not the only element to be taken into account when determining the likeness between two products: end use; physical characteristics and consumer preferences shall be taken into account during the likeness evaluation. A primary focus of Articles I and II of the GATT are tariffs, which may be denominated in terms of *ad valorem*, specific or a combination of these. Product classification must follow the Harmonised system of products classification. In the schedules of concessions (Article II), the Member State is allowed to bind its tariffs at the rate it wishes, which effectively sets the maximum ceiling of tariffs, called a bound tariff rate. Accession requires countries to bind all their tariffs and this is achieved through negotiation with other WTO Member States. Figure 14 shows the average bound rates in the WTO. As can be observed, the highest bound rates are applied by Developing Countries. Higher bound rates provide more policy space.

The bound tariffs can only be raised through renegotiation with other WTO Members under GATT Article XXVIII, an often costly and difficult affair.

Table 3. Summary of key GATT Articles

Article	Summary
I	General MFN requirements.
II	Tariff commitments (schedules of bindings).
III	National treatment.
V	Freedom of transit of goods.
VI	Allows antidumping and countervailing duties. Superseded by the GATT 1994 Agreement on Antidumping, and the Agreement on Subsidies and Countervailing Measures.

⁴⁷ GATT 1994, Art I.

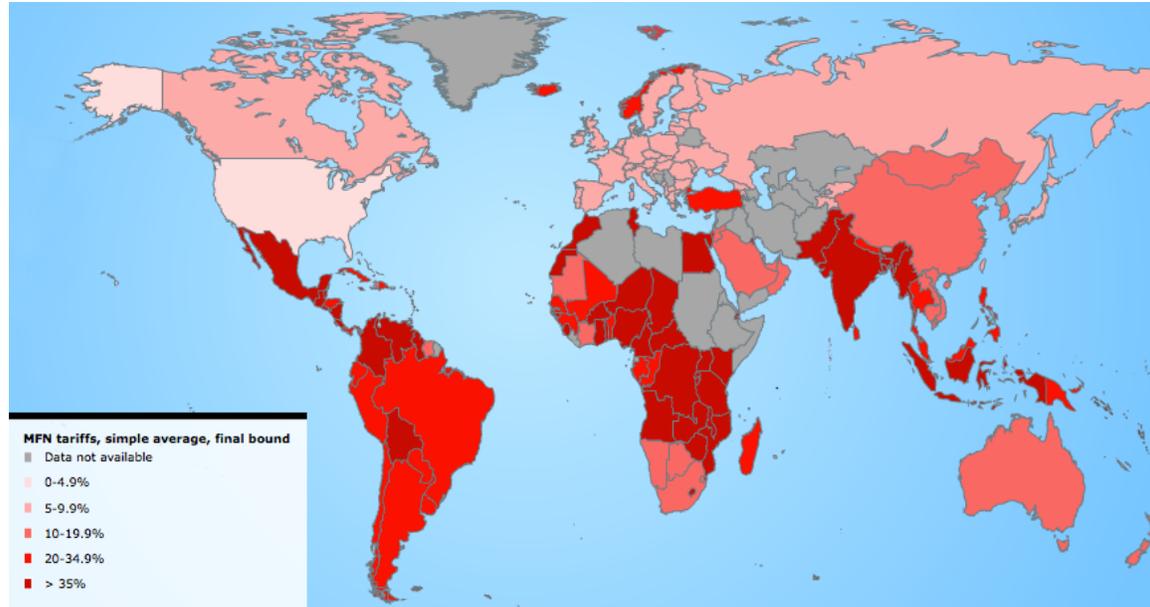
Article	Summary
VII	Requires that valuation of goods for customs purposes be based on actual value. Superseded by the GATT 1994 Agreement on the Implementation of Article VII.
VIII	Requires that fees connected with import/export formalities reflect annual costs of services rendered.
IX	Reaffirms MFN for labelling requirements and calls for cooperation to prevent abuse of trade names
X	Obligation to publish trade laws and regulations; complemented by the WTO's Trade Policy Review Mechanism and numerous notification requirements in specific WTO agreements.
XI	Requires elimination of quantitative restrictions.
XII	Permits trade restrictions if necessary to safeguard the balance of payments.
XIII	Requires that quotas, if used, to be administered in a non-discriminatory manner.
XV	Contracting parties to refrain from using foreign exchange arrangements to frustrate the intent of provisions of the GATT.
XVI	Notification and consultation requirements for subsidies. Superseded by the WTO Agreement on Subsidies and Countervailing Measures.
XVII	Requires that state trading enterprises comply with MFN.
XVIII	Allows developing countries to restrict trade to promote infant industries and to protect the balance-of-payments.
XIX	Allows for emergency action to restrict imports of particular products if these cause serious injury to the domestic industry. Complemented by the WTO Agreement on Safeguards.
XX	General exceptions provision- allows trade restrictions if necessary to attain noneconomic objectives (health, safety).
XXI	Allows trade to be restricted if necessary for national security reasons.
XXII	Requires consultations between parties involved in trade disputes.
XXIII	GATT's main dispute settlement provision, providing for violation and non-violation complaints. Complemented by the WTO Understanding and the Role and Procedures Governing the Settlement of Disputes (DSU).
XXIV	Sets out the conditions under which the formation of free trade areas or customs unions is permitted.
XXVII	Allows for renegotiation of tariff concessions.
XXVII bis	Calls for periodic MTNs to reduce tariffs.
XXXIII	Allows for accession. Superseded by Art. XII WTO.
Part IV	Calls for more favourable and differential treatment of developing countries.

Source: Except from Hoekman, B. & Kostecki, M. (2009). The Political Economy of the World Trading System. Oxford University press

The principle of **National Treatment** (NT) requires that foreign products are treated no less favourably than like domestic products. Such a treatment also extends to internal tax (Article III:2) and non-tax policies (Art III:4). The significance of Article III has increased with the fall in tariff rates. The dispute settlement mechanism can be invoked in the event that a country is considered to have contravened the provision on National Treatment, although it must be proven that differences in treatment apply to "like" products and that the given regulation has been applied in a discriminatory manner.

Other key articles and provisions in the GATT, which are considered significant to LLDCs are covered separately in the remaining sections of this chapter.

Figure 14. Average MFN unweighted Bound Rates



Source: WTO (2014)

III.3. Non-Agricultural Market Access Negotiations

III.3.1 Background to NAMA

Line by line tariff negotiations used to take place in the early phases of multilateral negotiations to reduce the bound rates of Members of the GATT. A harmonised approach to tariff liberalisation is now sought in order to facilitate the negotiations. Such an approach uses a linear or non-linear cut across all tariff lines.

III.3.2. NAMA Negotiations

NAMA (Non-Agricultural Market Access) refers to the set of market access measures conditions (tariff and non-tariff barriers) pertaining to industrial and primary products not covered in the WTO Agreement in Agriculture (Fergusson, 2011)⁴⁸. We focus on non-tariff barriers in this section. At the 2001 Doha Ministerial Conference, WTO members decided “to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff

⁴⁸ Fergusson, I. (2011). *The World Trade Organization: The Non- Agricultural Market Access (NAMA) Negotiations*. Congressional Research Service.

escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries"⁴⁹, in response to non-tariffs measures and tariffs which were restricting trade. The Negotiating Group on Market Access (NGMA) was created in order to monitor the negotiations on NAMA. During the NAMA negotiations, much emphasis was given on 3 main aspects: (i) The modality (tariff reduction formula), (ii) Sectorial initiatives and (iii) Providing flexibilities for developing countries⁵⁰.

However, the most debated issue was on the technique used for cutting tariffs. There were many countries that came forward with different formulas that could be used to calculate the amount of tariff that should be levied. The technical work for the preparation of the 'modality' included details on tariff formulas, flexibilities, and special and differential treatment. Based on those proposals, the chairman of NAMA proposed a "Draft element of Modality" before the Cancun Ministerial Conference of 2003⁵¹, also called the "Girard Text". The elements of the proposal contained a Swiss formula⁵² for the calculation of tariff reductions along with the sectoral initiative aimed at eliminating tariffs in seven sectors⁵³ and it also provided special and differentiated treatment for developing countries⁵⁴. The Swiss formula proposed was a variation of the original Swiss formula initially proposed in the Tokyo Round⁵⁵ (the latter used many coefficients). However, since the recommended modality in the Girard Text only took into account one coefficient, it was strongly opposed by developing and developed countries.

The Cancun Ministerial Conference ended in a deadlock as well since it came forward with a proposal (called the "Derbez text" which included the Swiss formula of sectoral) initiative. However, there was no sectoral identifications. A number of developing countries did not agree to the "Derbez Text" since they wanted the sectoral tariff to be voluntary, the tariff cuts and bindings to be more flexible and even asked for the dissolution of the Swiss type formula (Kemal and others, 2005). Hence, no decision regarding the modality on tariff reduction formula was finalised during this conference. It is only in the July package of 2004 that countries agreed to apply the non-linear formula (Swiss type formula on a line by line basis with seven sectors as proposed by Girard in 2003) since it takes "[...] fully into account the special needs and interests

⁴⁹ WTO (2001). *Doha Ministerial Declaration* . Para 16

⁵⁰ Kang, M. (2015). *Formulas for Industrial Tariff Reduction and Policy Implications*. UNESCAP.

⁵¹ WTO (2013), TN/MA/W/35, TN/MA/W/35/Rev.1

⁵² Swiss formula has the property of reducing higher tariffs below the ceiling tariff parameter of 16%. $t_1 = (a \cdot t_0) / (a + t_0)$, where t_0 is the base tariff and a is the maximum coefficient (Martin and Ivanic, 2005)

⁵³ Electronics and electrical goods; fish and fish products; footwear; leather goods; motor vehicle parts and components; stones, gems and precious metals; and textiles and clothing (TN/MA/W/35)

⁵⁴ Kemal, A., Din, M. and Ghani, E. (2005). *Non-agricultural Market Access: A South Asian Perspective*. Islamabad: Pakistan Institute of Development Economics.

⁵⁵ GATT,(1976). Tariff Cutting Formula, Tokyo Round, MTN/TAR/W/37, Tokyo WTO

of developing and least-developed country participants, including less than full reciprocity in reduction commitments”⁵⁶.

Following the failure of the Cancun Conference, the Hong Kong Ministerial Conference was held in 2005 and the latter was a build-up of the mandate stated in the Doha Ministerial Declaration (paragraph 16) and the 2004 NAMA Framework. Hence, a modality using the Swiss formula approach was proposed, but with coefficients which aimed at the elimination or reduction of tariffs (including tariff peaks or tariff escalation) on export products which were of interest to the developing countries⁵⁷. Since the declaration did not indicate the level or amount of coefficients that should be included, the developing and developed countries had conflicting views on whether to apply the Swiss formula with two coefficients or the ABI formula^{58 59}. Through the Declaration, the developing countries were given special and differential treatment whereby they were able to reciprocate less than the full reductions in commitments⁶⁰. Moreover, the participation of member countries in sectoral initiatives was now made “non-mandatory”⁶¹. All members adopted the Declaration put forward in Hong Kong since it made use of an asymmetric approach which gave more flexibilities to the developing countries than to the developed ones.

Post adoption of the Hong Kong Declaration in 2005, negotiations concerning the different options for the calculation of modalities continued and in 2008, the Chairman released a 4th revision of draft modalities. However, none of the elements present in the document were adopted. In the report made by the WTO Director General in 2014, he declared that “the 2008 texts will need some adjustment, notwithstanding my belief that much of what is in those texts, including the overall architecture and goals contained in those texts, can still be maintained”⁶².

Table 4 shows the different proposals and flexibilities at different stages of the NAMA negotiations.

⁵⁶ WTO (2003b). *Preparation for the Fifth Session of the Ministerial Conference, Draft Cancun Ministerial Text*. Second Revision, JOB(03)/150/Rev.2. WTO

⁵⁷ WTO (2005). *Doha Work Program, Hong Kong Ministerial Declaration*, WT/MIN(05)/DEC, Hong Kong WTO, para 14

⁵⁸ The Swiss formula using 2 coefficients was proposed by Norway and the US while the ABI formula which was proposed by Argentina, Brazil and India included the usage of multiple tariff averages, credit system and flexibility for the developing countries. (Kemal and others, 2005)

⁵⁹ WTO E-learning (2012). *Market Access for goods and Non -Agricultural Market Access (NAMA) Negotiations*. WTO

⁶⁰ WTO (2005). *Doha Work Program, Hong Kong Ministerial Declaration*, WT/MIN(05)/DEC, Hong Kong WTO, para 15

⁶¹ WTO (2005). *Doha Work Program, Hong Kong Ministerial Declaration*, WT/MIN(05)/DEC, Hong Kong WTO, para 16

⁶² WTO, General Council.(2014).Report by the Chairman of the Reade Negotiations Committee. Available at: https://www.wto.org/english/news_e/news14_e/gc_25jul14_e.htm

Table 4. Proposals under NAMA at different stages of the Doha Round

Negotiating Mandate	Year	Chairmen and their main texts	Tariff Reduction Formula Proposed	Flexibilities on Modalities proposed
Doha Ministerial Declaration (WT/MIN(01)/DEC/1, paras. 16, 31(iii) & 50)	2001		No tariff reduction method was proposed	Special and differential treatment should be accorded to developing countries and LDCs, including through the application of the principle of less than full reciprocity in reduction commitments.
	2002	Ambassador Pierre Louis Girard (Switzerland) (TN/MA/W/35 + Rev.1) paragraph 7	$t_1 = \frac{B \times t_a \times t_o}{B \times t_a + t_o}$ where, t_1 = final bound tariff rate, in ad valorem terms t_o = base rate t_a =average of base rates B = coefficients to be decided by negotiating partners	Developing countries should be given flexibility by a) being able to keep tariff lines unbound or b) not applying formula cuts, to up to 5 per cent of tariff lines provided that no more than 1% (1% of tariff lines providing they do not exceed %of the Member's imports, calculated for the reference period) could be taken in one HS Chapter.
Cancun Ministerial Text (JOB(03)/150/Rev.2, Annex B) (NOT ADOPTED)	2003	Draft Elements of Modalities for Negotiations on Non-Agricultural Products (TN/MA/W/35 + Rev.1)	Suspension of the tariff reduction formula due to protestation from the developing countries	
The "2004 NAMA Framework" (WT/L/579, Annex B)	2004	Ambassador Stefan Johannesson (Iceland) (paragraph 4 of the NAMA framework)	Continued with the Swiss formula applied on a line-by-line basis which shall take fully into account the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments	Developing countries should be given the following flexibility: a) applying less than formula cuts to up to 10% of the tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10% of the total value of a Member's imports; or, b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 5% of tariff lines provided they do not exceed 5% of the total value of a Member's imports. This flexibility could not be used to exclude entire HS Chapters
Hong Kong Ministerial Declaration (WT/MIN(05)/DEC, paras. 13-24)	2005	Chair's report (WT/MIN(05)/D EC, Annex B)		Reaffirmed the importance of special and differential treatment. The Chairman noted in his report that a central issue concerning the paragraph 8 flexibilities had been the question of linkage or non-linkage between these flexibilities and the coefficient in the formula.
		Ambassador Don Stephenson (Canada)	Adopted a Swiss formula which did not indicate the level or amount of coefficients that should be used. Hence, countries could use either i) the	(a) Developing Members subject to the formula shall be given the following flexibility: (i) applying less than formula cuts for up to 10% of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff

Negotiating Mandate	Year	Chairmen and their main texts	Tariff Reduction Formula Proposed	Flexibilities on Modalities proposed
			Swiss formula with two coefficients or (ii) the ABI formula (proposed by Argentina, Brazil and India) which was a variation of the Girard's formula	lines do not exceed 10% of the total value of a Member's non-agricultural imports; or (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 5% cent of non-agricultural national tariff lines provided they do not exceed 5% of the total value of a Member's non-agricultural imports . This flexibility shall not be used to exclude entire HS Chapters (anti-concentration clause). (b) Where developing Members subject to the formula do not use the flexibility in sub paragraph (a) above, they shall apply a coefficient of [b + 3] in the formula.
	2006	Towards NAMA Modalities (TN/MA/W/80)		
	2007	Introduction to the Draft NAMA Modalities (July 2007 Text, JOB(07)/126)	The proposed modality was a Swiss formula with 2 coefficients which would be applied on a line-to-line basis. $t_1 = \frac{(a \text{ or } b) \times t_0}{(a \text{ or } b) + t_0}$ Where, t ₁ = Final bound rate of duty t ₀ = Base rate of duty a=[8-9]=coefficient for developed members b=[19-23]= coefficient for developing members	(a) Developing Members subject to the formula shall be given the following flexibility: (i) applying less than formula cuts for up to 10% per cent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10% per cent of the total value of a Member's non-agricultural imports; or (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 5 % per cent of non-agricultural national tariff lines provided they do not exceed 5% per cent of the total value of a Member's non-agricultural imports . This flexibility shall not be used to exclude entire HS Chapters (anti-concentration clause). (b) Where developing Members subject to the formula do not use the flexibility in sub paragraph (a) above, they shall apply a coefficient of [b + 3] in the formula.
	2008	Draft Modalities for Non-Agricultural Market Access (February 2008 Text, TN/MA/W/103)		The same structure as paragraph 7 of the July 2007 text was proposed. In the May and July texts 2008, the flexibilities were linked to the choice of the coefficients by developing Members subject to the formula.
		Draft Modalities for Non-Agricultural Market Access –		

Negotiating Mandate	Year	Chairmen and their main texts	Tariff Reduction Formula Proposed	Flexibilities on Modalities proposed
		Second Revision (May 2008 Text, TN/MA/W/103/Rev.1)		
		Draft Modalities for Non-Agricultural Market Access – Third Revision (July 2008 Text, TN/MA/W/103/Rev.2)	The proposed modality was a Swiss formula with 4 coefficients which would be applied on a line-to-line basis $t_1 = \frac{[a \text{ or } (x \text{ or } y \text{ or } z)]X \text{ to}}{[a \text{ or } (x \text{ or } y \text{ or } z) + t_0}$ where, t_1 = Final bound rate of duty t_0 = Base of duty $a=8$ =Coefficients for developed members $x=20$, $y=22$, $z=25$ to be determined as provided in the paragraph 7= coefficients for developing members	
		Ambassador Luzius Wasescha (Switzerland)		
		Draft Modalities for Non-Agricultural Market Access – Fourth Revision (December 2008 Text, TN/MA/W/103/Rev.3)	Same as the formula proposed in the August draft	Developing Members subject to the formula shall be granted the flexibility to choose to apply the coefficient and flexibilities in paragraph 7(a) or 7(b) or 7(c): (a) Coefficient x (i.e. 20) in the formula and either: (i) less than formula cuts for up to 14 per cent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 16 per cent of the total value of a Member's non-agricultural imports; or (ii) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to 6.5 per cent of non-agricultural national tariff lines provided they do not exceed 7.5 per cent of the total value of a Member's non-agricultural imports(*). (b) Coefficient y (i.e. 22) in the formula and either: (i) less than formula cuts for up to 10 per cent of non-agricultural national tariff lines provided that the cuts are no less than half the formula cuts and that these tariff lines do not exceed 10 per cent of the total value of a Member's non-agricultural imports; or, (ii) keeping as an exception, tariff lines unbound, or not applying formula cuts for up to 5 per cent of non-agricultural national tariff lines provided they do

Negotiating Mandate	Year	Chairmen and their main texts	Tariff Reduction Formula Proposed	Flexibilities on Modalities proposed
				<p>not exceed 5 per cent of the total value of a Member's non-agricultural imports.</p> <p>(c) Coefficient z (i.e. 25) in the formula without recourse to flexibilities(*).</p> <p>(See also the anti-concentration clause section below)</p> <p>(*) It is understood that the options in sub-paragraph 7(a)(ii) and 7(b)(ii) (keeping tariff lines unbound or not applying formula cuts) may be combined but cannot together exceed the applicable percent of tariff lines and total value of a Member's non-agricultural imports.</p>

Source: WTO E-learning (2012). *Market Access for goods and Non -Agricultural Market Access (NAMA) Negotiations*. WTO

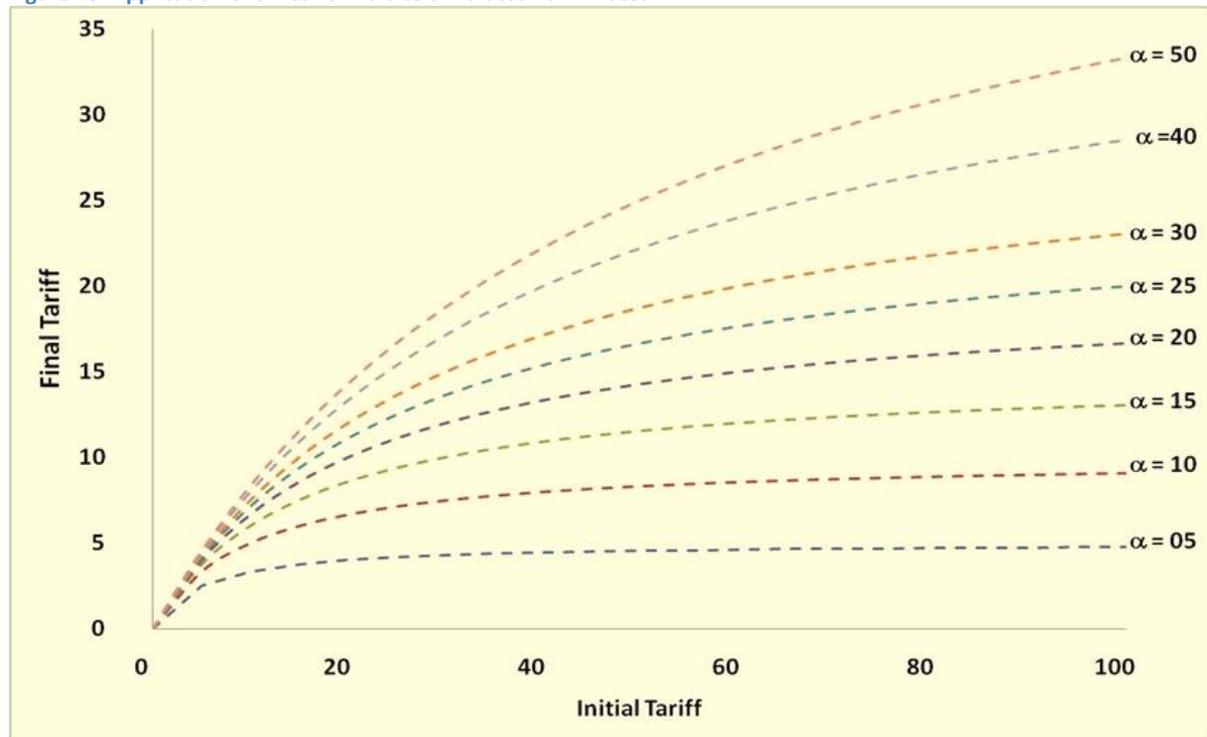
III.3.3. Negotiations on Tariffs and LLDCs

The proposal for the Swiss formula at various coefficients is illustrated in Figure 15. As mentioned before, it cuts hardest those tariffs which are highest, while having a harmonisation effect across all tariff ranges. While harmonisation of cross-country tariffs has an economic rationale for multilateral trade, it does reduce the policy space of countries to raise tariffs if needed.

Few LLDCs joined NAMA coalitions for the negotiations. Mongolia, for example, did join the NAMA coalition, since it had already significantly lowered its tariffs such that a high coefficient would have only a marginal impact on the final bound rates. Other countries would have had much more to lose and therefore did not support the NAMA proposals.

While LLDCs do have a number of sensitive products, the flexibilities currently proposed in the negotiations would support some policy space while harmonising some of the most troublesome tariffs, which impeded domestic competitiveness and the ability to adopt new technology and machinery. It would be valuable for LLDCs to undertake the necessary analysis to evaluate which additional flexibilities they require and whether an all LLDCs position could be taken for NAMA.

Figure 15. Application of Swiss Formula to Simulated Tariff Rates



Source: Author

III.4. Special and Differential Treatment

III.4.1. Background to Special and Differential Treatment

Special and Differential Treatment has been an important component of the multilateral trading system since the 1960s. Special and Differential Treatment dates back to the Uruguay Round. However, as early as 1947-48, at the Havana conference, developing countries (mainly Latin America at the time) challenged the assumptions that trade liberalisation on a MFN basis would automatically lead to their economic growth and development. Their arguments were based on the specific structural features of those developing countries and distortions arising from historical trading relationships that they claimed constrained their trade prospects. It was thus **necessary to improve the terms of trade, reduce dependency on exports of primary commodities**, correct balance of payments volatility and disequilibria, industrialise through infant industry protection, export subsidies and other measures⁶³.

Special and Differential Treatment (SDT) is one of the main tools accorded to Least Developed and Developing Countries in order for them to transition to the WTO rules and to accord to developing

⁶³ Gibbs, M. (1998).

countries more favourable access to developed country markets⁶⁴. SDT is also extended to technical assistance and capacity building programmes for Developing Countries, such as Aid for Trade (A4T) and the Enhanced Integrated Framework (EIF) for Least Developed Countries.

The evolution of favourable treatments at the WTO has reached a position that, “*Special and Differential Treatment* can now be defined as the legal verification of the economic differences between developed-country and developing-country members”⁶⁵. SDT allows differentiated treatment for developing countries at the WTO by justifying deviation from the most-favoured-nation (MFN) obligation. Its adoption is based on the argument that equal treatment could secure equality only among identical parties and that it was only unequal treatment which could correct inequalities between different parties⁶⁶.

SDT is the product of the coordinated efforts of developing countries to correct the perceived inequalities in the multilateral trading system by introducing preferential treatment in their favour in international trade relations. Since its incorporation into the GATT, the concept has played a significant role in promoting the integration of developing countries into the multilateral trading system.

Almost three quarters of the WTO members are developing countries. This makes provisions of special treatment an important concept for their effective participation in the WTO as they may not benefit fully from applying MFN treatment. Developing countries are often faced with a limited number of export commodities, high trade costs, lack of access to a trade support infrastructure and often weak physical infrastructure, making it difficult to compete on an equal footing with developed countries. LLDCs are sometimes faced with high transportation costs, often low ranking business environments, dependence on transit countries, limited human and physical capacity, and narrow export baskets, causing them to demand special and differential treatment. There is, however, currently no special favourable regime in view of the landlocked nature of these WTO Member States.

In the Doha Ministerial Declaration, a review of SDT provisions was requested. In 2002, Developing Countries submitted a list of 88 specific suggestions for strengthening and making more effective SDT. These proposals came mainly from the African Group and the LDC Group. The proposals usually identify parts of an agreement and suggest new wording to introduce new special and differential treatment provisions for developing countries or to strengthen existing

⁶⁴ UNCTAD (2000). Training tools for multilateral trade negotiations: Special and Differential Treatment, UNCTAD/DITC/Misc.35

⁶⁵ Gibbs, M. (1998). *Background Paper on Special and Differential Treatment in the Context of Globalisation*. Note presented to the G15 Symposium on Special and Differential Treatment in the WTO Agreements, New Delhi, 10 December 1998. Geneva: UNCTAD

⁶⁶ Yanai, A. (2013). Rethinking Special and Differential Treatment in the WTO. Institute of Developing Economies (IDE-JETRO): *IDE Discussion Paper No. 435*. Japan: IDE-JETRO

ones. As of the Hong Kong Ministerial Conference, some 28 proposals found agreement amongst the members of the Trade and Development Committee. There remains disagreement on whether the proposals should be revisited to make them more enforceable.

III.4.2. Market Access Preferences

Preferential Treatment is given to developing countries in order to expand the opportunities to trade from developing countries to developed markets.⁶⁷ The Generalised System of Preferences (GSP) is an example of this treatment. The margins of preference granted to developing countries is often small, and the products on which preferences are accorded are sometimes of limited interest to developing countries, while those of greatest interest suffer from tariff escalation and peaks. There is disagreement amongst economists as to the value of preferences.

One study found that the average tariff accorded to developing countries through the GSP after the Uruguay Round was less than 2.5% on average over the MFN rate which is applied to all Member States of the WTO⁶⁸. Restrictive rules of origin and non-tariff barriers also make it difficult for developing countries to benefit from the preferences. Although the EU, for example, grants duty free and quota free access to LDCs, these are not allowed to cumulate with non-LDCs in sourcing inputs into their production process, thereby limiting the potential to reach the target value addition required to qualify for origin status⁶⁹.

Favourable treatment, granted under GSP, remains a best endeavour and unilateral granting of preferences which are revisited on a regular basis. GSP should also be applied in a non-discriminatory manner among developing countries. The treatment remains a non-binding requirement.

The Doha Round makes specific reference to SDT⁷⁰. The WTO established three stages to serve its mandate of strengthening the precision, effectiveness and operationalization of the negotiation on Special and Differential Treatment, such as (i) identifying mandatory and non-mandatory Special and Differential Treatment provisions; (ii) examining the use of the provisions and their

⁶⁷ GATT, Art XXXVII, provides that: “the developed [Members] shall to the fullest extent possible [...] accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to [developing countries].”

⁶⁸ Amjadi, A., Reinke, U., & Yeats, A. (1996). Did external barriers cause the marginalization of Sub-Saharan Africa in World Trade?. *Policy Research Working Paper No. 1586*. World Bank, quoted in Hoekman, B. (2006) More Favourable treatment of Developing Countries: Ways forward. *Newfarmer, R. (ed) Trade, Doha and Development: A Window into the issues*, World Bank

⁶⁹ A common requirement for origin status is that the value of non-originating materials on a finished product should not exceed a stipulated percentage or that the value addition in country of manufacture should not be below a prescribed percentage for goods. For example, some rules may specify that the Customs Value of non-originating materials in a finished product must not exceed 60% of ex-factory price or that the value addition should be at least 35% of ex-factory price (see for Example SADC (2003) *Rules of Origin Exporters Guide Manual*, November).

⁷⁰ WTO (2001). Doha Ministerial Declaration, Para 44

relevance; and (iii) incorporating the provisions into the WTO legal system. The first two stages have made substantive progress. However, the third stage is yet to be accomplished mainly due to the divergent position of developed and developing country members.

After some very difficult negotiations, agreement was reached at the Hong Kong Ministerial of 2005 to grant duty free and quota free (DFQF) access to LDCs for all their products by 2008⁷¹. It was agreed that this would be done on a lasting basis that ensures stability, security and predictability. It was also agreed that Members who find this difficult to do will in the first stage provide DFQF access for at least 97 per cent of their tariff lines, but that these countries would take progressive steps to achieve compliance with the obligation to provide DFQF to all products. Some countries already applied high degrees of DTQF access prior to the Hong Kong Ministerial Decision, such as the EU through the Everything But Arms initiative (EBA), the US through the African Growth Opportunity Act (AGOA) and Australia, Canada and Japan through their own GSP systems.

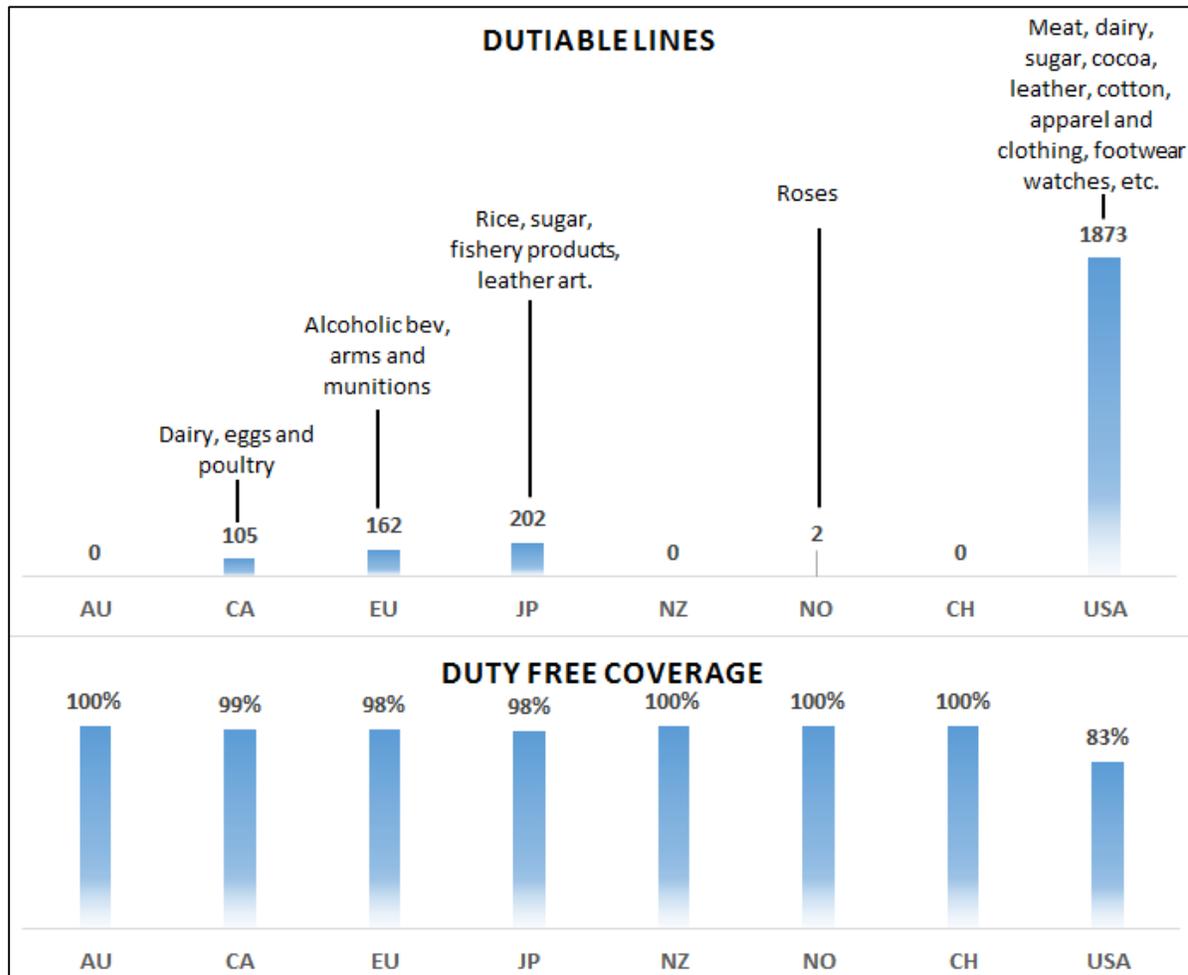
To date, most developed countries provide full or nearly full DFQF to the LDCs (see Box 11)⁷². At the Bali Ministerial Declaration, it was formally declared that “Developed-country Members that do not yet provide duty-free and quota-free market access for at least 97% of products originating from LDCs, defined at the tariff line level, shall seek to improve their existing duty-free and quota-free coverage for such products, so as to provide increasingly greater market access to LDCs prior to the next Ministerial Conference”⁷³.

⁷¹ WTO (2005). Hong Kong Ministerial Declaration. Annex F. Art 36

⁷² Odari, H. (2013). Duty-free and quota-free market access for LDCs. State of play and Bali outcome. Expert Group meeting for Least Developed Countries on the preparation for the World Trade Organization Ministerial Conference, Bali, Indonesia. UNCTAD. 11 November

⁷³ WTO (2013). Duty-free and quota-free (DFQF) market access for least-Developed countries. Draft Ministerial Declaration. WTO. WT/MIN(13)/W/16. 5 December

Box 11. Duty Free and Quota Free Access to LDCs in 2012



Source: Odari, H. (2013)

One major concern for many developing countries is that the actual rents available to developing countries arising from the margins of preferences actually do not accrue to the developing country exporter but instead to the developed country importers and distributors. The extent to which this occurs depends on a myriad of factors but a major factor is the market structure (and competition) of the distribution sectors in Developed Countries. A study found that only a third of rents for African exports of clothing to the US's GSP scheme - the African Growth and Opportunity Act (AGOA) accrued to African countries⁷⁴.

⁷⁴ Ozden, C. & Olarreaga, M. (2005). AGOA and Apparel: Who Captures the Tariff Rent in the Presence of Preferential Market Access? *The World Economy*, Vol. 28, Wiley Publishing, quoted in Brenton, P. and Ikezuki, T. (2006). The Value of Trade Preferences for Africa. *Newfarmer*, R. (ed) *Trade, Doha and Development: A Window into the issues*, World Bank

III.4.2. A note on preference erosions

Preferential margins refer to wedge between the MFN tariff and the tariff applied under a GSP scheme. Preferences are justified under the arguments that Developing Countries have smaller markets (and thus do not have scale economies), higher costs and lower levels of technology, all of which affects their productivity levels. Finally, they may also have limited access to physical and soft trade infrastructures⁷⁵.

With the signing of an increasing number of bilateral trade agreements due to the stalling of the Doha Round, the margins of preferences enjoyed by Developing Countries have decreased dramatically. The USA is aggressively seeking to negotiate the TPP, while the EU is negotiating bilateral agreements which are comprehensive in depth and scope with a number of ASEAN member countries. The EU also recently completed the negotiation of a series of regional agreements for Economic Partnership with African, Caribbean and Pacific (ACP) countries. This has had the effect of reducing the value of preferences to LLDCs which are not members of those agreements and which previously enjoyed zero tariffs on some lines that were subject to a positive MFN tariff. This reduced the value of the GSP system in general.

III.4.3. Technical Assistance

Openness to trade remains a key driver for economic success and improved living standards. Its benefits include the enhancement of the productive capacity of the economy, contributions to poverty reduction, facilitation of technology transfer and know-how, availability of products at lower costs, specialisation, and a reduction in the grip of local and regional monopolies. Nevertheless, trade openness may have consequences for the adjustment of resources and factors of production. Moreover, in order to take advantage of regional or global markets, institutions, an enabling trade environment, an effective regulatory system and adequate physical and soft infrastructure are necessary. For this reason, technical and financial resources are complementary to the process of economic integration in the world economy. In short, opening developing countries' economies to international trade is not enough and help is required in building trade related capacity in various areas.

To answer these issues the Aid for Trade (or A4T) initiative was launched in 2005 following the Hong Kong WTO Ministerial Conference to more closely and coherently bring together the aid and trade policies communities. A4T is an integral part of regular Official Development Assistance (ODA). Its objective is to help developing countries overcome the supply-side and trade related infrastructure constraints that inhibit their ability to benefit from market access opportunities.

⁷⁵ Brenton, P. and Ikezuki, T. (2006). The Value of Trade Preferences for Africa. *Newfarmer, R. (ed) Trade, Doha and Development: A Window into the issues*, World Bank

The categories of A4T include:

1. Trade policy and regulations: trade policy and planning, trade facilitation, regional trade agreements, multilateral trade negotiations, multi-sector wholesale/retail trade and trade promotion. This category also includes training of trade officials.
2. Trade Development: includes all support aimed at stimulating trade by domestic firms and encourages investment in trade-oriented industries, such as trade-related business development and activities aimed at improving the business climate, privatisation, assistance to banking and financial services, agricultures, forestry, fishing, industry, mineral resources and mining and tourism.
3. Trade-related infrastructure: economic infrastructure including transport and storage, communications, and energy generation and supply.
4. Building productive capacity: includes business development and activities aimed at improving the business climate, privatisation, assistance to banking and financial services, agriculture, forestry, fishing, industry, mineral resources, mining and tourism. This includes trade- and non-trade related capacity building.
5. Trade-related adjustment: covers contributions to the government budget to assist with the implementation of recipients' own trade reforms and adjustments to trade policy measures taken by or agreed with other countries and assistance to manage balance of payments shortfalls due to changes in the world trading environment.
6. Other trade-related needs: refers to programmes supporting trade in sectors not comprised in the other five categories, such as vocational training or public sector policy programmes.

Since 2006, the principles outlined in the Paris Declaration on Aid Effectiveness have laid the foundation for how aid for trade should be delivered⁷⁶. The main requirements include:

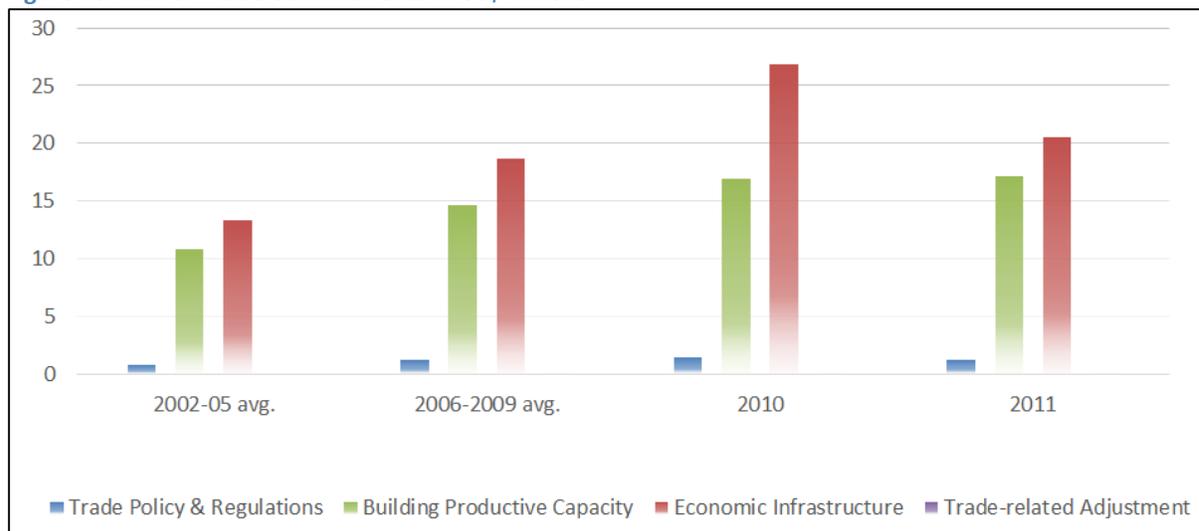
- Enhance transparency
- Avoid duplication of existing mechanisms and make them work better and more efficiently
- Strengthen ownership through broader consultations among public, private and civil society organisations
- Strengthen mutual accountability to build genuine partnerships and focus them on delivering results
- Better trade mainstreaming: integrating trade into national development or poverty reduction strategies

⁷⁶ OECD (2011) *Strengthening Accountability in Aid for Trade. The Development Dimension*. OECD Publishing

A4T commitments reached approximately US\$40 billion in 2011 (Figure 16). Aid to economic infrastructure and building productive capacity has dominated A4T flows, increasing steadily from the 2002-05 period until 2010. Although A4T declined in 2011, aid for Building Productive Capacity continued to rise. It should be noted that LDCs received most of their trade-related financing in ODA grants and loans.

While commitments were at US\$40 billion in 2011, A4T disbursements reached approximately US\$30 billion, up 40% since 2006 (Figure 17). This indicates that past commitments were being disbursed, albeit at a slower rate than the growth in commitments. Part of the mismatch between commitments and disbursements relates to the problems of absorption and articulation of needs from Developing Countries, as well as the stringent conditions applied to the disbursement of funds by some donors. Nevertheless, disbursements have been increasing annually at 10-11% since 2006, on average, so that a total of US\$ 164 billion was disbursed over the period from 2006 to 2011.

Figure 16. Aid for Trade Commitments in US\$ Billions

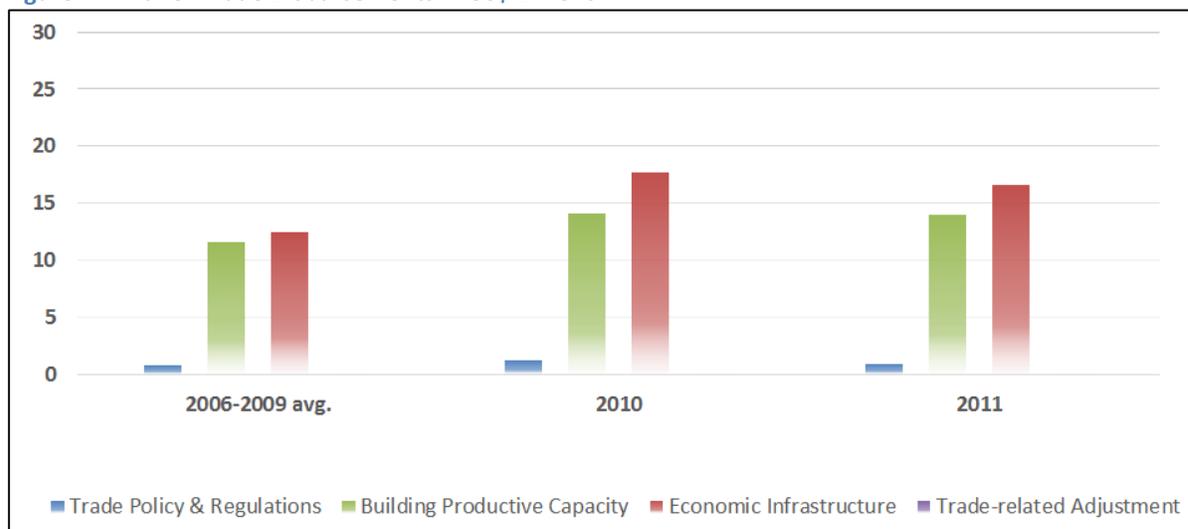


Source: OECD-DAC. Note: Expressed in constant US\$

Success has depended to a large extent on the country's ownership of the Aid for Trade activities and the degree of local participation in the definition of technical assistance activities. These were the findings of a review of the Aid for Trade initiatives, based on a case studies analysis⁷⁷. Figure 18 highlights the most important factors of success for Aid for Trade, which should be used as insights for future trade related capacity building activities for LLDCs.

⁷⁷ Source: OECD/WTO (2011). *Aid for Trade at a Glance 2011: Showing Results*, OECD Publishing

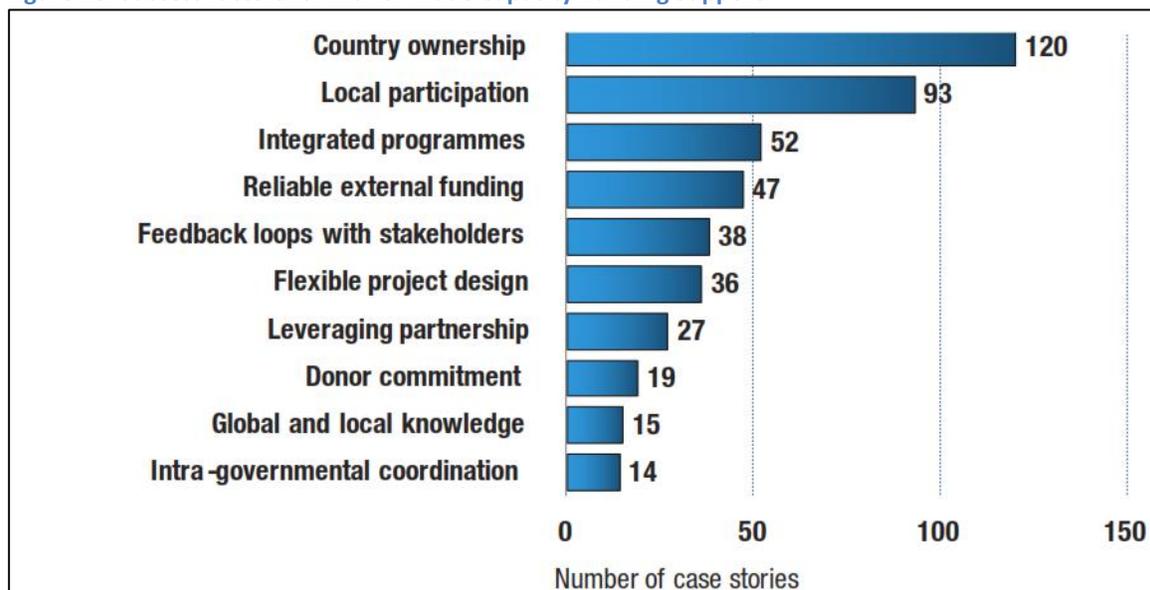
Figure 17. Aid for Trade Disbursements in US\$ Billions



Source: OECD-DAC. Note: Expressed in constant US\$

A4T is considered a success and commitments towards it remains strong from Developed Countries, and increasingly from Developing Countries. It should be noted that at the Ninth Ministerial Conference in December 2013, a Ministerial Decision on Aid for Trade was taken⁷⁸ to reaffirm WTO members' commitment to the Aid for Trade initiative, recognising the continuing need for Aid for Trade in developing countries, and in particular least-developed countries (LDCs). No declaration was made in favour of LLDCs specifically.

Figure 18. Success factors for Aid for Trade Capacity Building Support



Source: OECD/WTO (2011). *Aid for Trade at a Glance 2011: Showing Results*, OECD Publishing

⁷⁸ WTO (2013). *Ministerial Decision of 7 December 2013*. WTO WT/MIN(13)/34, WT/L/909

III.4.4. Trade Negotiations on SDT and LLDCs

There are some who argue that trade rules should be applied equally amongst all countries. This simplifies international trade rules but also makes sense if one considers that WTO disciplines benefit positive reforms in developing countries and ensure transparency and non-discrimination⁷⁹. The weak institutional framework, lack of financial resources and the technical knowledge on trade matters can nevertheless explain why developing countries have difficulty in implementing rules agreed by the WTO. If properly defined and applied in a pragmatic and targeted manner, SDT can accord developing countries improved development prospects to benefit from full participation in international trade.

All LLDCs, as their classification suggests, are developing countries with disadvantaged conditions which would legitimately confer higher degrees of preferences from Special and Differential Treatment provisions. However, there are currently no specific SDT provisions which refer to land-lockedness. LLDCs should consider demanding exemptions from certain rules, provided that such exemptions do not negatively affect other countries.

LLDCs should push through additional SDT provisions, akin to those enjoyed by all LDCs in order to benefit from longer time periods for implementing agreements, improved margins of preference and greater levels of technical assistance. Rules of origin restrictions should also be reconsidered and made less stringent.

LLDCs which are at a natural disadvantage over other countries in terms of export price due to high and unpredictable transport (and *de facto* insurance) costs, should demand higher preferential margins than those granted to other developing countries under the GSP schemes provided by developed countries. LLDCs should also seek to extend the duration of GSP schemes in order to reduce the uncertainty surrounding the duration of extension. Additional demands, such as the GSP+ scheme of the EU imposes additional difficulties for some LLDCs to achieve all the requirements, which include ratification of key ILO labour standards. Graduation from GSP is also a potential threat for some LLDCs which may pass the GDP per capita threshold, yet have a vulnerable and concentrated export basket, which would require benefiting from the opportunities from preferential margins to start exporting.

Finally, the LLDCs need to contribute effectively to the work programme of the WTO Committee on Trade and Development. Areas which should be focused on includes the coherence of delivery of A4T, resource mobilisation and efficiency, focusing A4T in mainstreaming trade in national development policies, engaging with the private sector, strengthening the systems used to report results, improving and strengthening South-South cooperation; and continue using A4T to foster

⁷⁹ Hoekman, B., Michalopoulos, C. & Winters, L. A. (2004). Special and differential treatment for Developing Countries. *The World Economy*. Vol. 27, Wiley Publishing

Regional Integration. The latter is particularly important for LLDCs who rely on their neighbours for transiting and for whom regional cooperation represents a critical link to accessing markets.

III.5. Rules of Origin

III.5.1. Background to Rules of Origin

Rules of Origin (ROO) are the criteria used to define the origin of a product. They are an essential part of trade rules when there are policies that discriminate against different exporting countries. The applications of different preferential arrangements (a free trade agreement for example) require that the goods produced are considered to be originating from a third party to the preferential access, otherwise third country exports could be guilty of circumventing the agreement and be labelled as originating from the third party. ROOs are important for free trade agreements, the application of antidumping (AD) measures or countervailing measures against a specific country (see Box 12 for the different kinds of ROOs).

Box 12. Types of Rules of Origin

Non-Preferential Rules of Origin apply to most-favoured-nation (MFN) trade as a means to determine the origin of goods within the framework of WTO trade policy instruments, such as anti-dumping proceedings, quantitative restrictions, Agreement on Textiles and Clothing and quotas that do not include preferential treatment.

Preferential rules of origin apply in the context of preferential tariff regimes such as the GSP, Free Trade Areas (FTAs), and regional integration. The purpose of preferential rules of origin is to confer preferential treatment such as preferential duties, special quotas, etc.

Source: UNCTAD (1999). *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators from Least Developed Countries*. UNCTAD

The criteria used to determine origin can vary from one country to another or from one product group to another. The most commonly used criteria is a Change in Tariff Heading (CTH), value added thresholds, or specific processing operations. The degree of transformation of imported materials into producing a final good varies for each type of criteria such that the ROO change according to the type of product in question. A certificate of origin (COO) is usually issued either by the Ministry in charge of trade matters of a country or the Customs Authority, to authenticate the origin of products.

The WTO Agreement on Rules of Origin aims to harmonise rules of origin, aside from those relating to the granting of tariff preferences (such as those applied to preferential of free trade agreements), and to ensure that such rules do not themselves create unnecessary obstacles to trade, either by creating unnecessary complexity to export or import formalities or increasing

documentation requirements for international trade⁸⁰. The agreement establishes a harmonised work programme, based upon a set of principles, including making the rules of origin objective, understandable and predictable. An annex to the agreement sets out a “common declaration” dealing with the operation of rules of origin on goods which qualify for preferential treatment.

In summary, the Agreement on Rules of Origin requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard.

The Agreement established a WTO Committee on Rules of Origin, which is open to all WTO Members and meets on an annual basis to review the implementation and operation of the Agreements⁸¹. The Agreement also established a World Customs Organisation (WCO) Technical Committee on Rules of Origin, which is open to all WTO Members and meets on an annual basis to carry out the harmonisation work and assess technical problems related to the application of rules of origin⁸².

III.5.2. Doha Round on Rules of Origin

During the Ninth Ministerial Conference of the Doha Round, held in December 2013 in Bali, a Ministerial Decision was taken to “[facilitate] market access for LDCs provided under non-reciprocal preferential trade arrangements for LDCs, Members should endeavour to develop or build on their individual rules of origin arrangements applicable to imports from LDCs in accordance with the following guidelines”⁸³. This endeavour related to the Hong Kong Ministerial Declaration (2005), which aimed to assist LDC integration in the Multilateral Trading System. Subsequent to this Ministerial Decision, the WTO Committee on ROO made its first review in October 2014. A recent study⁸⁴ outlines the low utilisation rates of preferences under unilateral preferential schemes by LDCs and reviews the challenges faced by LDCs in complying with existing rules of origin. The study’s main conclusion is that due to evolving global production networks in international trade, ROOs needs to take these factors into consideration. ROOs were updated in Canada in 2003 and the EU in 2011, and utilisation rates are above 90% in these countries. Japan and the USA still maintain ROOs from the 1970s. As a result, according to the study, and the

⁸⁰ GATT, Art 8.1(c)

⁸¹ GATT, Art 4.1

⁸² GATT Art 4.2 & Annex I

⁸³ WTO (2013). *Preferential Rules of Origin for Least-Developed Countries*. Ministerial Decision of 7 December 2013. WT/MIN(13)/42. WT/L/917. 11 December

⁸⁴ WTO (2014). Challenges faced by LDCs in complying with preferential rules of origin under unilateral preference schemes. Paper Presented by Uganda on Behalf of the LDC Group. Committee on Rules of Origin. G/RO/W/148. 28 October

utilisation rates are low (on average at 50% for non-AGOA exports to the US). Although the study remains a work in progress, an initial recommendation includes a revision of ad valorem criterions to take into account freight costs and insurance, particularly for LLDCs, and lower percentages for certain categories of products.

III.5.3. Trade Negotiations on Rules of Origin and LLDCs

Some LLDCs have difficulty in qualifying for origin status owing to the restrictive criteria applied and the complex reporting required in the rules of origin. For example, the fact that non-originating materials on a finished product should not exceed a stipulated percentage (often very high percentage) or that the value addition in country of manufacture should not be below a prescribed percentage for goods is difficult to attain for those countries with light manufacturing operations. In the field of textiles, the requirement by some regional agreements can also be very stringent, such as the proposed requirement under the Trans Pacific Partnership agreement to obtain the yarn from a member country party to the agreement to benefit from preferences in textiles and garments. Moreover, different standards are set by every customs union or country in the WTO, making it difficult to comply with and navigate the requirements in each case. The low utilisation rates of GSP are not only a symptom of dutiable lines still applied to Member's tariff schedule, but also to the difficulties in reaching origin status.

LLDCs have an interest in shaping the rules on ROOs so as to simplify them and reduce the dispersion of criteria, and incorporate special treatment relating to their special needs. They should take active part in the work relating to the harmonisation of the non-preferential and preferential rules of origin. In these negotiations, LLDCs should ensure that cumulation is permitted with transit countries and/or LLDCs, and take into consideration the weak value addition of LLDCs.

III.6. Sanitary and Phytosanitary Standards (SPS)

III.6.1. Background to Sanitary and Phytosanitary Standards

In order to protect human, animal and plant health, countries apply strict quarantine, health and safety controls to avoid contamination. The rules governing such protection are referred to as sanitary and phytosanitary measures (SPS). SPS conditions can include a myriad of measures such as prohibitions, restrictions, permission requirements for importing, certification, quarantine, testing, treatments, or maximum chemical residue levels. Usually SPS measures follow internationally agreed standards and rules. Under the WTO, deviation from internationally agreed rules are allowed provided that these are not applied discriminately but instead in a manner which

is objective, such that the measures do not constitute unnecessary disguised measures of protection.

All Members of the WTO should follow an international standard⁸⁵, which purports to give a specific guideline for trading partners on how they could reduce the SPS risks posed to humans, animal or plants. However, due to the differences in climate or the varying places of origins for the products, the same SPS measures cannot be applied across borders⁸⁶. Hence, the Member States are allowed to set their own health standard on the basis of scientific assessment risk⁸⁷ and it also encourages the usage of scientific assessment risk in other relevant products as well. Any measure adopted by a Member State should provide the same level of health protection as that received from an international standard without restricting trade⁸⁸.

It allows countries to set their own standards. But it also says that regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail⁸⁹.

During the Uruguay Round, WTO Member States negotiated disciplines in SPS measures applied by countries. Negotiators considered revising either GATT Art XX(b) or the WTO Agreement on Technical Barriers to Trade (TBT). However, consensus was reached to negotiate a new WTO Agreement on Sanitary and phytosanitary measures. The SPS Agreement contains SPS definitions, and the aims and objectives of the SPS Agreement which includes not applying SPS measures in an arbitrary and discriminatory manner (on an MFN and NT basis). The SPS Agreement also requires that “equivalence” is granted if an exporting country can demonstrate that it has implemented all the necessary measures to demonstrate an appropriate level of SPS protection, setting up of an enquiry point to make information available on national measures and notification procedures to inform the WTO Secretariat of measures taken. In addition, there are SDT principles applied to Developing Countries.

To be compatible with the WTO SPS Agreement, the application of standards must meet the following criteria: (i) be recognised by international standardisation bodies⁹⁰; (ii) be based on science, including scientific assessment of risk; (iii) apply a temporary precautionary principle in the absence of international standards or scientific evidence⁹¹. The concept of “equivalence” is a

⁸⁵ WTO Agreement on SPS, Art 3

⁸⁶ WTO, (1998). *Understanding the WTO Agreement on Sanitary and Phytosanitary Measures*. WTO

⁸⁷ WTO Agreement on SPS, Art 5

⁸⁸ WTO Agreement on SPS, Art 14

⁸⁹ WTO (1998), *ibid*.

⁹⁰ International Standards include those set by the Food and Agricultural Organization (FAO) and World Health Organization (WHO) Codex Alimentarius Commission, the World Organization for Animal Health (OIE), the International Plant Protection Convention (IPPC)

⁹¹ WTO Agreement on SPS, Art 7 Para 5

significant one in the WTO SPS Agreement⁹². The Agreement states that recognition of equivalence should be made if a country which does not follow the same procedures is still able to provide an equivalent level of protection. The Committee on Sanitary and Phytosanitary Measures states that

Equivalence can be accepted for a specific measure or measures related to a certain product or categories of products, or on a systems-wide basis. Members shall, when so requested, seek to accept the equivalence of a measure related to a certain product or category of products. An evaluation of the product-related infrastructure and programmes within which the measure is being applied may also be necessary⁹³/

Unfortunately, this is rarely done and developed countries in particular, usually require that their standards and processes are employed to confer the necessary license to export to their markets. If a country fails to comply with the requirements of the SPS Agreement, a plaintiff country may invoke the dispute settlement mechanism to resolve the dispute.

III.6.2. Special and Differential Treatment in the field of SPS

The SPS Agreement emphasises that the needs of developing countries, and in particular LDCs, must be taken into consideration. It provides that phased implementation of the measures and longer transition periods be granted to developing countries. They were also given a longer transition period of 2 years to implement the provisions of the WTO Agreement than developed countries. Technical assistance was also explicitly requested to be given to developing countries which so requested it, in order to implement the SPS Agreement, and importantly, an exporting country which must align its national quality infrastructure to the demands of an importing country has the right to request that the importing country consider providing technical and financial assistance to assist it in adopting the required standards. The phrasing of the agreement renders the assistance a best endeavour approach.

During the Doha Round, much emphasis has been placed on the difficulties faced by developing countries in implementing the WTO SPS Agreement. This main challenge concerns the inability of developing countries to conform to various importing markets' standards, owing to weak national quality infrastructure in the developing country. Hence, a notice period of six months was requested from importing countries in order that exports may adjust their standards to comply with new SPS measures. The purpose of this phase in period is also to review and comment on a Member State's standards and check whether they are in line with international standards or are based on a scientific approach. Member States are requested to ensure that SPS measures are

⁹² WTO (2004). *Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures*. Committee on Sanitary and Phytosanitary Measures. G/SPS/19/Rev.2. 23 July 2004.
⁹³ WTO (2004), *Idem*

available to all potential exports through the provision of requirements on reporting (making information available and setting up Enquiry Points)⁹⁴. Financial and technical assistance by other WTO members had to be provided to the developing countries so that they can adopt the new SPS measures rapidly⁹⁵. With regard to the principle of Equivalence⁹⁶, the SPS committee came to the conclusion that a series of steps should be given to all WTO countries in order that the adoption of equivalent measures can be made easier. Negotiations are still on-going in the area of SPS.

Box 13. Nepal's Implementation of the Agreement on SPS

This case study draws on the experience of Nepal's implementation of SPS measures during its accession process to the WTO. An exporter of herbal products, it received enquiries with regard to its conditions of production and export of ayurvedic medicines from Australia, Czech Republic, France, Germany, Italy and Sweden since its products did not seem to comply with good manufacturing practices (GMP). The requirement for GMP was a legitimate non-discriminatory measure to ensure that any potential contamination or threat to human safety is limited. Such measures are fully compliant with the WTO Agreement on SPS. The exporter was obliged to carry out complex laboratory tests in order to ensure the sanitation of the herbal products. However, the equipment necessary for the tests were not easily obtainable in Nepal. In order to deal with this situation the government imposed GMP requirements on both pharmaceutical and medical products in order to comply with the SPS requirements of another WTO Member. Nevertheless, knowledge on how to implement a GMP system was still absent and thus, could still not adopt the standards required for exporting.

Since the Nepali government faced financial and technical difficulties in committing to the policies of SPS standards, this restricted the potential market access benefits it had acquired for herbal products when joining the WTO. The government, therefore worked with the EU to receive technical assistance to implement the GMP and comply with the WTO Agreement in SPS. Technical assistance was devoted to areas such as the reinforcement of enquiry points and strengthening the capacity of the SPS department. Since Nepal is an LLDC and herbal products form a large proportion of their exports, the commitment to implement SPS measures is important. Increased knowledge and awareness through capacity building to the business community and strengthening Government SPS enquiry point and national quality infrastructure are some of the policies which have benefited Nepal.

Source: Shakya, B. (2005). Nepal: exports of ayurvedic herbal remedies and SPS issues. *Gallagher, P., Low, P. & Stoler, A. L (eds) Managing the Challenges of WTO Participation*. Cambridge University Press

⁹⁴ WTO Agreement on SPS, Annex B, Para 5.

⁹⁵ WTO (2010). *The WTO Agreements Series: Sanitary and Phytosanitary Measures*. WTO

⁹⁶ WTO Agreement on SPS, Art 4

III.6.3. Trade Negotiations in SPS and LLDCs

LLDCs, as is the case for all developing countries, face difficulties in complying with the SPS requirements of many developed countries. LLDCs are often agricultural based economies and require some flexibility in the manner in which the SPS Agreement is applied, even if the right of countries to protect themselves against risks is upheld. The reasons behind the challenges faced include the required investment in new equipment and technology, the high level of human resource training required to attain the required standards, and the capacity of the national quality infrastructure to undertake the required testing for certification.

LLDCs need to re-affirm their requirements with regard to better participation in the Committee on SPS and the need for technical and financial resources in this critically important area. Table 5 illustrates the costs for capacity building in SPS measures, which can vary from \$3 to \$110 million and require up to eight years to implement. The cost of technical assistance to comply with the TBT Agreement usually requires much more modest financial resources, and are usually less than \$0.5 million in size.

Table 5. World Bank costs of projects relating to capacity building in SPS

Country	Project Description	Cost (US\$ million)
Algeria, 1988–1990	Locust control	112.0
Argentina, 1991–1996	General agricultural export reform	82.7
Brazil, 1987–1994	Livestock disease control	108.0
China, 1993–2000	Animal and plant quarantine (component of agricultural support service project)	10.0
Hungary, 1985–1995	Slaughterhouse modernization (component of integrated livestock industry project)	41.2
Madagascar, 1980–1988	Livestock vaccination (component of rural development project)	11.8
Poland, 1990–1995	Food-processing facilities modernization (component of agro-industries export development product)	71.0
Russia, 1992–1995	Improvement of food-processing facilities and disease control (component of rehabilitation loan)	150.0
Turkey, 1992–1999	Modernization of laboratories for residue control (component of agricultural research project)	3.3
Vietnam, 1994–1997	Pest management (component of agricultural rehabilitation project)	3.5

Source: Finger, J. M. & Schuler, P. (2000). Implementation of WTO Commitments. in *Hoekman, B. Mattoo, A. & English, E. (eds) Development, Trade and the WTO: A Handbook*, World Bank. Reprinted in Nathan Associates (2003). *Trade Capacity building and Sanitary and Phytosanitary Control: A Resource Guide*. Research Report. April

Progress made in the application of the concept of equivalence of sanitary and phytosanitary measures is necessary and negotiation for stricter rules in this area should be sought by LLDCs. This would require strong technical knowledge on the issues, which is often lacking in many of the LLDCs, although support should be requested from Aid for Trade funds if this is the case.

III.7. Technical Barriers to Trade (TBT)

III.7.1. Background to Technical Barriers to Trade

Technical regulations, norms and standards, were first negotiated during the Tokyo Round (1973-79) and were concluded with a “Code on the Technical Barriers to Trade (TBT)”. A few countries ended up adopting it as a plurilateral agreement, while the majority did not. Realising the obstacles which can exist from national policies in this area, negotiations during the Uruguay Round focused on imposing disciplines for the adoption of standards and raising transparency requirements. The WTO Agreement on Technical Barriers to Trade emerged from the Uruguay Round negotiations.

The WTO Agreement on Technical Barriers to Trade (TBT) aims to ensure that technical regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade (see Box 14). The agreement provides WTO Members with the legal right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment. The technical standards and regulations vary from one country to another and pose a challenge for producers and exporters. The TBT Agreement strongly prefers the use of international standards and aims to create a predictable trading environment through its transparency requirements. For example, the TBT Agreement obligates parties to follow international standards and base their national regulations on them, if they are available in a specific area. The only exception to this obligation is when the international standards will be ineffective or inappropriate for a country. The burden of proof is on the country that chooses to set new standards.

Conformity assessment should follow non-discriminatory principles, provided prior publication of the procedure, consider the comments of interested parties to the TBT Agreement and allow a reasonable time between the adoption of the procedure and its enforcement.

The TBT Agreement requires that national standards setting bodies consult before setting standards and should issue once every six months a publication containing the standards which have been adopted since the last issue of the publication. The TBT Agreement also requires that the body allows a minimum of 60 days for comments of interested parties to the agreement and take into account the comments before finalising the standards.

Non-tariff measures, including TBTs, are one of the main constraints for developing countries to access developed country markets. LLDCs are no exception to this experience, and the rise of voluntary standards are raising the difficulties for exporters to conform to the requirements of developed markets.

In order to fulfil the transparency ambitions of the agreement, parties must establish a TBT enquiry point that should be able to respond to enquiries from other interested parties and provide relevant documents relating to national technical regulations and standards.

Box 14. WTO Agreement on TBT

The WTO Agreement on Technical Barriers to Trade (TBT) applies to all products, agricultural and non-agricultural. However, agricultural products are also subject to the WTO Agreement on Sanitary and Phytosanitary (SPS) measures. TBT refer to the technical regulations generally required to conform to the requirements of an export market and standards which are formulated by standardisation bodies.

The technical regulations lay down the characteristics of a product (product standards) and related processes and production methods (PPM), which have an impact on the safety, quality and characteristics of the product.

Annex 3 of the Agreement on TBT provides the guidelines for formulating standards, include a code of good practice. The main substantive requirements relate to the application of non-discriminatory practices (National Treatment (NT) and Most Favoured Nation (MFN) principles) and not applying regulations or standards as a form of protection (unnecessary obstacle to international trade). The Agreement also gives primacy of international standards over national standards where the former are more relevant.

Sources: WTO Agreement on Trade Facilitation. UNCTAD (1999) Handbook for Trade Negotiators from LDCs, UNCTAD

III.7.2. Doha Round Negotiations on Technical Barriers to Trade

While developing countries and LDCs in particular were given longer transition periods to implement the WTO Agreement on TBT, developing countries have had difficulty in establishing an effective notification system, in participating in responding to the consultations on new norms and standards, as well as reaching the increasing demands of technical regulations and mandatory and voluntary standards of developed countries. At the launch of the Doha Round, the TBT Agreement was officially revisited to clarify some provisions of the agreement, examine the way Developing Countries could better participate in the TBT Committee, and see how technical assistance or other special and differential treatment provisions could improve the ability of developing countries to monitor and implement the TBT Agreement⁹⁷.

During the Doha Round, the Council of Ministers confirmed the approach being developed by the TBT Committee, reflecting the results of the reviews of the TBT Agreement undertaken every

⁹⁷ WTO (2001). Implementation Issues and Concerns. Ministerial Conference. WT/MIN(01)/17, para 5

three years and mandated the work to continue. The TBT Agreement requires governments to allow other members — particularly developing countries — “a reasonable interval” to adapt their products or production methods to new regulations in importing countries (except in emergencies, and subject to certain conditions)⁹⁸. The ministers agree that, if possible, this “reasonable interval” is normally six months.

The Doha Declaration urged that the WTO Secretariat continue its efforts to improve the participation of developing countries in the work of international standards-setting activities, and in coordinating with other organisations on improving technical assistance. Finally, the Doha Declaration emphasised the need for LDCs to obtain adequate financial and technical assistance to respond to new TBT measures that significantly affect their trade, as well as implementing the provisions contained in the agreement.

III.7.3. Trade Negotiations on TBT and LLDCs

Negotiations relating to TBT do not focus on flexibilities given to countries in setting their own standards, which are a legitimate right for WTO Members, but rather on special and differential treatment with regard to the consultation, technical assistance and transparency processes. The LLDCs, much like other developing countries, face major challenges to follow the proceedings of the TBT Committee, as well as follow international standards setting in other multilateral organisations. The private sector in LLDCs have difficulties conforming to the requirements of developed markets because their national quality infrastructure is often ill equipped to deal with the plethora of requirements set by Developed Countries.

LLDCs have often worked with other negotiation groups, such as the African Group or the LDC group, to push forward their interests in this area. They should continue to do so, but should also explore possible LLDC specific issues that concern them. One such issue may relate to regional standards, and particularly those in transit countries. Efforts made to harmonise TBT standards within the regional context will contribute to the curbing of non-tariff measures. Relatively advanced efforts in this regard exist in the ASEAN, COMESA, EAC and SADC regions.

LLDCs could also request that developing countries improve the harmonisation of standards in their markets to shape a kind of “OECD” common standard framework, which would alleviate the burden caused on countries to conform to different standards for the same product in the EU, Japan and the USA, for example.

As for other developing countries, LLDCs not only have difficulty in formulating a national quality policy and setting up the institutional framework to guarantee a well-functioning national quality

⁹⁸ WTO Agreement on TBT, Article 2.12

infrastructure, but they also face challenges in informing the private sector and providing assistance to the private sector in adopting new standards.

With regard to the negotiations taking place in the Doha Round, negotiations on voluntary standards are gaining traction, mainly owing to the significant barriers to trade that they represent. While the standards are set by private bodies, the TBT Agreement does state that member governments must ‘[...] take such reasonable measures as may be available to them to ensure that local government and non-governmental standardising bodies within their territories, as well as regional standardising bodies of which they or one or more bodies within their territories are members, accept and comply with [the] Code of Good Practice’⁹⁹.

With regard to the negotiations taking place in the Doha Round, the NAMA proposals are intended to improve rules especially with regard to recognition of certifications across WTO members. The LLDCs need to be closely monitoring and participating in the Doha Round in order to shape the discussions and leverage a common position to push forward their interests in this area under the NAMA and AMA negotiation committee discussions.

III.8. Customs and Trade Facilitation

III.8.1. Background to Trade Facilitation

Trade Facilitation has a range of definitions, but one which is often referred to is the EU’s definition: “*The simplification and harmonisation of international trade procedures including import and export procedures, the latter being the activities (practices and formalities) involved in collecting, presenting, communicating and processing the data required for movement of goods in international trade*”¹⁰⁰. According to an OECD policy paper published in 2013, wide-ranging trade facilitation reforms would lower the costs of trade by 14.5% in low-income countries, compared with 10% in the rich OECD countries¹⁰¹. Landlocked countries can gain greatly from implementing trade facilitation measures (Box 15).

The issue of trade facilitation has been debated since 1996 in the Singapore Ministerial Conference where the countries wanted to refine and improve the provisions under the GATT Articles V, VIII and X¹⁰². The WTO Doha Declaration referred to the following mandate:

Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity

⁹⁹ ITC (2014). *Rwanda Company Perspectives. An ITC Series on Non-Tariff Measures*. MAR-14-242.E. ITC

¹⁰⁰ http://ec.europa.eu/taxation_customs/customs/policy_issues/trade_facilitation/index_en.htm

¹⁰¹ Moïsé, E. & Sorescu, S. (2013). Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade. *OECD Trade Policy Papers*. No. 144, OECD

¹⁰² WTO (2009). *Procedures to enhance Transparency of Special and Differential treatment in Favour of Developing Country Members*. Committee on Sanitary and Phytosanitary Measures. G/SPS/33/Rev. 1. 18 December

building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.

Box 15. SACU LLDCs and their experience with Trade Facilitation Measures

Within SACU, Botswana, Lesotho and Swaziland are landlocked and depend heavily on South Africa for the transit of their goods. Therefore, provisions on freedom of transit are an integral part of the SACU operational and institutional framework. In 2004, in order to reduce transaction costs and to create a more transparent and predictable environment to better facilitate trade within the SACU region, the Council adopted a programme for customs initiatives covering the following areas:

- Introduction of a Single Administrative Document (SAD) as a common Customs Declaration form
- Establishment of one-stop border arrangements
- Introduction of joint border controls
- Use of electronic data interchange by Customs authorities
- Implementation of a capacity enhancement programme

Source: UNCTAD (2011). Trade Facilitation in Regional Trade Agreements, *Transport and Trade Facilitation Series* No. 3, UNCTAD

After several years of exploratory work, WTO Members formally agreed to launch negotiations on trade facilitation in July 2004 on the basis of modalities contained in Annex D of the so-called “July package”¹⁰³. Under this mandate, members were directed to clarify and improve GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations)¹⁰⁴.

III.8.2. Doha Round and WTO Agreement on Trade Facilitation

The negotiations regarding the Agreement on Trade Facilitation (ATF) ended in the Ministerial Conference held in Bali in 2013 and, as a result, a new Protocol of Amendment was adopted in November 2014 and must be accepted by a two-thirds majority of WTO Member States. The Protocol of Amendment enables the trade facilitation agreement to be included in the annex of the WTO Agreement.

The ATF is separated into 3 sections. The first section aims at improving the movement of goods (including goods in transit), sets out rules in order to achieve customs cooperation, and requires

¹⁰³ WTO (2004), WT/GC/W/535

¹⁰⁴ www.wto.org

the establishment of a national committee by members in order to implement provisions of the agreement. Specifically¹⁰⁵:

- **Section I** contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It clarifies and improves the relevant articles (V, VIII and X) of the GATT 1994. It also sets out provisions for customs cooperation.
- **Section II** contains special and differential treatment provisions that allow developing countries and LDCs to determine when they will implement individual provisions of the agreement and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building. To benefit from SDT, a Member must categorise each provision of the agreement, as defined below, and notify other WTO Members of these categorisations in accordance with specific timelines outlined in the agreement:
 - **Category A:** provisions that the member will implement by the time the agreement enters into force (or in the case of a LDC Member within one year after entry into force);
 - **Category B:** provisions that the Member will implement after a transitional period following the entry into force of the agreement; and
 - **Category C:** provisions that the Member will implement on a date after a transitional period following the entry into force of the agreement and requiring the acquisition of assistance and support for capacity building.
- **Section III** contains provisions that establish a permanent committee on trade facilitation at the WTO and requires members to have a national committee to facilitate domestic coordination and implementation of the provisions of the agreement. It also sets out a few final provisions.

III.8.3. Special and Differential Treatment in the Agreement on Trade Facilitation

This agreement contains aspects which aim at helping developing countries and since LLDCs are still at their developing stage, the latter benefit from the same agreement. Around the year 2011, UNCTAD proposed to develop an approach that could help developing countries to implement the provisions of the trade agreement at the national level¹⁰⁶. According to UNCTAD, less than half of the trade facilitation measures have been implemented in developing countries. Developing countries' poor trade facilitation performance can be attributed to their level of development¹⁰⁷. Despite receiving help from international organisations or WTO Member States, many developing countries failed to grasp all of the technical details of the negotiations and how

¹⁰⁵ www.wto.org

¹⁰⁶ UNCTAD (2014). *The New Frontier of Competitiveness In Developing Countries*. UNCTAD.

¹⁰⁷ Moïse, E. and Sorescu, S. (2013). "Trade facilitation indicators: The potential impact of trade facilitation on developing countries' trade". *OECD trade policy papers No. 144*. OECD Publishing

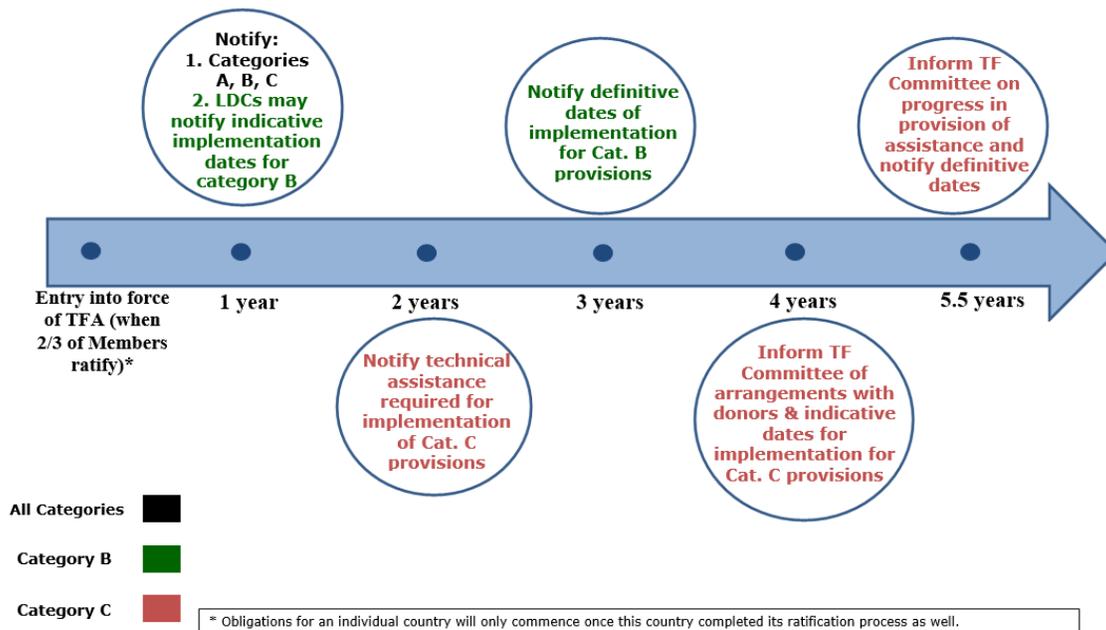
it could benefit them. Moreover, they are constrained by their scarce resources, such as financial, technological, institutional and human resources. The absence of organisational frameworks results in poor policy implementation of the provisions laid out in the trade agreement.

In light of these constraints, the WTO Agreement also provides additional protections and flexibilities for LDC Members such as:

- **Early Warning Mechanism:** whereby a Member can request an extension from the WTO Trade Facilitation Committee if it experiences difficulties in implementing a provision in Category B or C by the date it had notified. The extension will be automatic if the additional time requested does not exceed 3 years.
- **Expert Group:** where a requested extension has not been granted and a Member lacks capacity to implement, the WTO TF committee will establish an Expert Group to examine the issue and to make a recommendation.
- **Shifting between Categories:** Members may shift provisions between Categories B and C.
- **Grace Period:** following entry into force of the Agreement, LDCs will not be subject to the Dispute Settlement Understanding for a period of 6 years for Category A provisions and for 8 years for Categories B and C.

The reporting requirements for LDCs are also longer than in the case of Developed Countries (Figure 19).

Figure 19. Notification Process for LDCs in the WTO Trade Facilitation Agreement



III.8.4. Trade Negotiations on Trade Facilitation and LLDCs

The LLDCs made a number of communiqués to the effect that it desired a satisfactory conclusion to the negotiations on an ATF. The decisions with respect to trade facilitation have been agreed upon by LLDCs in the Vienna Programme of Action (2014) and constitute the strategic direction which LLDCs espouse. The objectives with regard to trade facilitation include: (i) simplifying and streamlining border crossing procedures with the aim of reducing port and border delays; (ii) improving transit facilities and their efficiency with the aim of reducing transaction costs; and (iii) ensuring that all transit regulations, formalities and procedures for traffic in transit are published and updated in accordance with the World Trade Organization Agreement on Trade Facilitation. All emphasis has been placed on border measures and transit procedures.

Under the Vienna Programme of Action, LLDCs stated their commitment to the following actions¹⁰⁸:

- To establish or strengthen, as appropriate, national committees on trade facilitation, with the involvement of all relevant stakeholders, including the private sector;
- To scale up and implement trade facilitation initiatives such as single-stop inspections, single windows for documentation, electronic payment, and transparency and modernisation of border posts and customs services, among others;
- To effectively implement integrated border management systems and strive to establish one-stop border posts, where appropriate, with neighbouring landlocked or transit developing countries that allow for joint processing of legal and regulatory requirements, with a view to reducing clearance times at borders, while fully utilising the tools for trade facilitation developed by international organisations to build national capacity;
- To ensure full and inclusive representation of the private sector, including public-private partnerships and transport business associations, in trade facilitation initiatives and policy, and to develop the necessary policies and regulatory framework to promote private sector involvement.

The statements made for better private sector involvement is a welcome one and one which will guarantee stronger results in efforts made by LLDCs to promote cross-border trade. While other measures will also undoubtedly constitute a major improvement, further behind the border procedures and publication of national customs procedures (and not just transit) is also important, as is an efficient implementation of risk management procedures, establishing a framework for authorised economic operators, pre-shipment inspection commitments, full

¹⁰⁸ International Think Tank for Land-Locked Developing Countries – <http://land-locked.org>

implementation of internationally agreed customs valuation rules, advance rulings and other areas of the WTO Agreement on Trade Facilitation.

The Programme of Action also calls upon transit countries to (i) ensure that trade facilitation initiatives, including the ATF, are developed and implemented together with landlocked developing countries in all the relevant areas; (ii) undertake further harmonisation, simplification and standardisation of rules, documentation requirements and border crossing and customs procedures; to enhance collaboration and cooperation among various customs and border-crossing agencies across borders; to promote the use of electronic (e-transaction) processes, the pre-arrival submission of customs declarations, risk management inspection systems and authorised economic operator systems; to improve transparency, predictability and consistency in customs activities; and to establish one-stop border posts, as appropriate, joint customs controls and inspection at border sites and other forms of integrated border management at borders with landlocked developing countries; (iii) share best practices in customs, border and corridor management and in the implementation of trade facilitation policies should be encouraged at the global, regional, subregional and South-South levels, including among the private sector; (iv) fully utilise the tools for trade facilitation developed by international organisations to build national capacity and ensure secure and reliable transport across borders by, inter alia, effectively implementing existing international standards and best practices for customs transit and safety and security of transport chains; and (v) ensure transparency in border crossings, customs and transit transport rules, regulations, fees and charges and accord non-discriminatory treatment so that the freedom of transit of goods is guaranteed to landlocked developing countries.

Some of these elements are in the WTO Agreement on Trade Facilitation but stronger enforcement and implementation support to transit economies should also have been lobbied for by LLDCs.

III.9. Safeguards

III.9.1. Background to Safeguards

Safeguards are a contingency type of trade protection measure applied to goods which are permitted under the disciplines of the WTO¹⁰⁹. Two other types of contingent protection measures are anti-dumping duties and countervailing measures. Safeguards are used by developing countries in order to protect their domestic markets (particularly infant industries)

¹⁰⁹ GATT Art XIX and WTO Agreement on Safeguards

from facing high and unexpected surges in competition. The country is also free to increase its MFN applied tariff rate to the bound threshold without invoking a safeguard measure.

Safeguard measures are contingency measures taken against imports. They are one of three types of contingent trade protection measures, along with anti-dumping and countervailing measures, available to WTO Members. Under the WTO various instruments provide for the possibility of introducing safeguard measures on a temporary basis to remedy the harm caused to domestic producers by certain developments in trade flows.¹¹⁰

GATT Article XIX safeguard measures

The first such legal instrument is Article XIX (“Emergency Action on Imports of Particular Products”) of the GATT 1994, which allows a WTO Member to take a safeguard action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry. An important condition is that there should be a demonstrated causal link between the import surge and the serious injury. Furthermore, it is also necessary that the increase in imports be the “result of unforeseen developments” and the result “of the effect of the obligations incurred by a contracting party under this Agreement”. The language of Article XIX GATT 1994 is the same as in the GATT 1947. However, this article was disregarded during the GATT era, particularly from the mid-1960s by the increased imposition by major industrialised countries of so-called “grey area measures”, such as “voluntary” export restrictions, orderly marketing agreements, etc., which disregarded the above-mentioned basic legal conditions. The devastating effects of this proliferation of grey area measures and the need to reinforce the disciplines of safeguards led to the UR Agreement on Safeguards.

Article 1 establishes that the Agreement on Safeguards is the vehicle through which measures may be applied pursuant to Article XIX of GATT 1994. That is, any measure for which the coverage of Article XIX (which allows suspension of GATT concessions and obligations under the defined “emergency” circumstances) is invoked must be taken in accordance with the provisions of the SG Agreement. Article 2 sets forth the conditions under which safeguard measures may be applied. These conditions are: (i) increased imports and (ii) serious injury or threat thereof caused by such increased imports. It also contains the requirement that such measures be applied on an MFN basis. The determination of increased quantity of imports that a Member must make before it may apply a safeguard measure can be of either an absolute increase or an increase relative to domestic production.

¹¹⁰ Note that negotiations on the possible introduction of safeguard mechanism relating to trade in services have been mandated by the GATS, but these have not produced a consensus, therefore the use of such contingency measure is not possible.

Regarding injury, the agreement defines “serious injury” and “threat of serious injury” with greater precision than the *old* GATT safeguard provisions. “Serious injury” is a significant overall impairment in the position of a domestic industry. In determining whether serious injury is present, investigating authorities are to evaluate all relevant factors having a bearing on the condition of the industry. Factors that must be analysed are the absolute and relative rate and amount of increase in imports, the market share taken by the increased imports, as well as changes in level of sales, production, productivity, capacity, utilisation, profits and losses, and employment of the domestic industry. “Threat of serious injury” is a threat that is clearly imminent as shown by facts, and not based on mere allegation, conjecture or remote possibility. If present serious injury is not found, a safeguard measure nevertheless can be applied if a threat of serious injury is found. The agreement also reinforces the obligation to establish causal link between import surge and injury.

Developing country Members receive special and differential treatment with respect to other Members' safeguard measures both as users and as Members affected by safeguard measures.

As users, developing Country Members may extend the application of a safeguard for an extra two years beyond that normally permitted (i.e., to a total of six years, meaning that developing countries may apply a measure for a total of 10 years, as compared with the usual eight). Rules for re-applying safeguard measures with respect to a given product are relaxed for developing country Members. (The minimum period of non-application for developing countries in most cases is one-half the duration of the original measure, so long as this period is at least two years).

As exporters, developing countries receive special and differential treatment with respect to other Members safeguard measures, in the form of a *de minimis* import volume exemption.

The *de minimis* provision of the WTO Agreement on Safeguards, prohibits the application of a safeguard measure against the product of a developing country if the share of the developing country member in the imports of the product concerned does not exceed 3 per cent, and that developing country members with less than 3 per cent import share collectively account for no more than 9 per cent of total imports of the product concerned.

A safeguard measure may either consist of an increase in the applied tariff or imposition of additional charges of a similar nature, or quantitative restrictions on imports of the good in question. The use of quantitative constraints requires the Member to declare its quantitative annual limits, which should not be lower than the average level of imports in the last three years. If a country wishes to allocate a quota among the exporting Members, it must hold consultations with other Members whom have an interest in supplying the product. If it is not reasonably practicable, the Member is entitled to allocate the quota shares on the basis of the past imports during a representative period, which is taken to be generally the last three years.

A provisional safeguard measure should be applied for a maximum of 200 days. If the Member State notifies on the use of quota allocations or the utilisation of tariffs, then a safeguard measure may be imposed for a period of up to four years. It can be extended further to reach a maximum of eight years. Developing countries, including LDCs, may extend the measure for an additional duration of two years, making it up to 10 years in total. If the measure is to be taken for more than one year, the Member has to liberalise it at regular intervals. If the duration is to exceed three years, the Member has to review it by the mid-term and it has either to remove the measure or increase the pace of liberalisation of the measure¹¹¹.

The application of a safeguard requires the Member to compensate those affected by this measure (i.e. those countries with a substantial interest in the export of the product to that market). The compensation is generally in the form of reduction of tariffs on the products of export interest to those countries. If an agreement is not reached on the mechanism for compensation, the affected Member has a right to retaliate in kind, such as by raising tariffs or charges on the import from the country applying the safeguard, provided that retaliation is not applied in the first three years of applying the safeguard.

Agricultural safeguards

While Article XIX safeguard measures can, in principle, be applied to all types of products, in practice it is invoked only in the case of industrial goods, as the Agreement of Agriculture (AoA) contains much less onerous safeguard conditions to protect against import surges. Furthermore, while, in principle, all WTO agreements and understandings on trade in goods apply to agriculture, including the Article IXI of the GATT 1994 and the SG Agreement, a provision of the AoA makes it clear that, where there is any conflict between the other agreements and the AoA, the provisions of the latter prevail.

Under the AoA, Article 5 allows WTO Members to invoke special safeguard (SSG) provision for tariffed products provided that a reservation to this effect ("SSG") appears beside the product(s) concerned in the relevant Member's schedule. The SSG provisions allow the imposition of an additional tariff where certain criteria are met. The criteria involve either a specified surge in imports (volume trigger), or, on a shipment by shipment basis, a fall of the import price below a specified reference price (price trigger). In case of the volume trigger, the higher duties only apply until the end of the year in question. In case of the price trigger, any additional duty can only be imposed on the shipment concerned. The additional duties cannot be applied to imports taking place within tariff quotas.¹¹²

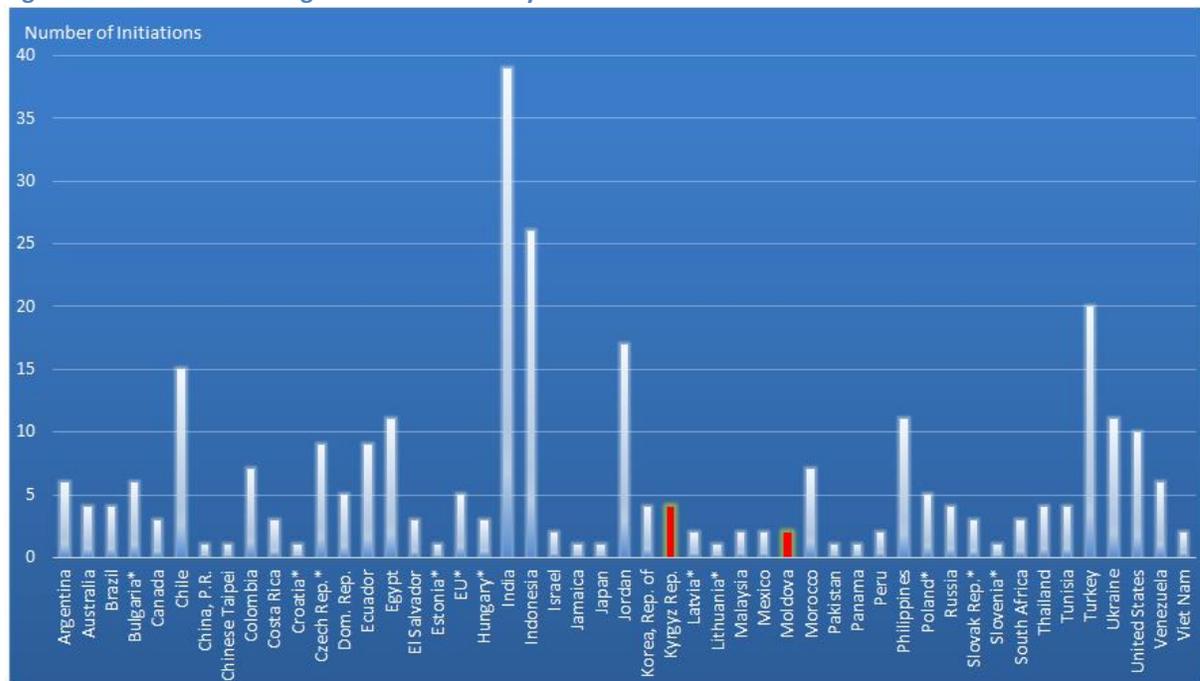
¹¹¹ UNCTAD (1999). *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators from Least Developed Countries*. UNCTAD

¹¹² WTO: *Agriculture*, the WTO Agreements Series, World Trade Organization 2003

III.9.2. Use of Safeguards by LLDCs

A few Landlocked Developing Countries, in spite of already being affected by higher transport costs and longer times to import, have applied SSM in order to limit the competition faced by imported products on the national market. For example, the Kyrgyz Republic has applied four times the SSM, while Moldova has applied it twice¹¹³. Safeguards are occasionally applied by Developed Countries, although the great majority originate from Chile, India, Indonesia, Jordan and Turkey (Figure 20). The reasons why large middle income countries tend to apply safeguards is that they feature the industries mostly affected by competition from third countries and they also have the institutional framework in place to prepare the investigative work necessary to apply the safeguards.

Figure 20. Initiation of Safeguard Instruments by WTO members



Note: LLDCs in red

Source: WTO (2014) Safeguard Initiations by Reporting Member, As at 31 December 2014

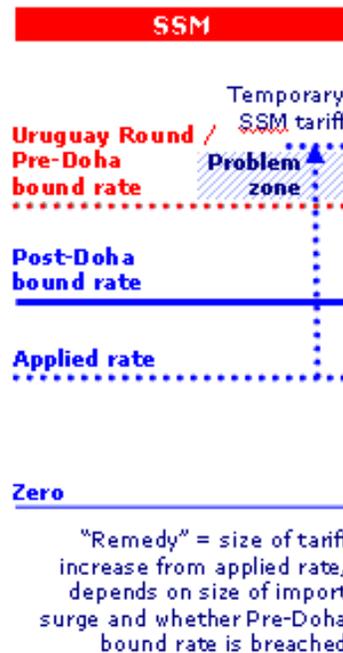
III.9.3. Doha Negotiations on Safeguards

In the Doha Round, a new type of agricultural safeguard, only available to developing countries, the so-called Special Safeguard Mechanism (SSM), was proposed. The SSM would allow developing countries to raise tariffs temporarily to deal with import surges and price falls. While

¹¹³ Advanced measures by reporting 2014. Safeguard Measures by Reporting Member. [Online]. Available at: https://www.wto.org/english/tratop_e/safeg_e/SG-MeasuresByRepMember.pdf

the negotiations seem to have resulted in an emerging consensus that developing countries will have their SSM, and more or less how big the import increase should be to trigger the temporary tariff rise, and how high the rise should be in general, the stumbling block of the SSM negotiations is the question of situations where the SSM would raise tariffs above Uruguay Round commitments or in the case of new Members, above their accession commitments (Figure 21).¹¹⁴ Developed countries, including the USA and some other major agricultural exporters, e.g. from among the members of the Cairns Group, argued that a threshold level had to be set, above which developing countries cannot increase their tariff rate. For example, a proposal was made to impose a ceiling on the applied rates of the pre-Doha Round bound tariff level. Furthermore, the volume of imports should be taken in consideration, in the calculation of the triggering mechanisms and before the application of additional safeguard duties. Proposals were also made to impose restrictions on the timeframe that the users of SSM should take into account while imposing the different measures.

Figure 21. SSM Proposal in the Doha Round



Source: WTO (2008). An Unofficial guide to agricultural safeguards GATT, old agricultural (SSG) and new mechanism (SSM). Available at: https://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm

At the other end of the spectrum, the developing countries were in favour of maintaining unlimited levels of policy space under the SSM, which they consider essential in order to defend their domestic agricultural sector. Differences in opinion have not been resolved and negotiations are still on-going.

¹¹⁴ WTO.(2008).An Unofficial guide to agricultural safeguards GATT, old agricultural (SSG) and new mechanism (SSM). Available from: https://www.wto.org/english/tratop_e/agric_e/guide_agric_safeg_e.htm

According to the declaration at the Hong Kong Ministerial Conference, there was no “material disagreement” regarding the quantity trigger above which or the price floor below which the tariff should be applied¹¹⁵. However, the main issue is on how to deal with circumstances where the “import surge” is below the trigger level. An agreement was reached on the fact that specific criteria of what exactly constitutes a surge must be set. However, there was no consensus on the type of measure that should be administered and for what duration. The other important yet unsettled matter discussed, was whether the SSM could be applied to any imported product regardless of its HS classification, or if there should be a selection on the products that are eligible for the SSM.

III.9.4. Trade Negotiation on Safeguards and LLDCs

LLDCs may legitimately need to apply safeguards but may not always have the necessary technical competence or the institutional framework in place to carry out the investigation and consultations necessary with industry that is necessary to apply safeguard measures. The need for technical assistance in this area makes it one in which LLDCs should consider being more active in the negotiations.

LLDCs, much like LDCs, can be affected by the application of safeguards in their major export markets. LLDCs may consider negotiating aggressively to be exempt from the application of safeguard measures. While this may not be possible or realistic since the application of a safeguard is a safety valve being used in the case of economic difficulties, one could consider the use of a quota distribution system which would first be filled by LLDCs which were already exporting to the economy in question (quota would be calculated according to their volume of imports in the three last years). Thereafter, the distribution of quotas to non-LLDCs would be distributed according to the formula currently proposed in the Agreement on Safeguards.

The terms and conditions for initiating a safeguard, duration of application (up to ten years for LDCs and eight years for non-LDCs) and the non-discriminatory principles are not considered to be negative for the LLDCs, and as such provide useful discipline to react quickly to a situation of import surges. In the case of a severe economic crisis where balance of payments difficulties are experienced, other provisions in the GATT agreement¹¹⁶ can be applied.

¹¹⁵ WTO (2005). *Doha Work Programme. Ministerial Declaration*. WT/MIN(05)/DEC. 22 December, Para 7 & Annex A

¹¹⁶ GATT 1994, Art XII

III.10. Subsidies and Countervailing Measures

III.10.1. Background to Subsidies and Countervailing Measures

The WTO Agreement on Subsidies and Countervailing Measures (ASCM) regulates the use of subsidies and provides the conditions under which a country may counter the negative effects of subsidies (the injury caused by such subsidies on domestic industries). The agreement provides that a country may use the WTO's dispute-settlement mechanism to seek the withdrawal of a subsidy or the removal of its adverse effects. A country may also launch its own investigation and eventually charge extra duty ("countervailing duty") on subsidised imports that are found to be hurting domestic producers. The Subsidies and Countervailing Duties Committee, which meets twice a year, is responsible for supervising and implementing the ASCM.

Economy-wide subsidies are presumed to be non-distorting to the allocation of domestic resources. Thus, WTO rules concern specific subsidies. Specific subsidies are subsidies that are limited to an enterprise, industry, or enterprises with a designated geographical region. Non-specific subsidies, on the other hand, are subsidies whose eligibility for, and amount is determined by objective criteria: non-conditional on export performance or the use of domestic inputs, in which case it is deemed to be specific. Governments use different forms of subsidies to support economic activities. These include direct payments or grants, tax concessions, soft loans, and government guarantees and equity participation. Subsidies may be firm- or industry-specific, or may be generally available¹¹⁷.

Box 16. What is a subsidy?

A *subsidy* is "financial assistance provided by the government to industry and trade". "A subsidy shall be deemed to exist if: (a) there is a financial contribution by a government or any public body within a government, that is, where a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); a government provides goods or services other than general infrastructure, or purchases goods" among other actions specified in the WTO Agreement on Subsidies and Countervailing Measures (ASCM).

1. Article 1 of the WTO Agreement on Subsidies and Countervailing Measures

Source: UNCTAD (1999). *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators from Least Developed Countries*. UNCTAD/LDC/107. United Nations

Four types of specificity exist within the meaning of the ASCM. At the WTO, a subsidy is deemed to exist if there is a financial contribution by a government (or public body) involving actual or potential direct transfer of funds (such as grants, loans, equity infusions, or loan guarantees) or forgoing of government revenue (tax concessions or credits).

¹¹⁷ Hoekman, B., Matoo, A. & English, P. (eds) (2002)

Special rules apply to agriculture. Three categories of specific subsidies have been distinguished in the agreement: *prohibited*, *actionable*, and *non-actionable*. Currently, specific subsidies are either prohibited or actionable. Members found to be using export or import substitution subsidies will be expected to withdraw the measures within three months.

Actionable subsidies are those that are permitted but may, if they cause adverse effects to the interests of a WTO Member, give rise to consultations, invocation of dispute settlement procedures, or the imposition of countervailing duties by the affected importing country¹¹⁸.

III.10.2. Special and Differential Treatment for subsidies

LDCs are allowed to use export subsidies. However, this is only applicable to the extent that the export share of a product from a LDC falls below 3.25 per cent of world exports of that product. But if the product reaches a share of 3.25 per cent of the world export market of that product and continues at the same level or rises higher for two consecutive years, it is considered to have reached a level of export competitiveness and the export subsidy on that product must then be phased out within the following eight years. Developing countries were allowed to use import subsidies until the end of 2002.

Among the proposals in the 1999 Uruguay Round, were an exemption of all LDCs, including those acceding to the WTO, from undertaking commitments on domestic support and export subsidies; elimination of export subsidies by developed countries, within an agreed time period, particularly for agricultural products of strategic interest to LDCs; and exemption from export competitiveness thresholds on export subsidies applied by LDCs¹¹⁹ (see Box 17).

III.10.3. Doha Round and SCM

During the Doha Ministerial Declaration of 2001, Ministers adopted a number of decisions on developing countries' difficulties implementing the current WTO Agreement on Subsidies and Countervailing Measures.

The WTO July 2004 Framework Agreement called for the elimination of all forms of export subsidies in Agriculture and for disciplines on export measures that have the effect of a subsidy¹²⁰.

¹¹⁸ Hoekman, B., Matoo, A. & English, P. (eds) (2002)

¹¹⁹ UNCTAD (1999). *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators from Least Developed Countries*. UNCTAD/LDC/107. United Nations

¹²⁰ Gorter, H. (2006). *Export Subsidies: Agricultural Policy Reform and Developing Countries*. In Newfarmer, R. (Ed). *Trade, Doha, and Development: A Window into the Issues*. The World Bank: Washington DC.

These eliminations and their equivalents were envisioned to finally put agriculture on an equal footing with manufacturing, an industry for which subsidies were banned in 2003.

Among the aims of the Doha negotiations is the reform of agricultural trade in three principal areas: market access, domestic support and export subsidies. Ministers in Doha in 2001 adopted a number of decisions on developing countries' difficulties implementing the current SCM Agreement.

During the Doha Round, WTO Members also negotiated a provision for support to farmers whereby support for prices, or for earnings (according to how much is produced or sold), would be substantially cut but not eliminated. Members would be allowed a conceptually small amount, limited to 2.5% of the value of production for developed countries and 6.7% for developing countries. In order to avoid concentration, this type of support would be limited for individual products.

Box 17. Types of Export Subsidies and Treatment in the WTO

Certain lessons can be drawn from the principles of an effective agreement on export subsidies, while some specific holes that need to be eliminated can also be identified. *These General principles include:*

- Since countries have committed to eliminate all forms of export subsidies, a firm deadline for phasing them out should be agreed upon. Five years is seen as reasonable.
- Members should be encouraged to make a gesture of good faith when signing the agreement by offering a down payment in the form of an immediate and across the board cut in export subsidies.
- *Ad valorem* (percentage) limits on the per unit subsidy (as a percentage of the world price) should be introduced on a commodity-by-commodity basis, combined with a ceiling on the total value of exports that may be subsidised. The *ad valorem* limit is expected to place a constraint on the difference between domestic and world prices, while the value limit will constrain the impact of export subsidies on world markets.
- Strengthened monitoring of export subsidies through coordination of data collection among major trade institutions such as the OECD and the WTO. The WTO Trade Policy Review Mechanism should, in particular, be mandated with the provision of an annual evaluation of the effects of export subsidies, with a particular focus on developing countries.
- All commitments should be made on a per product basis, accompanied by a uniform system of classifying products.
- Delaying or avoiding reductions through practices such as front-loading should be anticipated and prevented.
- Special and differential treatment for developing countries should not go beyond Article 9.4 of the Uruguay Round Agreements Act, which specifies exclusions for subsidies on marketing, handling and transportation only.

Source: Gorter, H. (2006). *Export Subsidies: Agricultural Policy Reform and Developing Countries*. In Newfarmer, R. (Ed). *Trade, Doha, and Development: A Window into the Issues*. The World Bank: Washington DC.

That said, a wide range of support is allowed for agriculture without limit under the "Green Box", which is considered non-trade distorting, e.g., for development, infrastructure, research, agricultural extension, structural adjustment. Conditions would also be tightened to prevent direct income supports such as those obtained from stimulating production.

Export subsidies, including subsidies hidden in export credit, state trading enterprises and non-emergency food aid, were to be eliminated by 2013. Since the July 2008 Geneva Ministerial, ministers negotiating on “modalities” tentatively agreed on a number of issues but were stuck on the “special safeguard mechanism” (SSM) for developing countries in which much has already been agreed on. The SSM would allow developing countries to temporarily raise tariffs to combat import surges and price falls.

It was agreed that developing countries have access to an SSM. There was still disagreement on the size of increased in imports to trigger the temporary tariff rise, and how high the rise should be in general. There was also disagreement on the type of situation in which SSM could raise tariffs above commitments countries had made in the 1986–94 Uruguay Round — the “pre-Doha Round bound rates”.

As of June 2015, the version debated is the version circulated in December 2008 by the chairperson of the agriculture negotiations as the latest version of the draft “modalities”. In the December 2008 Draft, with regards to export competition, export subsidies were to be eliminated by end of 2013 (longer for developing countries). Also, in Market Access and Domestic Support, the following was to apply:

DOMESTIC SUPPORT

- **Overall trade distorting domestic support** (Amber + de minimis + Blue). EU to cut by 80%; US/Japan to cut by 70%; the rest to cut by 55%. “Down payment” (immediate cut) of 33% for US, EU, Japan, 25% for the rest. Bigger cuts from some other developed countries, such as Japan, whose overall support is a larger % of production value. Cuts made over 5 years (developed countries) or 8 years (developing).
- **Amber Box (AMS)**. Overall, EU to cut by 70%; US/Japan to cut by 60%; the rest to cut by 45%. Bigger cuts from some other developed countries whose AMS is larger % of production value. Also has down payment.
- **Per product Amber Box support**: capped at average for notified support in 1995-2000 with some variation for the US and others. Countries' caps to be annexed to these “modalities”.
- **De minimis**. Developed countries cut to 2.5% of production. Developing countries to make two-thirds of the cuts over three years to 6-7% (no cuts if mainly for subsistence/resource-poor farmers, etc.). (Applies to product-specific and non-product specific de minimis payments)
- **Blue Box** (including “new” type). Limited to 2.5% of production (developed), 5% (developing) with caps per product.
- **Green Box**. Revisions — particularly on income support, to ensure it really is “decoupled” (ie, separated) from production levels, on developing countries’ food stockpiling, and on tighter monitoring and surveillance.

Source: WTO Website

Since then, the agriculture negotiations committee has been holding talks on unsettled issues arising from the December 2008 draft on modalities.

In April 2012, the Committee on Subsidies and Countervailing encouraged more members to notify their subsidy programmes, and on improving the timeliness and completeness of notifications. In October 2012 the Committee on Subsidies and Countervailing Measures approved the final extension of the transition period — until the end of 2013 — for export subsidy programmes of 19 developing countries. The programmes consist mainly of free trade zones and tax incentives.

At the January 2015 meeting of the Negotiations Committee on Agriculture members were still divided on a number of issues with regards to the modalities.

III.10.4. Trade Negotiation on Subsidies and Countervailing Measures and LLDCs

For many LLDCs, subsidies play an important role in the development of industries and in the support of rural communities. Because of the unfavourable geography of LLDCs, their agricultural exports and industries are at a natural disadvantage to other countries. Meanwhile, owing to a lack of investment in key infrastructures, LLDCs often resort to subsidies to bridge the gap in private investment.

LLDCs need to be engaged in the negotiation on SCM, and to argue for the need for additional flexibilities over other countries and equal treatment as LDCs.

III.11. Social and Environmental Standards

III.11.1. Negotiations on Labour Standards

International labour standards have gradually become a contentious issue in relation to trade between industrialised and developing countries. Labour standards related scandals in China from

Box 18. Regulation of Labour Standards

Labour standards are multidimensional and differ across countries depending on the stage of the development, political, economic and social conditions of the country. Many institutions have tried to promulgate universal labour regulations to coordinate the improvement of labour conditions worldwide. The main institution, developing such international labour policies and norms is the International Labour Organization (ILO), which has submitted 189 conventions and is systematically promoting labour standards, including the abolition of child labour, elimination of discrimination or freedom of association. Countries deciding to ratify conventions adopted by the ILO are under the obligation to improve labour standards in their domestic economy.

Source: Stec-Nicpon, A. (2015). Committing to Labour Standards in Free Trade Agreements, in *International Trade and Investment Review*, Vol.1 (1), International Economics

suppliers of Apple (regarding underpaid and overworked workers in December 2014), tragic events in Bangladesh (with the collapse of a textile assembly operation which supplied multinationals in Europe and the US) and countless other scandals involving overseas operations involving underpaid or underage workers have fuelled the debate on imposing labour standards in developing countries. Many countries however, are against connecting labour standards with trade agreements, which can be expensive and difficult to implement and

monitor¹²¹.

International organisations, including those of the ILO or WTO, have not reached consensus on imposing any trade related sanctions¹²² against countries which flout international conventions on labour standards and human rights, and recommend to not make use of trade agreements as a channel for the enforcement of labour standards¹²³. The WTO stated that: *“economic growth and development fostered by increased trade and further trade liberalisation contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question”*¹²⁴.

At the Third Ministerial Meeting in Seattle in December 1999, the issue of core labour standards was perhaps the most divisive issue on the agenda. In the run-up to the meeting, both the United

¹²¹ Baker, P., Huong, P. & Vanzeti, D. (2014). *EU-Vietnam FTA Sustainable Impact Assessment*. MUTRAP

¹²² Mah, J.S.(1998) *ASEAN labour standards and international trade*, in ASEAN Economic Bulletin, vol.14, no.3, pp.292-302

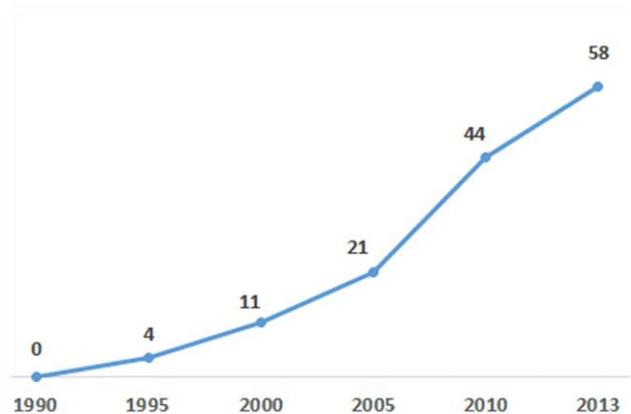
¹²³ Anuradha R.V. & N.S. Dutta (2012) *Trade and Labour under the WTO and FTAs*, Clarus Law Associates.

¹²⁴ WTO (1996) *Singapore Ministerial Declaration adopted on 13 December 1996*.

States and the European Union put forward proposals for addressing the issue of labour standards inside the WTO. Although, officials from both members said they did not envision the use of trade sanctions in the context of the labour standards issue, both proposals were fiercely opposed by developing country governments¹²⁵.

Nonetheless, in recent years the number of trade agreements that cover labour issues have increased and many countries, including those in the European Union and the United States, have initiated new bilateral trade agreements with such provisions¹²⁶. According to the ILO, in June 2013 there were 58 agreements which included labour clauses, such as “*minimum working conditions, enforcement of national labour laws, as well as monitoring and enforcing labour standards*”¹²⁷. Although the majority of these trade agreements contain labour provisions that do not imply any economic cost related to sanctions for non-compliance, a growing number of conditions are imposed. Some of the countries, in particular the United States, went further to include the improvement of national labour laws as a condition for ratifying any agreement¹²⁸.

Figure 22. FTAs with labour provisions



Source: ILO (2013) Labour standards increasingly included in bilateral and regional free trade agreements

The EU also draws attention to social development, economic growth and labour regulations in developing countries. However, instead of imposing trade sanctions based on social and labour standards, the EU provides incentives in the form of additional tariff preferences for those countries that are fulfilling the core international labour rights (a positive reward approach). The EU’s generalised system of preferences (GSP) has been augmented by offering additional trade incentives to those developing countries that apply a series of conventions which relate to human rights, including international labour standards¹²⁹. The US has similarly applied labour standards in its free trade agreements and for the utilisation of GSPs.

WTO Article XXIV allows trade-linked labour standards in preferential trading agreements. This Article XXIV concerns the creation of customs unions and free trade agreements and the Enabling

¹²⁵ WTO (2001). *Trade and Labour Standards. A difficult issue for many WTO member governments*. WTO Ministerial 2001 Briefing Notes.

¹²⁶ Lazo Grandi, P. (2009) *Trade Agreements and their Relation to Labour Standards*, ICTSD.

¹²⁷ ILO (2013) *Labour standards increasingly included in bilateral and regional free trade agreements*.

¹²⁸ ILO (2013), *ibid*

¹²⁹ EC (2013) *Practical guide to the new GSP trade regimes for developing countries*, European Communities.

Clause of 1979, which governs special and differential treatment for developing country exports¹³⁰. While the WTO charter establishes some terms limiting the use of preferential trade agreements, there are no restrictions on conditionality relating to labour standards and enforcement. As a consequence, most current preferential trade agreements involving developed and developing countries contain labour standards provisions¹³¹.

III.11.2. Negotiations on Environmental Goods and Services

There has been a significant debate over whether the WTO is the best framework for shaping and policing a multilateral environment agreement, and whether purely environmental agreements are more appropriate than trade agreements in order to curb environmental externalities brought about by any kind of economic development. Nevertheless, the WTO Agreements contain provisions which permit a certain latitude for the application of environmental policies. For example, in the interpretation made by the Appellate Body in deciding the EC-Asbestos case, the WTO considered the issue of product likeness (under the consideration of National Treatment provisions) and considered a broad range of characteristics in determining 'likeness', including the effects a product may have on human health¹³². However, it remains unsettled whether production processes and methods (PPMs) can or should be taken into account in determining 'likeness'. The WTO Agreement on TBT also permits the application of technical regulations if they are applied for environmental reasons in accordance with international standards¹³³. GATT Article XX, the General Exceptions clause, allows for certain measures even when they violate other GATT rules. Among the measures accepted are those 'necessary to protect human, animal, or plant life or health' or 'relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption'. Such measure may include import bans related to another country's environmental regulations¹³⁴.

WTO negotiations during the Doha Round have focused on eliminating trade barriers to environmental goods and services with an aim of creating a "win-win-win" situation for trade, the environment and development. Negotiations focus on the reduction or elimination of non-tariff barriers to environmental goods and services such as catalytic converters, air filters or consultancy services on wastewater management¹³⁵.

¹³⁰ Brown, D. K., Dehejia, R. & Robertson, R. (2010). *Better Factories Cambodia, Summary of Findings*. 13 September

¹³¹ Brown, D. K. (2012). Labour Standards and Human Rights, in Narlikar, A., Daunton, M. & Stern, R. M. (eds) *The Oxford Handbook on the World Trade Organization*. Oxford University Press

¹³² Hufbauer, G. & Fickling, M. (2012). Trade and the Environment, in Narlikar, A., Daunton, M. & Stern, R. M. (eds) *The Oxford Handbook on the World Trade Organization*. Oxford University Press

¹³³ WTO TBT Agreement, Art. 2

¹³⁴ Hufbauer, G. & Fickling, M. (2012), *ibid*

¹³⁵ WTO (2014). *Azevêdo welcomes launch of plurilateral environmental goods negotiations*, 2014 News Item. WTO. 8 July.

In the 2001 Doha Ministerial Declaration, members were required to negotiate the reduction and/or elimination of tariff and non-tariff barriers on environmental goods and services, the emphasis being that negotiation should aim at achieving sustainable development by creating a triple win situation for trade, the environment and development.

According to the WTO, the negotiations will have three winning functions. Firstly, the negotiations can facilitate trade through the reduction or elimination of tariff and non-tariff barriers (NTBs) by allowing domestic purchasers, including business and governments at all levels, to acquire environmental technologies at lower costs. In addition, liberalisation of trade in environmental goods will encourage the use of environmental technologies, which will in turn stimulate innovation and technology transfer.

Secondly, the negotiations are beneficial to the environment as they will improve a countries' ability to access high quality environmental goods. This will directly improve the quality of life for citizens in all countries by providing a cleaner environment and better access to safe water, sanitation or clean energy. The use of environmentally friendly goods will also reduce harmful side-effects of various activities that are harmful to the environment, hazardous to human health, and may lead to a more efficient use of energy.

Finally, the liberalisation of trade in environmental goods and services is beneficial for development as it will enable developing countries to obtain the tools needed to address key environmental priorities as part of their on-going development strategies.

There is a close link between trade in environmental services and trade in goods. This is due to the fact that provisions of services often rely on the use of related goods. For instance, solar energy installations (a service) provided for the installation of photovoltaic panels (a good).

On 8 July 2014, the Director General of the WTO welcomed the launch of plurilateral negotiations for an Environmental Goods Agreement brought by fourteen WTO members. According to the members, "talks will promote green growth and sustainable development while providing impetus for the conclusion of the Doha Round".¹³⁶ The talks are open to any WTO member and the results will be applied according the most-favoured nation principle, and will be non-discriminatory. Australia, Canada, China, Chinese Taipei, Costa Rica, the European Union, Hong Kong China, Japan, New Zealand, Norway, Singapore, the Republic of Korea, Switzerland and the United States launched the negotiations, collectively making up 86 per cent of global environmental goods trade. Environmental protection is a very important topic of concern to the

¹³⁶ WTO (2014). Azevêdo welcomes launch of plurilateral environmental goods negotiations, 2014 News Item, WTO, 8 July.

WTO and the liberalisation of environmental goods is a significant element of negotiations under the Doha Development Agenda.

The talks were expected to build on a list of 54 environmental goods assembled by the Asia-Pacific Economic Cooperation forum (APEC) countries in 2012 to reduce import tariffs to 5 per cent or less by the end of 2015. The products include wind turbines, air quality monitors and solar panels. Negotiators said that they will meet regularly to discuss substance and product coverage. The first phase of the consultations was aimed at eliminating tariffs or customs duties on a wide range of environmental goods while a second phase would be focused on addressing the bureaucratic or legal issues such as non-tariff barriers that could hinder trade in environmental.

III.11.3. Trade Negotiations on Social and Environmental Standards and LLDCs

LLDCs have a strong interest in carefully monitoring and participating in the negotiations linked to social and environmental standards. While these are important, they need to be applied in a non-discriminatory and transparent manner. Moreover, LLDCs may require flexibilities with regard to the transition period for adopting such standards and demand technical assistance for complying with the ILO core labour standards provisions or multilateral environmental decisions. Increasingly developed countries are attempting to push production processes into explaining differences in “like” products which have been produced in a manner which may have environmental consequences. This is particularly the case in agricultural and mining sectors, where more stringent rules are applied by developed countries. A typical example is the practice of slash and burn, which is increasingly seen by some developed countries as an unacceptable practice. Freedom of association and the right to protest are also increasingly demanded in multilateral (GSP) agreements and in bilateral agreements.

III.12. Other Trade Related Areas of interest to LLDCs Negotiated in the Doha Round

III.12.1. Public Stockholding for Food Security

During the period of the Doha Round, escalating food prices and concerns over food safety encouraged some Developing Countries to engage in stockpiling food. Initiated by India, the G-33 group of developing countries proposed that the rules of the WTO be amended to make it easier for developing countries to buy food at administered prices from poor farmers when building public food-stocks or providing domestic food aid.

Agreement of the Bali Ministerial package, which emerged from the Ninth Ministerial Conference¹³⁷ included disagreement over the issue of public stockholding, which was viewed as

¹³⁷ WTO (2014). *The Bali decision on stockholding for food security purposes*. Ministerial Conference. WT/MIN(13)/38 & WT/L/913

trade distorting since it affected world prices and volumes of products supplied on the international market. The direct effect was that it could also impact food security in other countries. Countries that provide domestic support to their farmers either supply the excess produce at discounted prices or sell the surplus production at a lower price on the international markets.

A consensus was not reached in the negotiations due to the varying opinions on the trade distortion effects of net imports of subsidised agricultural products from developing countries.

Mainly India and Thailand were at the forefront of the debate. Nevertheless, LLDCs have a real interest in these negotiations given that food security can be an issue for them as they that can have irregular sources of supply for imports and expensive freight costs, which could threaten their food security. Others remain in fragile conflict regions that can also affect the supply of essential foods. In some countries, food stockpiling may be a sensible policy and disciplines affecting the ability of LLDC government to engage in stockpiling may be detrimental to some LLDC development objectives.

III.12.2. Export Taxes

Export restrictions or taxes are not often used in international trade. These duties were common in the past and were significant elements of mercantilist trade policies, where they served as a safeguard for domestic supplies and industries in raw material producing countries. The most commonly taxed export products include agricultural products such as sugar, coffee and cocoa, forestry products, fishery products, mineral and metal products, leather, hides and skins products¹³⁸. Export taxes act as effective protection for domestic industries. For example, unprocessed coffee destined for export may be taxed (at times highly) to encourage local processing by domestic industries to enable export of the finished (processed) product (see Box 19).

¹³⁸ Piermartini, R. (2004). *The Role of Export Taxes in the Field of Primary Commodities*. Geneva: WTO

Box 19. Economic Rationale for Export Taxes

There are a number of economic explanations for implementing export taxes as an economic development tool, which include to:

1. Affect the terms of trade. For large countries, restricting its exports (by making it less price competitive because of the tax applied to its exports), can raise its world price.
2. Guarantee food security by restricting the export of food commodities.
3. Raise government fiscal receipts. Export taxes are a source of revenue to developing countries
4. Redistribute income. Export taxes act as measures that imply redistribution of income at the detriment of domestic producers of the taxed commodity and is advantageous for domestic consumers and public revenues.
5. Stabilisation of domestic prices. Some developing countries use export tax in order to stabilise domestic prices for exports.

Source: Bouet, A. & Laborde Debucquet, D. (2010). Economics of export taxation in a context of food crisis. *IFPRI discussion papers 994*, International Food Policy Research Institute (IFPRI).

There are various forms of export restrictions. These include export taxes, export bans, regulated exports, and supervised exports (see Box 20). Customs duties (export and import duties) give a price advantage to locally-produced goods over similar goods which are imported, and raise revenues for governments. The Doha Round has the broad and specific objective of reducing distortions in agricultural trade caused by high tariffs and other barriers, export subsidies, and some kinds of domestic support.

The WTO has made significant progress in reducing the frequency of export taxes, mainly due to the fact that their elimination has generally been accepted as a way of enhancing growth prospects and strengthening a country's external position¹³⁹. Export taxes are often claimed to be substitutes for income tax in sectors such as agriculture, and their reduction or elimination is likely to be accepted if it is implemented as one element of an overall tax reform package. Elimination of export taxes has a positive impact on the producers of the affected commodities, and when it comes to the case of agricultural products, these producers may be among the poorer segments of society.

¹³⁹ Hoekman, B., Matoo, A. & English, P. (eds) (2002). *Development, Trade and the WTO: A Handbook*. World Bank

Box 20. Types of Export Restrictions

According to Piermartini (2004), export taxes can take different forms. An export tax can be levied as an ad valorem tax, specified as a percentage tax of the value of the product; or a specific tax, specified as a fixed amount to pay per unit of a product. It can be a progressive tax, i.e. characterised by a high tax rate when the price of the product is high and a lower tax rate when the value of the product is low. All types of export taxes have the effect of reducing the volume of exports and are therefore a form of export restriction.

Historically, export bans have frequently been applied to live fishery products, wildlife, hides and skins of certain endangered species, or to prevent exports of dangerous materials. For example, Indonesia banned exports of palm oil and cooking oil in an attempt to control domestic prices in the aftermath of a huge depreciation of the rupiah in 1997. The use of this policy has two fundamental problems: it is not a credible long-term policy (the effectiveness of an export ban is seriously curtailed by the anticipation of the ending of the ban) and it often leads to smuggling.

Regulated exports include quotas and licensing requirements. Quotas define a maximum volume of exports, while licensing requirements require that a commodity be exported only through certain approved exporters. This system results in a strong discretionary element in the trading system and may encourage the formation of export cartels and rent-seeking activities. Supervised exports is a mixed form of control used for some commodities to ensure an adequate domestic supply of "essential goods" at a reasonable price.

Export taxes are mainly used by developing and least-developed countries (LDCs).

Source: Piermartini, R. (2004). *The Role of Export Taxes in the Field of Primary Commodities*. Geneva: WTO

Export taxation as a policy instrument is not subject to WTO disciplines. As it is not regulated by the WTO, it is particularly important to determine its economic effects. Export taxes are imposed by developing countries on primary export commodities. In some cases taxes are imposed in lieu of royalties for the extraction of minerals; in others they are used to provide protection to industries that process primary commodities. The taxes mean that primary producers and farmers receive a price below that prevailing in world markets for their commodities. While elimination of the tax raises the producer's incomes, it may also bankrupt established processing facilities that are viable only if they pay lower-than-world prices for their inputs¹⁴⁰. Sometimes export taxes are used in an attempt to exercise market power, and in such cases the policy can have a very adverse effect on the poor.

The Negotiation Group on Market Access discussed export restrictions in 2002 during the Doha Round but did not reach the consensus necessary to present to the Council of Ministers. The US wanted to table a proposal that export taxes could be applied for revenue purposes only. The EU favoured a blanket ban on the use of export taxes for raw materials. Japan and Switzerland raised the concern that export taxes could damage net food importing countries' food security, and as

¹⁴⁰ Hoekman, B., Matoo, A. & English, P. (eds) (2002). *Development, Trade and the WTO: A Handbook*. World Bank

such made a proposal to eliminate export taxes altogether. The Cairns Group proposed reductions on export taxes and restrictions to the elimination of import escalation, while some Developing Countries retorted that export taxes may be a response to support industrialisation by overcoming the existence of tariff escalation policies applied by some countries. In July 2006, talks on farm subsidies and on lowering import tariffs failed, and negotiations were suspended. Negotiations on export taxes have been put on hold as a result¹⁴¹.

Food security concerns will be relevant to some LLDCs and the issue of export taxes is one that could acutely affect their access to supplies. On the other hand, some LLDCs will desire the application of export taxes to foster industrialisation within their own borders instead of exporting raw materials and minerals. The negotiations should be carefully followed by LLDCs, and ideally within the group some common negotiating positions should be sought, which balances the needs of net food importing countries (as well as those countries desiring to import intermediary inputs into their industries), and those which are attempting to build industries based on their natural endowments.

¹⁴¹ Deese, W. & Reeder, J. (2008). Export Taxes on Agricultural Products: Recent History and Economic Modelling of Soybean Export Taxes in Argentina. *Journal of International Commerce and Economics*. Vol I. August

IV. MULTILATERAL NEGOTIATIONS FOR TRADE IN SERVICES

IV. 1. Introduction

Overall, this chapter aims to help trade officials to navigate the very complex world of services regulations and trade in services negotiations. The objective is to familiarise LLDCs' trade policy makers and trade negotiators with the key concepts of trade in services, the particularities of regulation of trade in services as opposed to trade in goods, and the key principles and main provisions of the General Agreement on Trade in Services. Particular attention is given to explaining the functioning of the WTO in the area of services, with practical examples of the everyday life of trade diplomats participating in various committees and groups where they represent their respective countries.

Understanding the economics of services is key for adopting services trade policy that increase a country's competitiveness, contributes to enhanced exports of both goods and services, help create jobs and contributes to poverty reduction. Therefore, this chapter starts with explaining the contemporary role of services in the value-chain and their importance for the production of goods and services both at the micro and macro levels. Special focus is on those service sectors, which are of special interest for LLDCs, such as transportation services (in particular road and air transportation), communication services, computer and related services and ICT in general, financial services, and travel services.

The chapter then turns to the political economy, and mechanics of WTO negotiations on trade in services, providing insights into the current DDA negotiations on further liberalisation of trade in services and their linkages with other negotiating areas.

IV.2. Background on negotiating services in the WTO

IV.2.1. The genesis of the GATS¹⁴²

The Uruguay Round agreement on trade in services, i.e. the General Agreement on Trade in Services (hereinafter GATS), is perhaps the single most important development in the multilateral trading system since the GATT itself came into effect in 1948. This *new* agreement for the first time extends internationally agreed rules and commitments, broadly comparable with those of the GATT, into a huge and still rapidly growing area of international trade.

¹⁴² This section mainly draws on Croome, J. (1995) *Reshaping the World Trading System – A history of the Uruguay Round*. Diane Publishing Co.

With minor exceptions, the General Agreement on Tariffs and Trade that was designed after World War II, and which embodied the rules of the multilateral trading system, did not cover services, until the birth of the WTO in 1995. Governments, including trade policy makers, have long questioned the need for a trade agreement on services. This was partly due to the fact that most services have been traditionally considered to be non-tradable or considered “domestic” activities. For example, services supplied by hotels and restaurants or personal services that do not lend themselves to the application of trade policy concepts and instruments. Other sectors, e.g. rail transport and telecommunications, have been viewed as classical domains of government ownership and control, given their infrastructural importance and the perceived existence, in some cases, of natural monopoly situations. A third important group of sectors, including health, education and basic insurance services, are considered in many countries to be governmental responsibilities, given their importance for social integration and regional cohesion, which should be tightly regulated and not be left to the rough and tumble of markets.¹⁴³ In addition, some services have been dealt with in specific fora, e.g. the IMF and BIS for financial services, or under bilateral agreements, for example road and air transport services, a situation that is difficult and unnecessary to change.

With technological changes, privatisation and globalisation in the 1970s and 1980s, the tradability of most services and their growing importance in international trade became evident. Indeed, many services sectors have undergone fundamental technical and regulatory changes in recent decades, opening them to private commercial participation and reducing, even eliminating, existing barriers to entry. The emergence of the Internet has helped to create a range of internationally tradeable products, and has removed distance-related barriers to trade that had disadvantaged suppliers and users in remote locations, especially in LLDCs. Relevant areas include professional services such as software development, consultancy and advisory services, etc.¹⁴⁴

These changes prompted the most competitive service economies, namely the US and the UK, to try to put the liberalisation of trade in services on the GATT’s agenda. It took some 15 years of discussions until the General Agreement on Trade in Services (GATS) was finally born in 1995 as part of the Agreement Establishing the World Trade Organization. Informal discussions on international trade in services started in the GATT in the early 1980s, followed by not less than 13 studies submitted by developed countries as from 1982. Addressing various aspects of services, e.g. the scale and diversity of services in national economies and in international trade, the surging growth of the sector as a whole, the complexity of its structure and of the regulations imposed on it, they ultimately made the case for making services part of the MTS. As noted by Croome (1995), from 1985 onwards, GATT discussion of services was effectively legitimised by a decision of the November 1984 annual session, and broadened by the addition of developing countries to the exchange of information and ideas. It was at this time that the United States, supported by

¹⁴³ WTO (2005)

¹⁴⁴ Idem.

the United Kingdom, called for the negotiation of a framework of rules for trade in services comparable to the GATT rules for trade in goods, and identified a number of the basic GATT principles, such as market access, transparency and national treatment, as being applicable also to services. However, it was not until the launching of the Uruguay Round in September 1986 that an agreement was reached to negotiate on a framework for trade in services.

Part II of the September 1986 GATT Ministerial Declaration on the Uruguay Round, the so-called Punta del Este Declaration, decided to launch negotiations on trade in services in the following terms:

Ministers also decide, as part of the Multilateral Trade Negotiations, to launch negotiations on trade in services.

Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalisation and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations.

GATT procedures and practices shall apply to these negotiations. A Group of Negotiations on services is established to deal with these matters. Participation in the negotiations under this Part of the Declaration will be open to the same countries as under Part I. GATT secretariat support will be provided, with technical support from other organizations as decided by the Group of Negotiations on Services.

The Group of Negotiations on Services shall report to the Trade Negotiations Committee.

Twenty years after the birth of the WTO, these negotiating terms seem simple, however one should recollect that even this short mandate emerged from several years of heated and detailed preparatory discussions with developing countries even refusing to enter into discussion on how international rules might be developed for the sector.

The negotiations that followed started without any firm basis and negotiators in the absence of pre-existing models of disciplines for trade in services. Negotiators initially had to spend a great deal of time discussing how trade in services might be liberalised. Within the Punta del Este mandate, negotiators agreed that it had to tackle five initial tasks: (i) look at problems of definition and statistics; (ii) examine broad concepts on which principles and rules for trade in services might be based, including disciplines that might be appropriate for particular service sectors; (iii) consider how wide the coverage of the services framework ought to be; (iv) survey what disciplines and arrangements already affected trade in services; and (v) look at the measures and practices that helped or hindered the growth of trade in services and which might be candidates

for rules on transparency and liberalisation. Some developing countries – mainly led by India – tended to argue that more progress was needed on statistics and definitions before bargaining could begin.

V.2.2. The main issue areas of the negotiations

The discussion of concepts on which principles and rules for trade in services would need to be based was a core element of the preparatory negotiations that and in due course was fed into the negotiation on the “multilateral framework” that later became the GATS. For most participants, the obvious starting point was the set of basic principles of the GATT, even though difficulties arose as to how to interpret these principles or how to understand their application to the services universe. Basic discussions evolved around questions such as what to regulate and what national treatment of foreign-service suppliers and foreign services would mean, whether the most favoured nation treatment is unconditional, and for a long time the perceived contradiction between liberalisation and the development of developing countries (that the latter felt contradicted by trade liberalisation).

The next key issue was the coverage of a services agreement: should the agreement cover all services, or should some sectors be left out? Many countries wanted universal coverage, mainly because they believed that this would allow a balance of advantages for the widest possible participants: however, there were also strong opponents who felt that full coverage of all sectors would deprive them from their leverage on free riders to make meaningful liberalisation commitments.

At the ministerial meeting in Montreal in December 1988, an agreement was reached on the concepts, principles and rules that could be applied to the multilateral framework.

After the Montreal mid-term review an important factor that gave the negotiations greater momentum was the shift in the positions of many developing countries: they moved away, in services as in many other areas of the Uruguay Round, from defensiveness and passive participation towards an active search for solutions and full participation. Ultimately, this new approach helped them reap gains from the negotiations and also gave more inclusiveness to talks. In short, the dividing lines of the services negotiations ceased to be North-South, which helped more constructive negotiations that were addressing the gaps between the real interests.

In the subsequent phase of the Uruguay Round, negotiators were tackling a reduced number of key principles for the future GATS text: transparency, progressive liberalisation, national treatment, non-discrimination, market access, increasing participation of developing countries, safeguards and exceptions, and domestic regulatory freedom. Besides, they held “sectoral testing exercises” to look at the special problems and issues affecting trade in a number of sectors, and

to understand how the general principles being worked out for the framework agreement might apply in practice. These covered telecommunications, construction, transportation, tourism, professional services and financial services.¹⁴⁵

In the run-up to the 1989 Brussels ministerial meeting the negotiations still continued on the basis of some 15 competing texts, later replaced by an arbitrated Chairman's text submitted to Ministers. In this phase, two key questions dominated the negotiations: sectoral coverage and MFN treatment. On the former, there was a North-South divide, with most developed countries being firm on universal coverage (although the US wished to exclude some sectors altogether from the services agreement) whilst developing countries wished to adopt a "positive list approach", meaning that the agreement would apply only to sectors positively identified.

Regarding MFN, the US tried to use the principle of conditional MFN in order to extract commercial advantages by tying this treatment to the exchange of specific commitments. This position, however, met universal opposition, as it contradicted the core nature of the MTS.

The so-called Dunkel draft¹⁴⁶ presented to the Brussels Ministerial meeting in December 1990 left many issues unresolved, chief among them being the MFN question. The Dunkel text on services contained sectoral annexes on maritime, inland waterway, road and air transport, on basic telecommunications and telecommunications services, on labour mobility and on audio-visual services. An annex on financial services was missing, even though negotiators agreed on its need.

In the aftermath of the Brussels Ministerial a new US position accepting unconditional MFN helped unblock the negotiations and allowed other participants to present offers on market access commitments. The linkage they made between the acceptance by the US of the unconditional MFN and their tabling market access offers played a positive contribution to moving forward in the Round. At the same time, keeping with the realities of prevailing bilateral agreements in some sectors, such as transport and audiovisual, the principle of limited number of exemptions from MFN was adopted.

With a broad agreement on the framework text in Brussels, the market access negotiations could start in the early months of 1991 spanning up to December 1993, which marked the end of most Uruguay Round negotiations. Nevertheless, during this period negotiators would also improve the framework text well beyond what was envisaged in December 1990.

¹⁴⁵ Croome, J. (1995) *Reshaping the World Trading System – A history of the Uruguay Round*. Diane Publishing Co.

¹⁴⁶ Arthur Dunkel was the Director-General of the GATT who presented a draft text of the Uruguay Round results, which in many respect was « arbitrated » in the absence of convergence among negotiators.

IV.2.3. General Agreement on Trade in Services

As a result of the Uruguay Round negotiations, GATS entered into force on 1 January 1995 to provide for the extension of the multilateral trading system to services. GATS is part of the Agreement Establishing the World Trade Organization. In accordance with the principle of the “single undertaking” decided on during the Uruguay Round, all Members of the WTO are signatories to GATS and have to assume the resulting obligations. So, regardless of their countries’ policy stances, trade officials need to be familiar with this agreement and its implications for trade and development. These implications may be far more significant than available trade data suggest.

Box 21. Single Undertaking

“Single Undertaking” is a guiding principle in the framework of multilateral trade negotiations. The *Doha Ministerial Declaration* states that “. . . the conduct, conclusion and entry into force of the outcome of the negotiations shall be treated as part of a single undertaking”. The Punta del Este Declaration, which launched the *Uruguay Round*, also said that the conduct of the negotiations, their conclusion and entry into force were to be treated as a single process. “Single undertaking” has also been used to refer to the requirement that WTO members must join all the agreements administered by it, except for the two *plurilateral agreements*. Membership of these remains optional. Before the WTO was established, GATT members could elect to a large extent which of the agreements under the purview of the GATT, other than the GATT itself, they wanted to join.

Source: Walter Goode (2003). *Dictionary of Trade Policy Terms*. Fourth edition. July

The GATS consists of three main components. The first is a framework of **rules**, which to a large extent was modeled on the GATT, relies on many of its principles, and which lays out the general obligations governing trade in services. It provides for disciplines on transparency, domestic regulations of services, MFN treatment, market access and national treatment. In important aspects, the framework is still incomplete, and therefore the GATS directs for rule-making in certain areas, such as emergency safeguards, subsidies, government procurement and domestic regulation. The second component consists of specific sectoral and modal agreements embodied in annexes to the main text and/or in Ministerial Decisions. The five GATS Annexes relate to air transport, financial services, maritime transport and telecommunications, as well as the movement of natural persons. The third component consists of the Schedules of Specific Commitments, detailing the liberalisation undertakings of each WTO member. Each Schedule is specific to a WTO member.¹⁴⁷

Caution must be exercised when assessing a particular obligation of a WTO Member under the GATS as similarities with the GATT might be misleading. Indeed, some apparently similar

¹⁴⁷ However, Regional Economic Organisations may share a single Schedule. This is the case of the European Union the Member States of which are each Members of the WTO.

principles might have different scope under the GATS than under GATT. For example, the principle of National Treatment, fundamental to both GATS and GATT, is applied very differently; it is an unconditional obligation for trade in goods, but it is a conditional obligation for services and its extent depends on specific commitment made by the WTO Member concerned. The technically much more complex Services Schedules add to the difficulty of assessing exactly what rights and obligations a WTO Member has undertaken under the GATS.

In the following, the GATS agreement itself is explained, followed by the five GATS Annexes, which set out supplementary rules. This Section concludes with an explanation of how to prepare and read the Schedules of Specific Commitments.

Table 6. Quick Guide to the GATS

PART I SCOPE AND DEFINITION		
Article	Title	Short content
<i>I</i>	Scope and Definition	Defines the “measures” to which the GATS applies. Defines the notion of trade in services according to four modes of supply.
PART II GENERAL OBLIGATIONS AND DISCIPLINES		
<i>II</i>	Most Favoured Nation Treatment	The basic principle of non-discrimination between WTO Members. Applies as in the GATT. See also Annex on Article II Exemptions.
<i>III</i>	Transparency	Requires each Member to publish promptly “all relevant measures of general application” that affect operation of the GATS. Also requires to notify the Council of new or changed laws, regulations or administrative guidelines that significantly affect trade in sectors subject to Specific Commitments.
<i>IV</i>	Increasing Participation of Developing Countries	Defines the modalities of increasing participation of developing country Members in world trade.
<i>V</i>	Economic Integration	Allows WTO members to discriminate in favour of parties liberalising trade in services in economic integration agreements, subject to such agreements meeting Article V requirements on WTO compatibility.
<i>V bis</i>	Labour Markets Integration Agreements	Similarly to Economic Integration Agreements, provides similar legal cover for agreements establishing labour markets integration. The main condition is that citizens of the countries involved should be exempt from residency and work permit requirements.
<i>VI</i>	Domestic Regulation	Article VI:1, measures of general application
<i>VII</i>	Recognition	As a departure from the MFN requirement, Article VII provides scope for WTO Members, when applying standards or granting licenses, certificates, etc., to recognise education and other qualifications a supplier has obtained abroad.
<i>VIII</i>	Monopolies and Exclusive Service Suppliers	The GATS does not forbid the existence of monopolies or exclusive service suppliers per se. Article VIII:1 requires WTO Members to ensure that monopolies or exclusive service providers do not act in a manner inconsistent with the MFN obligation and commitments.

		Moreover, under Article VIII:2, Members are obliged to prevent such suppliers, if these are also active in sectors that are beyond the scope of their monopoly rights and covered by specific commitments, from abusing their position and acting inconsistently with these commitments.
<i>IX</i>	Business Practices	Refers to business practices other than those falling under the monopoly-related provisions of Article VIII that restrain competition and thereby restrict trade. Requires each Member to consult with any other Member, upon request, with a view to eliminating such practices.
<i>X</i>	Emergency Safeguard Measures	Provides for multilateral negotiations on the question of emergency safeguard measures (counterpart to GATT Article XXVIII). Any such mechanism, should it be agreed to by Members, would need to be based on the principle of non-discrimination. No agreement has been reached to date.
<i>XI</i>	Payments and Transfers	Requires WTO Members to allow international transfers and payments for current transactions relating to specific commitments. The rights and obligations of IMF Members, under the Articles of Agreement of the Fund, shall not be affected. This is subject to the proviso that capital transactions are not restricted inconsistently with specific commitments, except under Article XII (see below) or at the request of the Fund.
<i>XII</i>	Restrictions to Safeguard the Balance-of-Payments	Allows for temporary departures from general obligations or specific commitments made in case a Member experiences serious balance-of-payments and external financial difficulties.
<i>XIII</i>	Government Procurement	Article XIII provides that the MFN obligation (Article II) and any existing commitments on market access and national treatment (Articles XVI and XVII) do not apply to the procurement of services for governmental purposes. However, Article XIII provides for negotiations to be conducted on any new discipline under the GATS. No agreement has been reached to date.
<i>XIV</i>	General Exceptions	Generally similar to GATT Article XX, but does not provide for some exceptions (<i>e.g.</i> restrictions on gold movements) and includes others that are uniquely important to services (<i>e.g.</i> the protection of confidential records).
<i>XIV bis</i>	Security Exceptions	Nearly identical to GATT Article XXI, except for the further requirement that WTO members inform the Council for Trade in Services “to the fullest extent possible of measures taken under [this provision] and of their termination”.
<i>XV</i>	Subsidies	Subsidies, like other measures affecting trade in services are already subject to the GATS, thus unconditional general obligations, including MFN treatment, apply. National treatment only applies in scheduled sectors, and subject to any Article XVI limitation.

		Article XV nevertheless provides for negotiations on disciplines that may be necessary to avoid trade-distortive effects. No such disciplines have been agreed on yet.
PART III SPECIFIC COMMITMENTS		
XVI	Market Access	Article XVI consists of six different quantitative types of limitations, which must be scheduled if WTO members wish to maintain them.
XVII	National Treatment	Permits WTO members to schedule and maintain discrimination. Thus GATS National Treatment is fundamentally different from the unqualified obligation of national treatment applicable to goods trade under the GATT.
XVIII	Additional Commitments	Allows WTO Members to undertake additional commitments with respect to measures not falling under Articles XVI and XVII.
PART IV PROGRESSIVE LIBERALISATION		
XIX	Negotiation of Specific Commitments	Provides for successive rounds of negotiations with a view to achieving a progressively higher level of liberalisation. The process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.
XX	Schedules of Specific Commitments	Requires each WTO Member to submit a Schedule, but does not prescribe the sector scope or level of liberalisation. Specifies some core elements to be covered in each Member's schedule. It also provides that the Schedules form "an integral part" of the GATS.
XXI	Modification of Schedules	Provides a rules for modifying or withdrawing specific commitments. The relevant provisions may be invoked at any time after three years have lapsed from the date of entry into force of a commitment. It is thus possible for Members, subject to compensation, to adjust their commitments to new circumstances or policy considerations.
PART V INSTITUTIONAL PROVISIONS		
XXII	Consultation	Provides for rules for the consultation phase of Dispute Settlement. Subjects consultations to the WTO Dispute Settlement Understanding (DSU).
XXIII	Dispute Settlement and Enforcement	Provides rules for the recourse to the DSU and the settlement of violation and non-violation disputes.
XXIV	Council for Trade in Services	Provides rules for the institutional framework to facilitate the operation of the GATS.
XXV	Technical Cooperation	Provides that service suppliers of Members, which are in need of such assistance, shall have access to the services of contact points referred to in paragraph 2 of Article IV. Provides for technical assistance to developing countries to be provided by the WTO Secretariat.
XXVI	Relationship with Other International Organisations	Provides for the arrangements for consultation and cooperation with the UN and other IGOs.
PART VI FINAL PROVISIONS		

XXVII	Denial of Benefits	Provides for the cases where a service or a service provider is not considered to be a beneficiary of the GATS.
XXVIII	Definitions	Provides for definitions.
XXIX	Annexes	Lists the Annexes that are part of the GATS.
ANNEXES		
Annex on Article II Exemptions		The Annex on Article II Exemptions stipulates that MFN exemptions should not exceed ten years in principle, and provides for a review of all existing measures that had been granted for periods of more than five years.
Annex on Movement of Natural Persons Supplying Services under the Agreement		Clarifies that the scope of the GATS does not extend to measures affecting persons seeking access to the employment market or to measures governing citizenship, residence or permanent employment .
Annex on Air Transport Services		The Annex excludes from the scope of GATS measures affecting air traffic rights and services directly related to their exercise, which are for the most part governed by arrangements negotiated under the Chicago Convention. At the same time, it confirms that measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation systems (CRS) services are covered.
Annex on Financial Services		Clarifies some core GATS provisions as they apply to financial services. One of the central elements is the so-called “prudential carve-out”: WTO Members are free to take prudential measures to protect investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.
Second Annex on Financial Services		Provides for the possibility for a WTO Member - during a limited period - to list MFN-inconsistent measures relating to financial services in the Annex on Financial Services, as well as to improve, modify or withdraw all or part of its specific commitments on financial services.
Annex on Negotiations on Maritime Transport Services		Provided for the continued non-application of the MFN obligation in maritime transport for those Members that have not undertaken specific commitments in this sector. Following the suspension of the negotiations on maritime transport in 1996, the Council for Trade in Services took a decision to the same effect.
Annex on Telecommunications		Delineates the conditions governing access to and use of public telecommunications networks and services. Whenever a sector is listed in a Member’s schedule, all foreign suppliers in that sector must be treated on a “reasonable and non-discriminatory” basis in their use of all public telecommunications services.
Annex on Negotiations on Basic Telecommunications		Provided for modalities of application of MFN treatment and MFN exemptions for telecom services pending the Negotiations on Basic Telecommunications.

Source: Author based on information sources from the WTO website

IV.2.4. Structure of the GATS

The GATS has six parts and 29 articles or 32, if three *bis* articles are counted separately.

IV.2.4.1. Basic purpose

The Preamble essentially states three considerations that shaped its negotiation. First, the establishment of a multilateral framework of principles and rules, aimed at progressively opening up the trade in services, should help this sector to expand and to contribute to economic development worldwide. Secondly, WTO Members, and particularly developing countries, will still need to regulate the supply of services to meet national policy objectives. And thirdly, developing countries should be helped to take a fuller part in world trade in services, particularly through strengthening the capacity, efficiency and competitiveness of their own domestic services.

According to the Preamble, the GATS is intended to contribute to trade expansion “under conditions of transparency and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of developing countries”. Trade expansion is thus not seen as an end in itself, but as an instrument with which to promote growth and development. The link to development is further reinforced by explicit references in the Preamble to the objective of increasing participation of developing countries in services trade and to the special economic situation and the development, trade and financial needs of the least developed countries.

The contribution of GATS to world services trade rests on two main pillars: (a) ensuring increased transparency and predictability of relevant rules and regulations, and (b) promoting progressive liberalisation through successive rounds of negotiations. Within the framework of the Agreement, the latter concept is tantamount to improving market access and extending national treatment to foreign services and service suppliers across an increasing range of sectors. It does not, however, entail deregulation. Rather, the Agreement explicitly recognises the right of governments to regulate and to introduce new regulations in order to meet national policy objectives, and the particular need of developing countries to exercise this right.

To a considerable degree, the drafters of the GATS took inspiration from the GATT and used terms and concepts that had already been tested for decades in goods trade. These include the principles of Most Favoured Nation treatment and National Treatment. Comparable to its status under the GATT, MFN treatment, the obligation not to discriminate between WTO Members, is an unconditional obligation, which applies across all services covered by GATS. The tariff schedules under the GATT, in which countries bind their tariff concessions on merchandise imports, find their equivalent in schedules of specific commitments, which define the relevant trade conditions for services.

Reflecting peculiarities of services trade, however, there are also notable differences in scope and content between the two agreements.

- (a) Unlike GATT, GATS covers measures affecting both the product (service) and the supplier.
- (b) The definition of services trade covers not only cross-border supply, but also three additional forms of transaction (“modes of supply”).
- (c) While quota-free entry (“market access”) and national treatment are generally applicable obligations under the GATT, they apply under the GATS on a sector-by-sector basis and only to the extent that no qualifications (“limitations”) have been scheduled.

IV.2.4.2. Scope and coverage

Part I (Article I) defines the scope and coverage of the GATS. The agreement applies to **measures** by WTO Members, **which affect trade in services**.

Measures by WTO Members:

Under WTO law, “measure” has a very wide meaning. A measure is normally any law, rule, regulation, policy, practice or action carried out by a government or on behalf of a government. A measure affecting trade does not need to be formalised or published; even an administrative instruction may constitute a “measure”.

Measures by **WTO Members**:

As in the case of the GATT (where the relevant and similar rule is Article XXIV:12), the reach of this definition goes beyond central governments to include measures taken by regional and local governments, and includes those of non-governmental bodies exercising powers delegated to them by governments. Also, as under the GATT, Members’ governments are required to do their best to ensure that these sub-national governments observe GATS obligations and commitments.

It does not matter in this context whether a measure is taken at central, regional or local government level, or by non-governmental bodies exercising delegated powers. Article XXVIII makes it clear that measures covered are any measures,

[Whether] in the form of a law, regulation, rule, procedure, decision, administrative action, or any other form, . . . in respect of:

- (i) *the purchase, payment or use of a service;*

- (ii) *the access to and use of, in connection with the supply of a service, services which are required by those Members to be offered to the public generally;*
- (iii) *the presence, including commercial presence, of persons of a Member for the supply of a service in the territory of another Member.*

It is interesting to note that **the notion of a “service” itself is not defined**. In the GATT, the concept of “good” is not defined either, but there is a general consensus that products listed in the Harmonised Nomenclature are those to be considered as “goods”. Nevertheless, electrical energy – although classified in the HS – is still considered as services by some WTO Members. This lack of common understanding does not pose a problem until the breach of GATT obligation regarding the treatment of electrical energy is alleged by a complaining WTO Member.

Which services are covered by the GATS? **All services** are covered with two exceptions:

- Article I:3b excludes “*services supplied in the exercise of governmental authority*” and Article I:3c excludes services which are “*supplied neither on a commercial basis, nor in competition with one or more service suppliers*”. Typical examples may include police, fire protection, central banking services, mandatory social security, and tax and customs administration.
- There is only *one sector-specific exception*: measures affecting *air traffic rights and directly related services*, so-called “hard rights” are excluded from the GATS’ coverage. This follows from the Annex on Air Transport Services, according to which only aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services are included in the agreement. However, the exclusion of air hard rights is subject to periodic review.

IV.2.4.3. What is “trade” in services?

Article I sets out a comprehensive definition of the concept of “trade in services” in terms of four different modes of supply and depending on the territorial presence of the supplier and the consumer at the time of the transaction.

Pursuant to Article I:2, the GATS covers services supplied:

- (a) From the territory of one Member into the territory of any other Member (**mode 1 – cross-border trade**);

- (b) In the territory of one Member to the service consumer of any other Member (**mode 2 – consumption abroad**);
- (c) By a service supplier of one Member, through commercial presence, in the territory of any other Member (**mode 3 – commercial presence**); and
- (d) By a service supplier of one Member, through the presence of natural persons of a Member in the territory of any other Member (**mode 4 – presence of natural persons**).

Unlike traditional trade agreements covering goods, the GATS extends to consumer movements (mode 2) and the movement of production factors – in the form of investment flows intended to establish a commercial presence (mode 3) and of natural persons entering markets to supply a service (mode 4). These four modes are used in structuring the Schedules of specific liberalisation commitments made by WTO Members. This wide definition of trade in services is crucially important, as it helps in understanding the special problems and regulatory issues that arise in the international trade in services and that have shaped the principles and rules embodied in the GATS, as well as the specific commitments that WTO members have undertaken in their Schedules.

Box 22. The four modes of supply in practice

Cross-border supply of services, or Mode 1 in trade policy jargon, corresponds to the normal form of trade in goods. In many ways it is the most straightforward form of trade in services, because it resembles the familiar subject-matter of the GATT, not least in maintaining a clear geographical separation between seller and buyer: only the service itself crosses national frontiers.

Mode 2 is **consumption abroad**, or in the words of Article I, the supply of a service in the territory of one Member to the service consumer of another Member. Typically, this will involve the consumer travelling to the supplying country, perhaps for tourism or to attend an educational establishment. Another example of consumption abroad would be the repair of a ship or aircraft outside its home country.

Mode 3 is the supply of a service through the **commercial presence** of the foreign supplier in the territory of another WTO member. Examples would be the establishment of branch offices or agencies to deliver such services as banking, legal advice or communications. This is probably the most important mode of supply of services, at least in terms of future development, and also raises the most difficult issues for host governments and for GATS negotiations. A large proportion of service transactions require that the provider and the consumer be in the same place.

“Mode 4” relates to the **presence of natural persons**, or in less opaque language, the admission of foreign nationals to another country to provide services there. Mode 4 may be linked to commercial presence, but not necessarily. Indeed, Mode 3 does not necessarily require the presence of foreigners (the foreign supplier’s office may be staffed entirely by local personnel). However, the supplier may well feel a need to employ some foreign managers or specialists. When this is the case, Mode 3 will be found together with Mode 4. Mode 4 may also be found alone, with no permanent commercial presence, and the visiting persons involved may be employees of a foreign service supplier, or may be providing services as independent individuals. An annex to the GATS makes it clear, however, that the agreement has nothing to do with individuals looking for employment in another country, or with citizenship, residence or employment requirements. Even if members undertake Mode 4 commitments

to allow natural persons to provide services in their territories, they may still regulate the entry and stay of the persons concerned, for instance by requiring visas, as long as they do not prevent the commitments from being fulfilled.

Source: WTO (1998)

IV.2.4.4. General obligations and disciplines

IV.2.4.4.1. Most-Favoured Nation treatment

Part II sets out **general obligations and disciplines, which apply to all WTO Members and, for the most part, to all services**. The sector coverage of these obligations and disciplines, therefore, is independent from the coverage of a country's Schedule, i.e. from the sectoral scope of a country's liberalisation commitment.

The principle of *Most-Favoured Nation* treatment (MFN) is the cornerstone of the MTS conceived after World War II. It seeks to avoid the political and trade frictions and distortions of power-based (bilateral) policies that characterised the pre-WWII period with the guarantees of a rules-based framework where trading rights do not depend on the level of an individual participants' economic or political influence. Any advantage with respect to any trade measure that has been granted to one country must automatically and unconditionally be extended to all other participants in the MTS. This allows all countries to benefit, without expending additional negotiating efforts, from concessions that may have been agreed between large trading partners with much negotiating leverage.

GATS Article II, which contains the MFN treatment, directly parallels the centrally important Article I of the GATT. Its first paragraph states that *with respect to any measure covered by this Agreement, (as defined very widely in Article I) each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than it accords to like services and service suppliers of any other country*.

This classical statement of the MFN principle is, however, qualified. A Member is permitted to maintain a measure that is inconsistent with the general MFN requirement if it has established an exception for this inconsistency. This is a major difference from WTO Members' MFN obligation on trade in goods, which does not allow deviation from this basic non-discrimination obligation, save in the case of waivers granted in specific cases to countries temporarily in need of such deviation. During the Uruguay Round, it became clear that unqualified liberalisation in some service sectors could not be achieved, and that liberalisation subject to some temporary MFN exceptions would be preferable to no liberalisation at all. The result was that more than 70 WTO Members made their scheduled services commitments subject to a further list of exemptions

from Article II. These national MFN exemptions are listed in the concerned Members List of MFN Exemptions (that are to be found in the document series GATS/EL/...)

These exemption lists are governed by conditions set out in a separate annex to the GATS. The annex makes clear that no new exemptions can be granted, at least by this route: any future requests to give non-MFN treatment can only be met through the WTO waiver procedures described in Part I of the present study. Some listed exemptions are subject to a stated time limit. For those that are not, the annex provides that, in principle, they should not last longer than 10 years (that is, not beyond 2004), and that in any case they are subject to negotiation in future trade-liberalizing rounds. Meanwhile, all remaining exemptions will be reviewed in the Council for Trade in Services before the end of 1999 to see whether they are still needed. In practice however, no MFN exemption has been removed by any WTO Member.

The other permitted departure from the MFN treatment under the GATS is among countries that are members of regional trading arrangements. (See the discussion of Article V, below.)

IV.2.4.4.2. Transparency obligations

A second basic principle carried over from the GATT is that of **transparency**. Sufficient information about potentially relevant rules and regulations is critical to the effective implementation of an agreement. Traders will be badly handicapped in doing business in a foreign country unless they know what laws and regulations they are effected by. This problem is particularly serious for trade in services, because so many of the relevant government rules are domestic regulations.

Article III requires each Member to promptly publish all relevant measures of general application (that is, measures other than those which involve only individual service suppliers) that affect operation of the agreement. Members must also notify the Council for Trade in Services at least annually of all changes in their laws, regulations or administrative guidelines that affect trade in services covered by their specific commitments. However, there is no requirement to disclose confidential information (Article III *bis*).

Pursuant to Article III:4, each WTO Member is required to establish an “**enquiry point**” which provides specific information to other Members upon request. The obligation is intended to promote transparency of a WTO Member’s GATS commitments and its legal and regulatory framework affecting trade in services. The GATS states that WTO members should establish an enquiry point “within two years from the date of entry into force of the Agreement Establishing the WTO.” This deadline is related to original Members. For a newly acceding country, the obligation to establish a GATS enquiry point becomes effective on a date that is specified in its Protocol of accession.

Moreover, pursuant to Article IV:2, there is an extended requirement as far as information requests from developing countries to developed countries are concerned. In this case, developed countries (as well as other countries, if possible) are to establish **contact points** to which both service suppliers and governments of developing countries can send requests for information about commercial and technical aspects of the supply of services, professional qualifications required, and the technologies available.

Box 23. Establishing a GATS Enquiry Point

There are no official guidelines for countries to follow to implement the GATS Enquiry Point obligation. Enquiry points can be created with minimal human resources and equipment. In fact country experiences show that staff is usually assigned to the enquiry point through a reallocation of duties within the designated ministry.

The level of sophistication of enquiry points varies from quite simple to quite structured. The former case may simply identify a phone, fax, and email at a contact ministry; the latter may set out a detailed set of administrative procedures covering the staffing, roles and responsibilities of the enquiry point. Once established, the enquiry point should be notified to the WTO Secretariat to help widely disseminate enquiry point(s) contact information to WTO members.

Identify the appropriate government entity-A national enquiry point(s) is an official government entity that responds to WTO member requests for information and relevant documents on domestic services sectors. It is a centralised coordinating point that transmits such requests to, and related answers from, the ministry or agency responsible for formulating, implementing and enforcing national and international policies related to a specific service sector. An appropriate government body, typically within the Trade/Commerce Ministry, should be officially designated to be in charge of the GATS enquiry point structure and operations through an administrative decision by the appropriate government authority.

Draft clear operational procedures and guidelines-Once the appropriate governmental agency and department has been officially designated, implementing regulations should be drafted and adopted to specify the responsibilities of the enquiry point(s). Memorandums or agreements with appropriate line Ministries and regulatory agencies may be necessary to facilitate cooperation and identify the department or staff responsible for the intra-ministerial cooperation. Guidelines detailing the operational procedures should be developed to help existing officials as well as newly appointed staff to carry out their duties. Operational procedures should clearly outline the enquiry point processes and communication structure.

Coordinate with key stakeholders- It is important for a government to think through the national network that is involved in GATS related issues when establishing its GATS enquiry point. This national network typically includes each of the ministries and regulatory agencies responsible for one or more services sectors and identifies institutional focal points (e.g., specific departments) or key persons/officials responsible for coordination within these ministries and agencies.

Source: Nathan Associates Inc.

Note that the GATS does not require the establishment of contact points by developing and least developed countries. However, many recently acceded developing countries have notified contact points as well as enquiry points.

IV.2.4.4.3. Domestic regulations

The other rules in Part II are intended to ensure that benefits under the GATS are not frustrated by domestic regulations. While the GATS recognises each WTO Member's right to regulate, it also seeks that generally-applied measures that affect trade in service sectors be applied reasonably, objectively and impartially.

Pursuant to Article VI:1, measures of general application are to be administered "in a reasonable, objective and impartial manner". If the supply of a scheduled service is subject to authorisation, Members are required to decide on applications within a reasonable period of time (Article VI:3).

Under Article VI:2, Members are committed to operating domestic mechanisms ("judicial, arbitral or administrative tribunals or procedures") where individual service suppliers may seek legal redress. At the request of an affected supplier, these mechanisms should provide for the "prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in service".

Box 24. GATS negotiations on disciplines in domestic regulations

Article VI:4 and the Decision on Domestic Regulation¹⁴⁸ call upon WTO members to develop any necessary disciplines to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade in services.

Traditionally, trade negotiations focus on the removal of measures, which constitute "trade barriers". GATS negotiators negotiate commitments to remove or reduce certain types of restrictions that affect trade in services. These consist essentially of restrictions on market access (Article XVI) and national treatment (Article XVII). However, trade in services is in many cases affected by other types of regulations, which are not captured by the concepts of "market access" and "national treatment". Even more than in merchandise trade, these so-called "domestic" regulations, which pursue various public policy objectives, will always have an important effect on trade in services. The GATS does not interfere with WTO Member's regulatory objectives and with their right to regulate, but it recognises that certain measures could restrict trade. Therefore, in addition to market access and national treatment negotiation, it contains a mandate to develop disciplines to ensure that measures relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards do not constitute unnecessary barriers to trade in services.

Because of the importance of the domestic regulatory environment as a context for trade, the Council for Trade in Services has been given a particular negotiating mandate in Article VI:4 of the GATS. It provides for the development, in appropriate bodies, of any necessary disciplines to prevent domestic regulations (qualification requirements and procedures, technical standards, and licensing requirements) from constituting unnecessary barriers to trade. Work has started in 1995 in the *Working Party on Professional Services* (WPPS), which developed the "Disciplines on Domestic Regulation in the Accountancy Sector"¹⁴⁹, which were approved by the Services Council in December 1998. The "accountancy disciplines" are applicable only to Members with specific commitments on accountancy.

¹⁴⁸ WTO document S/L/70

¹⁴⁹ WTO document S/L/64

On 26 April 1999, the Council for Trade in Services adopted a Decision on Domestic Regulation¹⁵⁰, which established the *Working Party on Domestic Regulation* (WPDR) and the WPPS ceased to exist. According to its mandate, the WPDR shall develop generally applicable disciplines and may develop disciplines as appropriate for individual sectors or groups thereof. The disciplines on domestic regulation would not apply to all possible regulations affecting trade in services, but only to a subset of particular measures. These are identified in Article VI:4 of the GATS and the subsequent Decision on Domestic Regulation as five types of measures, namely those relating to: licensing requirements; licensing procedures; qualification requirements; qualification procedures; and technical standards.

WTO Members have been negotiating in the WPDR on a set of *horizontal* disciplines on domestic regulation. While the negotiations are still on-going, a Chairman's text from 2009, which reflects drafting suggestions, has been produced. The main regulatory principles considered so far in the negotiations included the following:

- Transparency of information on regulatory requirements and procedures;
- Impartiality and objectivity of decisions by competent authorities;
- Relevance of foreign qualifications and professional experience should be taken into account;
- Legal certainty should be applied during the course of an application for license;
- Reliance on International Standards could facilitate the evaluation of qualifications obtained abroad;
- Necessity: domestic regulation shall not constitute unnecessary barriers to trade in services.

Following the intensification of the Doha Round negotiations decided in December 2010, renewed consultations on a draft for disciplines for domestic regulation were held during February until early April 2011. A Progress Report by the Chairman of the WPDR produced on 14 April 2011¹⁵¹, reflecting the progress so far achieved. It is difficult to summarise the elements contained in the text and the respective proposals, as the negotiations are still on-going and consensus has not yet been reached on all the elements that should be included in the disciplines.

Article VI:5 seeks to ensure that specific commitments are not nullified or impaired through regulatory requirements (licensing and qualification requirements, and technical standards) that are not based on objective and transparent criteria or are more burdensome than necessary to ensure quality. The scope of these provisions is limited, however, to the protection of reasonable expectations at the time the commitment is made.

Article VI:6 requires Members that have undertaken commitments on professional services to establish procedures to verify the competence of professionals of other Members.

IV.2.4.4.4. Economic Integration Agreements

Like GATT (Article XXIV) with regard to merchandise trade, the GATS also has special provisions to allow countries participating in integration agreements to be exempt from the MFN requirement. Article V permits any WTO Member to enter into agreements to further liberalise trade in services on a bilateral or plurilateral basis, provided that the agreement has “substantial sectoral

¹⁵⁰ WTO document S/L/70

¹⁵¹ WTO document S/WPDR/W/45

coverage” and substantially removes discrimination between participants. Recognising that such agreements may form part of a wider process of economic integration well beyond the services trade, the Article allows the above conditions to be considered in this perspective. It also provides for their flexible application in the event of developing countries being parties to such agreements.

IV.2.4.4.5. Recognition

Article VII allows Members, when applying standards or granting licenses, certificates etc., to recognize education and other qualifications that a supplier has obtained abroad. This may be done on an autonomous basis or through agreement with the country concerned. However, other Members are to be afforded an opportunity to negotiate their accession to agreements or, in the event of autonomous recognition, to demonstrate that their requirements should be recognised as well.

IV.2.4.4.6. Exceptions

GATS contains exception clauses for particular circumstances. Regardless of relevant GATS obligations, a WTO Member is allowed - in specified circumstances - to restrict trade in the event of serious balance-of-payments difficulties (Article XII) or for health and other public policy concerns (Article XIV), or to pursue essential security interests (Article XIV bis).

IV.2.4.5. Specific Commitments

In addition to respecting the general obligations, each WTO Member is required to assume specific commitments related to market access (Article XVI) and national treatment (Article XVII) in designated sectors. The relevant sectors and also any departures from the relevant obligations of Articles XVI and XVII are to be specified in the country’s Schedule of concessions.

Article XVI (Market Access) and XVII (National Treatment) commit Members to giving no less favourable treatment to foreign services and service suppliers than is provided for in the relevant columns of their Schedule. Commitments thus guarantee minimum levels of treatment, but do not prevent Members from being more open (or less discriminatory) in practice.

IV.2.4.6. Market Access

Article XVI:2 specifies six quantitative type limitations in respect to which WTO Members may depart from full market access. In other words, in the absence of any such restriction access to the market of a given service is considered “full”. Article XVI reads as follows:

In sectors where market-access commitments are undertaken, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:

- (a) limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test;*
- (b) limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;*
- (c) limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test;*
- (d) limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test;*
- (e) measures which restrict or require specific types of legal entity or joint venture through which a service supplier may supply a service; and*
- (f) limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment.*

IV.2.4.7. National Treatment

Article XVII defines the terms and conditions under which a WTO Member can deviate from the National Treatment with respect to scheduled services. The article reads as follows:

- 1. In the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.*
- 2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.*
- 3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member.*

IV.2.4.8. Additional Commitments

Article XVIII allows WTO Members to also undertake additional commitments with respect to measures not falling under the market-access and national-treatment provisions of the Agreement. Such commitments may relate to the use of standards, qualifications or licenses.

IV.3. Current negotiations on trade in services: the Doha Round

Whilst the Uruguay Round was a great success in terms of bringing trade in services under the umbrella of the MTS, it produced less tangible results in effectively opening services markets to international competition as the initial GATS Schedules tended to reflect the actual level of trade restrictions.

As in the case of the GATT, whose history was a succession of tariff rounds, trade liberalisation under GATS was foreseen from the outset to be progressive over a longer-term process. In its Article XIX:1, GATS provides for future trade negotiations with a view to achieving “a progressively higher level of liberalisation” through successive rounds of negotiations, the first of which was to start “not later than five years from the date of entry into force of the WTO Agreement”, i.e. 1 January 2000. Negotiations on the GATS began on 1 January 2000 as part of the Uruguay Round’s so-called “built-in” agenda, but despite intensive preparatory works, have been quickly subsumed by the broader discussions on a future MTN and with the launch of the Doha Development Agenda in November 2001, the services negotiations were included in the Doha Round.

IV.3.1. The mandate

As seen above, new negotiations on services were already mandated under the agreement reached in the Uruguay Round. This mandate is contained in GATS Article XIX, which requires Members to enter into successive rounds of negotiations, the first beginning not later than five years from the date of entry into force of the WTO (i.e., from 1 January 1995). Article XIX also requires Members to establish **negotiating guidelines and procedures** for each round of services negotiations.

In March 2001, WTO Members reached an agreement on the guidelines for the current negotiations, which were approved in a Council for Trade in Services in Special Session decision.¹⁵² The document builds to a large extent on relevant GATS provisions, in particular Article IV (“Increasing Participation of Developing Countries”) and Article XIX (“Negotiation of Specific

¹⁵² Document S/L/93

Commitments”). The Guidelines¹⁵³ established that the negotiations’ main objectives and principles are:

- To achieve progressive liberalisation as enshrined in relevant GATS provisions.
- To provide appropriate flexibility for developing countries, with special priority to be given to least-developed countries.
- To respect “the existing structure and principles of the GATS” (e.g. to follow the bottom-up approach in scheduling commitments).

Regarding the **scope of the negotiations**, the mandate instructed that:

- No sectors or modes should be excluded from the scope of the negotiations at the outset.
- Special attention is to be given to export interests of developing countries.
- Negotiations would include discussions on eliminating existing exemptions from MFN treatment in order to ensure equal treatment among all WTO members.
- The GATS’ rule-making agenda i.e. those on disciplines on domestic regulation (Article VI:4), emergency safeguards (Article X), government procurement (Article XIII) and subsidies (Article XV), is integrated into the wider context of the services negotiations.

Regarding the “Modalities and Procedures”, the mandate made it clear that the negotiation should be based on:

- The current schedules as the starting point (rather than actual market access conditions).
- Request-offer negotiations are the main approach. (See in the box below what are Request-Offer Negotiations.)
- Negotiating credit for autonomous liberalisation is based on common criteria.¹⁵⁴
- There would be an ongoing assessment of trade in services.
- The Services Council has the mandate to evaluate the results of the negotiations prior to their completion in the light of Article IV.

Whilst the basic methodology for services negotiations is the bilateral exchange of requests and offers, plurilateral and multilateral approaches are often used as well. In the DDA’s first phase, the market access negotiations followed the method of bilateral requests/offers. As this process proved very time-consuming, Members agreed at the 2005 Hong Kong Ministerial Meeting to pursue the market access negotiations on a plurilateral basis as a complement to the bilateral approach. This was intended to intensify the negotiations. In the plurilateral process any Member

¹⁵³ https://www.wto.org/english/tratop_e/serv_e/nego_mandates_e.htm

¹⁵⁴ These criteria were developed later by the Services Council in “Modalities for the Treatment of Autonomous Liberalisation”. See document TN/S/6.

or group of Members can present requests or collective requests in any specific sector or mode of supply identifying their objectives in the negotiations in that sector of mode of supply.¹⁵⁵

Box 25. Request and Offers

Requests

Under request-offer negotiations, each WTO Member submits requests to its trading partners. These requests can be made to other Members individually or to groups of Members. While some countries tailor their requests to specific trading partners, others have submitted nearly identical, general requests to a number of countries. Requests can take the form of:

- a request for the trading partner to make commitments in a new sector (i.e., a sector not already included in its schedule).
- a request to remove an existing restriction or to reduce its level of restrictiveness (e.g. if a country has a foreign equity limitation of 49% in a given sector, another WTO Member may request that limit to be removed altogether - i.e., that 100% equity be allowed - or that it be raised to 75%).
- a request to remove an existing MFN exemption;
- a request to make an additional commitment in its schedule covering particular regulatory practices aimed at making sure that liberalisation is effective. For example, additional commitments were used in the negotiations on telecommunications for countries to commit to providing an independent regulator for the sector.

The exchange of requests as a process has traditionally been purely bilateral, with countries communicating directly with one another. The WTO Secretariat does not normally have a role to play.

Offers:

In the next stage, WTO Members submit offers in response to all the requests they have received. Countries usually prepare a single offer in response to all requests received. Countries may choose not to offer anything in response to some requests, or not to satisfy all points in some requests, and they are free to do so. The choice of what to offer is the decision of each WTO Member. Some countries have already indicated that they will not be making requests or offers on particular sectors (notably, health and education) in the current round of negotiations. For the sake of clarity, WTO Members have submitted their initial offers in the form of a revision to their existing schedule of concessions, with changes indicated in strike-out and bold.

While requests are addressed bilaterally to negotiating partners, offers are traditionally circulated multilaterally (i.e., to all WTO Members). This is because, under the MFN rule, access offered to one WTO Member is automatically offered to all WTO Members. Given this, the offer is shown to all WTO Members, and even Members which did not initially make any requests can consult and negotiate with a country that has submitted an offer. Equally, some countries may choose not to submit their own requests, judging that their interests are covered by others' requests and knowing that whatever those other countries manage to negotiate in terms of access will automatically be extended to them under MFN.

The submission of offers can also trigger further requests, including by countries which had not yet submitted requests, and then the process continues and becomes a succession of requests and offers. As with most types of negotiations, initial requests can be ambitious, and initial offers more minimal, with a compromise emerging in the process of negotiation.

Source: Nielson, J & Taglioni, D. (2004) Services Trade Liberalisation: Identifying Opportunities and Gains, in *OECD Trade Papers* No.1. 6 February

¹⁵⁵ Doha Work Programme – Ministerial Declaration – Annex C, document WT/MIN(05)/DEC of 18 December 2005.

As noted by Marchetti and Roy (2008), the plurilateral requests/offers methodology “provided more sectoral focus, allowed for a more optimal use of time and sector expertise, and, last but not least, helped identify the critical mass necessary in each segment of the market access negotiations, be it sector- or mode-related.”

While overall the main *demandeurs* in the plurilateral negotiations were developed countries, and their requests targeted mainly large developing countries, the process can no longer be characterized as purely North-South bargaining. Rather, developing countries, such as Chile, Hong Kong, China, the Republic of Korea, Mexico, and Singapore, have joined developed countries as *demandeurs* in various areas, and target countries of requests include developed countries and developing countries alike.¹⁵⁶

IV.3.2. LDCs in the DDA services negotiations

To meet an LDC-specific requirement of Article XIX:3, namely that “[negotiating] guidelines shall establish modalities ... for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.”, the Negotiating Guidelines were complemented by the “Modalities for the Special Treatment for Least-Developed Country Members”¹⁵⁷. These modalities intend to ensure **maximum flexibility for LDCs** in the negotiations. Moreover, all WTO Members are committed to exercising **restraint in seeking commitments from LDCs**; at the same time Members should give **special priority to sectors and modes of export interest** to LDCs when preparing their own schedules.

The Hong Kong Ministerial Declaration further eased the burden of participation of LDCs in services negotiations, as Paragraph 26 of the Declaration provided that in recognition of the particular circumstances of LDCs, they **were not expected to undertake any new commitments**.

At the same time, LDCs have been **invited to indicate their priority sectors and priority modes of supply, so that they can be taken into account by other Members’** offers. Regarding Mode 4, non-LDC members were invited to undertake commitments taking into account “all categories of natural persons identified by LDCs in their requests” - to the extent possible and consistent with Article XIX of the GATS. Regarding the LDC-waiver:

156 Marchetti, J. A. and Roy, M. (2008) Services Liberalisation in the WTO and in PTAs. In *Marchetti, J. A. and Roy, M. (eds) Opening Markets for Trade in Services: Countries and Sectors in Bilateral and WTO Negotiations*, Cambridge University Press

157 WTO document TN/S/13

Recognition for autonomous liberalisation

Recognizing that countries have continued to liberalise and introduce significant domestic regulatory reforms outside of the GATS negotiations, modalities for the treatment of autonomous liberalisation were also adopted by the Council for Trade in Services in Special Session.¹⁵⁸ These modalities provide criteria for assessing the value of autonomous liberalisation and the procedures for how such liberalisation could be treated in the context of the current round of services negotiations.

Institutional Structure for the Negotiations

The Council for Trade in Services (meeting in “special session”) is the body responsible for overseeing the negotiations. All subsidiary bodies, such as the Working Party on Domestic Regulation and the Working Party on GATS Rules, report to the Council.

IV.3.3. Negotiating areas and outcomes

In accordance with the negotiating Mandate, the GATS negotiations cover four major areas: **market access, domestic regulation, GATS rules, and the implementation of LDC modalities.**¹⁵⁹ The latest official report on the state-of-play of the negotiations is that of the Report by the Chairman of the Council for Trade in Services, Special Session, to the Trade Negotiations Committee (April 2011).¹⁶⁰

Market access

Although services now account for more than half of the GDP of almost all countries, and for more than 75% of GDP in high-income countries, and they are recognized as critical factors of the competitiveness of firms in any country¹⁶¹, 15 years of DDA negotiations on services have still failed to produce any agreement. This, despite the huge gains that a services deal would produce.¹⁶²

The history of the DDA services negotiations can be summarised as a series of go-stops in market access negotiations. The difficulties of the services negotiations are mainly due to the fact that

¹⁵⁸ WTO document TN/S/6

¹⁵⁹ The key procedural stages of the negotiations from March 2001 to the December 2011 WTO Ministerial Conference, are summarised by the WTO Secretariat at https://www.wto.org/english/tratop_e/serv_e/key_stages_e.htm

¹⁶⁰ Document TN/S/36

¹⁶¹ Hoekman and Mattoo (2013)

¹⁶² According to earlier estimates, the DDA’s global welfare gain in services would amount to \$1.7 trillion, many times larger than the potential gain from free trade in agriculture. Source: Global Services Coalition: Progress in Services Negotiations Needed to Secure Business Support for Doha Round, press release dated February 21, 2007

they are part of the larger framework of Doha, and asymmetric progress is hardly conceivable to any of the negotiating parties with interests in many negotiating groups. Thus the fate of services is linked to that of agricultural and NAMA negotiations. Nevertheless, difficulties in the services negotiations themselves, especially the lack of general willingness to make meaningful offers, have also been holding back progress. It was noted by Hoekman and Mattoo (2013) that the services offers tabled by 62 WTO Members through 2008 would have improved on existing GATS commitments by only about 10 percent. The analysis of offers concluded on the low level of ambition of Members' offers that they were twice as restrictive as their applied policies. This implied great scope for WTO members to increase the restrictiveness of prevailing policies if they desired to do so.¹⁶³

The situation was acknowledged by the Chairman of the services negotiating group in July 2005: the overall quality of the initial and revised offers "remains poor [and] few, if any, new commercial opportunities would ensue for service suppliers . . . for most sector categories, a majority of the offers do not propose any improvement . . . There is thus no significant change to the pre-existing patterns of sectoral bindings."¹⁶⁴

The report from the Chairman of the Council for Trade in Services, Special Session, referred to the above as not only reflecting a general agreement on the lack of progress since the latest serious attempt to move things forward which dates back to mid-2008 "services signaling conference", but also deep disagreement between groups of countries about the causes of the remaining gaps.

According to Hoekman and Mattoo (2013), the complications in the market access negotiations are mainly due to regulatory nature of policies that restrict trade and investment and segment the services markets and for many countries significant liberalisation of applied policies seems unlikely given the great diversity in regulation and regulatory capacity.

Faced with the deadlock in the services negotiations, it is remarkable that a group of WTO Members, the so-called "**Really Good Friends of Services**" (RGFs), decided on 5 July 2012 to start preparing negotiations on a **Trade in Services Agreement** (TISA). As of this writing, the participants of TISA include Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Switzerland, Turkey, Uruguay and the US. Information on TISA negotiations from press reports indicate that they have mostly focused on a framework of rules (e.g. on data flows, state-owned enterprises, and various sector-specific issues) and on the agreement's liberalisation modalities (i.e., negative vs. positive list approach to scheduling commitments, or a combination of both). Initial market access offers are to take the form of a

¹⁶³ Hoekman and Mattoo (2013)

¹⁶⁴ As quoted by Marchetti, J. A. and Roy, M. (2008) Services Liberalisation in the WTO and in PTAs. In *Marchetti, J. A. and Roy, M. (eds) Opening Markets for Trade in Services: Countries and Sectors in Bilateral and WTO Negotiations*, Cambridge University Press

hybrid approach that builds on the General Agreement on Trade in Services (GATS), but that provides for commitments on national treatment to be undertaken for all service sectors on the basis of a negative list. It has been estimated that the agreement would offer the European Union a potential EUR 15.6 billion and the United States EUR 10.4 billion.

Negotiations on rules

In addition to the market access negotiations, DDA negotiators have also been tasked to further develop certain rules of the GATS.

First, negotiations on Domestic Regulation take place in the Working Party on Domestic Regulation to develop **disciplines in the area of domestic regulation** according to the mandate provided for in GATS Article VI.4.

Box 26. Timeline of Trade in Services Negotiations under the Doha Round

January 2000: Negotiations begin
March 2001: Guidelines and the Procedures for the Negotiations on Trade in Services are adopted
November 2001: Doha Development Agenda is adopted
March 2003: Deadline for receiving “initial offers”
July 2004: “July Package” resuscitates negotiations and establishes deadline of May 2005 for submission of revised offers
December 2005: Hong Kong Ministerial Conference reaffirms key principles of services negotiations
July 2006: Doha negotiations suspended
January 2007: Resumption of Doha negotiations
May 2008: Report on services issued
July 2008: Services Signalling Conference held as part of “July 2008” package. Ministers exchange signals on what improvements could be expected in services.
2009: Slowdown in negotiations overall due to failure to conclude agriculture and NAMA modalities as part of the “July 2008” package.
March 2010: Stocktaking exercise conducted by the TNC to revive the negotiations. Report by the Chairman of the Council for Trade in Services in Special Session for the purpose of the stocktaking.
December 2010: General Council calls for intensification of DDA negotiations across all areas.
April 2011: Report by the Chairman of the Council on Trade in Services to the Trade Negotiations Committee, representing the state of play in the services negotiations on market access, domestic regulation disciplines, GATS rules and the LDC waiver.
December 2011: Eighth Ministerial Conference adopts a waiver to permit WTO members to grant preferential treatment to services and service suppliers from LDCs

Source: WTO website https://www.wto.org/english/tratop_e/serv_e/s_negs_e.htm

Second, the Working Party on GATS Rules (WPGR) is tasked with the negotiations on emergency safeguard measures (Article X), on government procurement (Article XIII) and on subsidies (Article XV). The progress report of the Chairman of the Council for Trade in Services, Special Session, indicates a total lack of progress in these negotiations, as “the proponents had found it difficult to convince the Membership of the need for new disciplines in any of the three areas”. He concluded that discussions in the WPGR have not been able to move to a text-based process.

LDC modalities (LDC-waiver)

At its 8th Ministerial Conference in 2011, the WTO adopted the “*Decision for Preferential Treatment to Services and Service Suppliers of Least-Developed Countries*” (the “LDC Services Waiver”). The waiver allows WTO members to deviate from their MFN obligation of non-discrimination in order to provide preferential treatment to services and service suppliers from least-developed countries. The LDC Services Waiver essentially constitutes an “LDC-only Enabling Clause for services” pursuant to which any WTO Member can grant preferential treatment to LDC services and service suppliers without violating their MFN obligation. However, so far no WTO Member has granted any such preferences. The WTO took a decision at the 9th WTO Ministerial Conference (Bali) in December 2013 for the “*Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries*”. The decision seeks, among other things, to accelerate the operationalization of the LDC Services Waiver by *inter alia* providing for the convening of a “High-level meeting” six months after the submission of an “LDC collective request” which was ultimately held at the level of the WTO Services Council on 5 February 2015.

In their collective request, which has been submitted by the LDC Group on 21 July 2014, the LDCs indicated the services sectors and modes of supply of interest to them.¹⁶⁵ It should be noted that there are no preconditions to granting preferences to the LDCs, and the LDC collective request is not a legal obligation for any preferences the donors might wish to grant.¹⁶⁶

IV.4. Sector interests and issues

“Services are very important to LLDCs. Services is an area where distances can lose their importance. The use of technology, banking, call centers, tourism and other sectors are where the landlockedness has no implication whatsoever.”

H.E. Ambassador Manuel Maria Caceres, Vice-Minister of Economic Relations and Integration, Paraguay

Stylised facts about services in LLDCs indicate that the vast majority of LLDCs specialises in agriculture and mineral products for export, with only a few in manufacturing and nearly 70% of aggregate exports of the 30 LLDCs being composed of mineral and agricultural commodities.

¹⁶⁵ *Collective Request Pursuant to the Bali Decision on the Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries*, S/C/W/356. The LDC Collective Request was submitted on 23 July 2014.

¹⁶⁶ Further information on LDCs and the GATS waiver may be found at:

https://www.wto.org/english/news_e/news15_e/serv_05feb15_e.htm

Other than transport services and tourism, the scope of exportable services is still very limited, and their total value is low. The export of communication services has been dynamic, but its value is still small and LLDCs' share in the global telecom sector is limited. Exports of other services such as financial and insurance, construction and IT services are very small. On the imports side, the LLDCs mainly import transportation and travel services, while other services imports such as construction and recreational services are marginal. Overall, trade in services continues to play a minor role in LLDCs.

It is striking how much the field of trade in services and the importance of the GATS for LLDCs have been overlooked so far. A review of the literature indicates that until very recently the attention of LLDCs trade officials was not particularly focused on services – except for transport services and services related to trade facilitation measures – and participation in the GATS. For example, a major study paper prepared by UNCTAD in 2005¹⁶⁷ which discusses the participation of LLDCs in the MTS did not even mention the General Agreement on Trade in Services of the WTO but instead identified the following areas of interest: Trade facilitation; The Work Programme on Small Economies; The Indicative List of Specific Characteristics and Problems; Special and differential treatment; Negotiations on NAMA, and WTO accessions. Most trade policy attention has so far almost exclusively focused on trade facilitation and, as far as trade in services is concerned, on transport services whose importance is obvious.

However, export, and also import, of services not affected by distance or other trade barriers, such as ICT services or ICT-enabled services, are an opportunity for LLDCs to create wealth by avoiding trade costs due to remoteness and dependence on transit traffic.

As noted in UN-OHRLLS (2012), whilst LLDCs face many barriers to exports in the goods sectors due to remoteness and high transport costs as well as small domestic markets, moving towards a knowledge- and information-intensive service economy would open up new export opportunities and help overcome the effects of distance and remoteness as barriers to trade. This requires governments to adopt pro-active service sector development policies, create an enabling regulatory environment, and embrace greater liberalisation of trade in services, in particular in education, telecommunications, tourism and professional services.

As the WTO Deputy Director-General Valentine Rugwabiza noted, the Doha services negotiations are potentially of extreme importance to LLDCs, especially in the areas of telecommunications and transportation (including air transport services). Liberalisation of services is crucial for the further economic development of LLDCs. However, LLDC policy barriers to trade and investment in the services sector remain higher than for the goods sector. Restrictive trade policies have the effect, like distance, of making a country more economically remote from the rest of the world.

¹⁶⁷ Effective Participation of Landlocked Developing Countries (LLDCs) in the Multilateral Trading System, doc. UNCTAD/LDC/2005/3 (PART II) dated 1 July 2005

Therefore, LLDCs should seize the opportunity of the Round to remove the restrictions they maintain and which inhibit the development of their own services that should connect them with the rest of the world.

An efficient services sector has a crucial importance in overcoming the extra costs of landlockedness by making available low-cost and high-quality producer services. Such services can enhance overall productivity and competitiveness of LLDCs.

LLDCs need to implement service policy reforms and trade liberalisation including regulations adapted to the needs of liberalised markets. All of this should take place within a multilateral framework because the MTS can help implement these reforms. However, LLDCs have submitted only a small number of proposals in the services negotiations, reflecting the difficulty in clearly identifying their negotiating objectives.

IV.4.1. Transport Services

It is widely acknowledged that LLDCs face severe transport cost penalties for their exports and imports to and from major markets due to their distances to major seaports and weak infrastructures, for air, road, and rail transport alike. LLDCs' cost penalty is, on average, approximately 75% higher than those of coastal economies. According to Redding and Venables¹⁶⁸, the higher transport costs of the median LLDC results in 60% lower trade flows than those of the median coastal economy, which in cases of poor own country infrastructure and transit country infrastructure, is further reduced to 75%. High transport costs also act as a restriction to trade in services. An example is provided by high international travel charges that limit the number of inbound travellers into high transport cost destinations.

Transport costs act like tariffs, and therefore reduced transport costs are associated with the integration of markets within an economy and with the integration of those domestic markets into the global economy.¹⁶⁹

Since the LLDCs' main attribute is their lack of direct territorial access to the sea and isolation from world markets¹⁷⁰, the transport sector has always been an area of particular interest to policy makers of LLDCs. Most of the policy discussions held so far have primarily taken place outside the WTO and less attention was paid to finding solutions in the GATS framework. LLDCs themselves were not too active in the Doha services negotiations in bringing their perspectives on transport

¹⁶⁸ Redding, S. & Venables, A. J. (2006). The economics of isolation and distance. *Grynberg, R. (ed) WTO at the Margins Small States and the Multilateral Trading System*. Cambridge University Press

¹⁶⁹ Findlay, C. (2008). Transport Services. *Mattoo, A. Stern, R. M. & Zanini, G. (eds) A Handbook of International Trade in Services*, Oxford University Press

¹⁷⁰ UN-OHRLS (2012)

services sector issues to the fore. To some extent LLDCs' attitude is understandable, as most of their concerns can be addressed more directly in regional and bilateral contexts.

Additionally, while the GATS covers transport services, it remains relatively ineffective in opening up markets. Multilateral negotiations did not lead to any major liberalisation of actual trade policies.¹⁷¹ Regarding road transport services, a sub-sector of particular interest to LLDCs, there are few market access and national treatment commitments, whilst numerous most favored nation (MFN) exemptions have been taken to protect bilateral agreements. In other words, the basic principles of the GATS often are not effectively applied to the road transport services sector. Bilateral agreements will remain strategic transport and trade integration tools for most countries in the foreseeable future¹⁷² (see Box 27 for examples of the benefits of transportation agreements).

The relevance of the GATS is further reduced by the fact that exceptions to the MFN rule still prevail, namely in maritime services (especially for developed economies) and in air transport where the relevant sectoral Annex excludes "hard rights" from the scope of the Agreement.

This Chapter does not aim to provide a detailed description of the economics of trade in transport services, or the very complex set of restrictive rules and practices to trade in air, maritime, road and rail services. The interested reader may wish to consult the very detailed sectoral Background Notes prepared by the WTO Secretariat as inputs to the Doha negotiations.¹⁷³

Instead we seek to highlight the ill-adapted nature of trade policies in transport services in many LLDCs, which, in turn, exacerbate the challenges of remoteness. The following chart shows LLDCs' ranks in the World Bank's Services Trade Restrictions Index (STRI) for Transportation Services in Mode 3, i.e. commercial presence, usually associated with FDI. (The index of 100 indicates a fully closed market, and zero a fully open one.)

Box 27. Benefits in negotiating transportation agreements

Malawi, Zimbabwe, and Zambia are landlocked countries in Southern Africa; each of them concluded a bilateral road transport agreement with South Africa, reflecting their strong interests in relation with this country. The agreements between them are based on the Southern African Transport and Communications Commission (SATCC) model. Besides being associated in various initiatives at regional and subregional levels, the four countries had very specific reasons for concluding bilateral road

171 Actual trade liberalisation commitments were only made as a result of WTO accession negotiations, among which the most notable are those made by China. Findlay (2008)

172 Kunaka, C., Tanase, V., Latrille, P. & Krausz, P. (2013). *Quantitative Analysis of Road Transport Agreements (QuARTA)*, World Bank

173 Air Transport Services: document S/C/W/59,

Developments in the Air Transport Sector Since the Conclusion of the Uruguay Round, documents S/C/W/163 and S/C/W/163/Add.1 to Add.6

Maritime Transport Services, documents S/C/W/62 and S/C/W/315

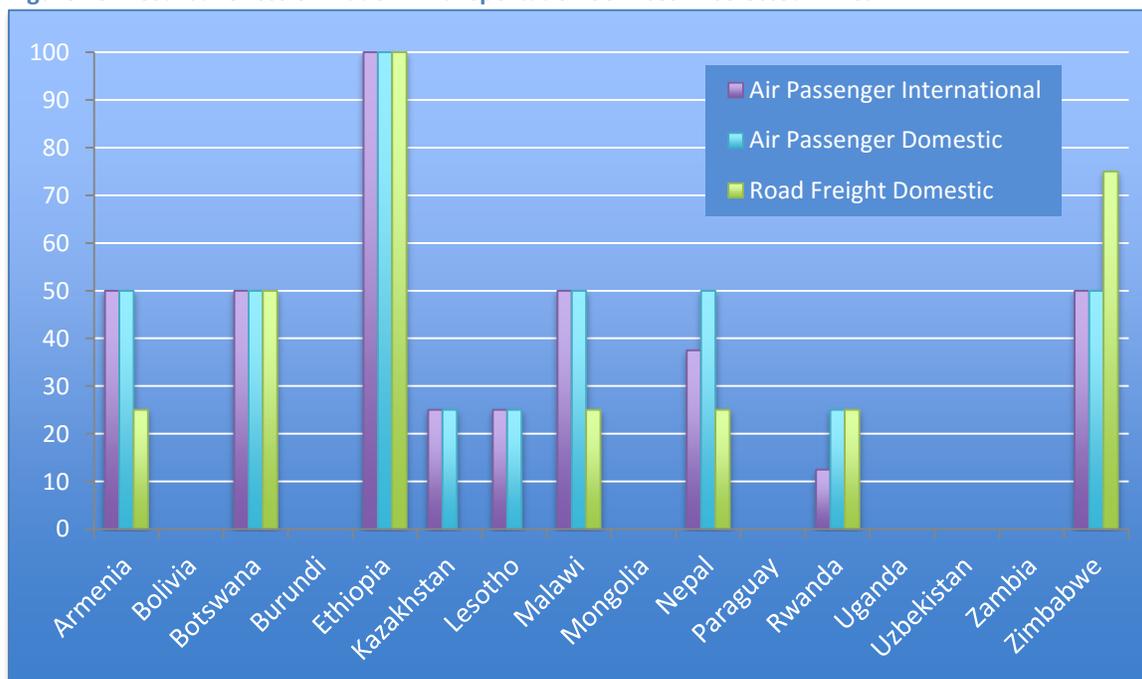
Land Transport Services, documents S/C/W/60, S/C/W/61 and S/C/W/324

transport agreements. South Africa is Malawi's largest trade partner (the traffic between the two countries has to transit through Mozambique and Zimbabwe). Zimbabwe is heavily dependent on South African ports for its international trade. The two countries have a long history of bilateral cooperation in transport and some transport firms tend to register fleets in both countries. The countries are the only two in Southern Africa that agreed to allow cabotage, albeit on a reciprocal basis and for a limited period of time. However, cabotage is dealt with not in the bilateral agreement but rather in each country's domestic legislation. Zambia's largest trade partner is South Africa while the latter's ports are Zambia's main trade gateways (the traffic has to transit through either Botswana or Zimbabwe).

There are agreements between distant countries that are well-functioning because trade volumes keep them relevant. For example, the trade between Kazakhstan and the Netherlands amounts to US\$5.2 billion, and trade between Kazakhstan and Switzerland amounts to US\$11.5 billion. In the case of the agreement between the former Yugoslav Republic of Former Yugoslav Republic of Macedonia (landlocked) and the United Kingdom, 5% of FYR Macedonia's imports originate in the United Kingdom and are transported mainly by road.

Source: Kunaka, C., Tanase, V., Latrille, P. & Krausz, P. (2013). *Quantitative Analysis of Road Transport Agreements (QuARTA)*, World Bank

Figure 23. Restrictiveness of Trade in Transportation Services in selected LLDCs



Source: World Bank STRI database

However, it is important to note that there is no direct causal link between the absence of market access and/or national limitations and prices. For example, Uganda has a zero index, but has the

highest air-freight rates in the region to Northern Europe from East Africa and rates are at least twice as high as those in West Africa.

Other restrictions implemented by LLDCs in Mode 3 include limitation to foreign participation in local air companies (Botswana) and the prohibition for a foreign investor to hold a controlling stake in a local transportation company (Botswana). In Malawi, only a Malawian-owned company can be designated as an international air carrier or benefit from bilateral air services agreements. Malawi also applies a strict approval procedure for the repatriation of earnings, which is also made subject to the unpredictable availability of foreign exchange in the Central Bank. Zambia applies a licensing system that includes multiple restrictions, such as an inquiry into “public interest”, an economic needs test, and the verification of the current number and efficiency of providers in the market. Zimbabwe restricts the foreign ownership in a transport firm to 49%, but the Minister of State for Indigenisation and Empowerment can grant higher foreign equity participation. Another Mode 3 restriction in Zimbabwe is the requirement that 51% of the Board of Directors must be nationals. Finally, repatriation of earnings is subject to the approval of the Reserve Bank.

These examples demonstrate the variety of restrictions applied in LLDCs. It appears that LLDCs’ high transport costs would need to be addressed through pro-competitive regulatory reforms in the first place, followed by appropriate re-regulation before actual trade liberalisation is envisaged. Indeed, many LLDCs still maintain anti-competitive regulatory structures especially in the road and air transport sectors, which not only perpetuate private and/or public monopolies but also inhibit the competitiveness of other sectors, such as tourism and business services. For example, it was reported that the lack of effective air competition in Botswana results in high prices on the main international routes, despite high subsidies paid to Air Botswana, and this is a major factor of the tourism sector’s inability to maintain its international competitiveness.

Effective application of competition rules and policy is warranted by the network structure of the transport sector(s). This might not necessarily imply multiple operators, as some segments of some transport sectors may constitute natural monopolies, but would then require effective regulations of the incumbent. As Findlay (2008) noted, “Assessments of whether there is ‘a competition policy problem’ depend on the definition of the market”. For example, a road operator can provide competition for a rail operator. Whether the rail operator has market power depends on whether the relevant market is the rail-transport market or the land-transport market. A single rail operator may be the lowest cost provider of rail services, but this may not rule out effective competition to discipline prices in the broader market for land transport.” In case of natural monopoly in a given transport market, regulation of the access to the essential facility, e.g. the rails, is needed as well as the allocation of scarce resources, e.g. landing slots at airports.

The need for regulation of the transport sector also arises with respect to congestion management and protection against environmental pollution.

Although LLDCs might find regional and bilateral agreements more convenient to agree on liberalisation of trade in air and road transport services, they should also find an interest to participate actively in the GATS Doha Round. Indeed, multilateral negotiations might help support domestic reform of transport service regulations. The history of the MTS indicates that most services trade liberalisation occurs as a result of autonomous policy change, and opening up of the transport sector to foreign competition can be decided through unilateral policy to reap the benefits of greater competition in the domestic market. However, making such a step in the framework of the MTS has the added advantage of lending more credibility to trade reform measures. This more visible and credible policy change is likely to give political guarantees to investors regarding the stability and irreversibility of the policy environment in which their investment is being made. In addition to this enhanced credibility, another advantage of “selling” policy changes as part of reciprocal bargaining is that the market access gained at the negotiating table is needed to curb domestic opposition to change.

LLDCs’ GATS Commitments

A detailed analysis of specific commitments made for transport services reveals a very low level of interest of the LLDCs, as a whole, in integrating their sectors into the multilateral system. Among the original WTO Members, only Lesotho and Niger made limited commitments for some road transport services. On the other hand, the Schedules of the other 7 LLDCs indicate greater market openness. These recently acceded Members made binding commitments on a wide range of services, some of them even covering the whole range of services, including maritime services, space transport and pipeline services. Table 7 offers an overview of the services for which LLDCs made national and/or national treatment commitments.

Table 7. Summary of GATS Commitments made by LLDCs for Transport Services

(Sub-sectors partially or wholly covered under Section 11 of the *Services Sectoral Classification List*)

A. Maritime Transport Services							
	Aa	Ab	Ac	Ad	Ae	Af	Total
Kyrgyzstan	●	●	●	●	●	●	6
Moldova	●	●	●	●	●	●	6
B. Internal Waterways Transport							
	Ba	Bb	Bc	Bd	Be	Bf	Total
Moldova	●	●	●	●	●	●	6
C. Air Transport Services							
	Ca	Cb	Cc	Cd	Ce		Total

Armenia ¹⁷⁴				●		2
Kyrgyzstan	●	●	●	●	●	5
Lao PDR ¹⁷⁵				●		2
FYR Macedonia ¹⁷⁶				●		2
Moldova ¹⁷⁷	●	●	●	●		5
Nepal ¹⁷⁸				●		2
Tajikistan ¹⁷⁹				●		2
D. Space Transport						
Moldova			●			1
E. Rail transport services						
	Ea	Eb	Ec	Ed	Ee	Total
Armenia				●		1
Kyrgyzstan	●	●	●	●	●	4
FYR Macedonia				●		1
Moldova	●	●	●	●	●	5
Tajikistan				●		1
F. Road transport services						
	Fa	Fb	Fc	Fd	Fe	Total
Armenia	●	●		●		3
Kyrgyzstan	●	●	●	●	●	5
Lesotho	●	●		●		3
FYR Macedonia	●	●	●	●		4
Moldova	●	●	●	●	●	5
Niger		● ¹⁸⁰				
Tajikistan		●		●	●	3
G. Pipeline Transport						
	Ga		Gb		Total	
Kyrgyzstan	●		●		2	
FYR Macedonia	●		●		2	
Moldova	●		●		2	

¹⁷⁴ Armenia also committed "Selling and marketing of air transport services, including computer reservation systems services"

¹⁷⁵ Lao PDR also committed "Selling and marketing of air transport services, including computer reservation systems services".

¹⁷⁶ Macedonia also committed "Selling and marketing of air transport services, including computer reservation systems services"

¹⁷⁷ Moldova also committed "Selling and marketing of air transport services, including computer reservation systems services"

¹⁷⁸ Nepal also committed CRS services.

¹⁷⁹ Tajikistan also committed "Selling and marketing of air transport services, including computer reservation systems services".

¹⁸⁰ Only international

Nepal		●		●		2
Tajikistan		●				1
H. Auxiliary services						
	Ha	Hb	Hc	Hd		Total
Armenia	●	●	●			3
Kyrgyzstan	●	●	●	● ¹⁸¹		4
FYR Macedonia		●	●			2
Moldova	●	●	●	●		4
Nepal		●				1
Tajikistan	●	●	●			3
Legend:						
<p><u>A. Maritime Transport Services</u></p> <p>a. Passenger transportation</p> <p>b. Freight transportation</p> <p>c. Rental of vessels with crew</p> <p>d. Maintenance and repair of vessels</p> <p>e. Pushing and towing services</p> <p>f. Supporting services for maritime transport</p> <p><u>B. Internal Waterways Transport</u></p> <p>a. Passenger transportation</p> <p>b. Freight transportation</p> <p>c. Rental of vessels with crew</p> <p>d. Maintenance and repair of vessels</p> <p>e. Pushing and towing services</p> <p>f. Supporting services for internal waterway transport</p> <p><u>C. Air Transport Services</u></p> <p>a. Passenger transportation</p> <p>b. Freight transportation</p> <p>c. Rental of aircraft with crew</p> <p>d. Maintenance and repair of aircraft</p> <p>e. Supporting services for air transport</p>			<p><u>D. Space Transport</u></p> <p><u>E. Rail Transport Services</u></p> <p>a. Passenger transportation</p> <p>b. Freight transportation</p> <p>c. Pushing and towing services</p> <p>d. Maintenance and repair of rail transport equipment</p> <p>e. Supporting services for rail transport services</p> <p><u>F. Road Transport Services</u></p> <p>a. Passenger transportation</p> <p>b. Freight transportation</p> <p>c. Rental of commercial vehicles with operator</p> <p>d. Maintenance and repair of road transport equipment</p> <p>e. Supporting services for road transport services</p> <p><u>G. Pipeline Transport</u></p> <p>a. Transportation of fuels</p> <p>b. Transportation of other goods</p> <p><u>H. Services auxiliary to all modes of transport</u></p> <p>a. Cargo-handling services</p> <p>b. Storage and warehouse services</p> <p>c. Freight transport agency services</p> <p>d. Other</p>			

It might be concluded from this overview that in the case of the overwhelming majority of LLDCs there seems to be a striking discrepancy between their interest to alleviate their trade constraints resulting from landlockedness through a more open and competitive transport system and the

¹⁸¹ Services on transport tickets reservation by means of computers

level of their multilateral commitments. A thorough analysis of each country's transport policy would be needed to identify the reasons for this apparent policy incoherence. These might include mere protection of domestic interest groups, regulatory inertia, or a preference to opening up the transport sector in a bilateral or regional framework over the multilateral level.

IV.4.2. ICT Services

A service sector of particular interest to LLDCs is Information and Communication Technology Services¹⁸²: The reasons are multiple¹⁸³ and include the following:

- Computer and Related Services are among the most digitised services and can easily be traded across borders by way of electronic networks. While geography has an impact on establishing the physical infrastructure necessary for cross-border ICT services, once these are in place, landlockedness and related distance do not hinder service delivery. This explains why Computer and Related Services are perhaps the most internationally tradable among commercial service categories.
- In many developing countries, the Computer and Related Services sector makes intensive use of human capital, but is not particularly reliant on physical capital. Therefore, an export-oriented Computer and Related Services sector can be developed in an LLDC with good technical education and limited infrastructure.
- Connections to international ICT networks enable service providers to compete for business independently of location.
- Unlike other economic sectors, a large domestic market is not a precondition for developing successful export sector.
- The ICT service market is constantly evolving as a result of clients' perpetually diversifying needs; the market therefore provides new opportunities in numerous emerging subsectors and niche markets that IT service companies in developing countries can tap into. The following figures illustrates the types of IT, Business Process Outsourcing (BPO), and Knowledge Process Outsourcing (KPO) services that offshore firms typically outsource.

Developing countries, including LLDCs, are, however, differently positioned in the world competition for ICT enabled outsourcing services, as a country's social and economic ties are also key factors when IT service firms decide on the location of their exports. It is not surprising that

¹⁸² Although the title of this part of the Handbook refers to information and communications technology (ICT) services, we focus on Computer and Related Services, which is a distinct sector of the GATS Classification List. A particular difficulty is to delineate computer services from the broader category of the information and communications technology (ICT) services, which also includes equipment and telecommunication services, because the literature and statistical sources usually do not distinguish between the computer and related services component from the larger ICT category.

¹⁸³ Engman, M. (2010). Exporting Information Technology Services: In the Footsteps of India. In *Cattaneo, O., Engman, M., Saez, S. & Stern, R. M. (eds) International Trade in Services: New trends and Opportunities for Developing Countries*. World Bank

Indian BPO service exporters export to the United States and the United Kingdom, while those in Mauritius and Romania are exporting to France.

Two other factors merit attention that should make ICT services of interest to LLDCs. Firstly, Computer and Related Services do not require any particular attributes that favor one gender over the other and therefore are likely to promote greater participation of female workers in the labour market. Secondly, an expanding Computer and Related Services sector has spillover effects on other sectors of the economy through increased reliance of Computer Services, which, in turn, are likely to result in business innovation and enhanced productivity in the economy as a whole.¹⁸⁴

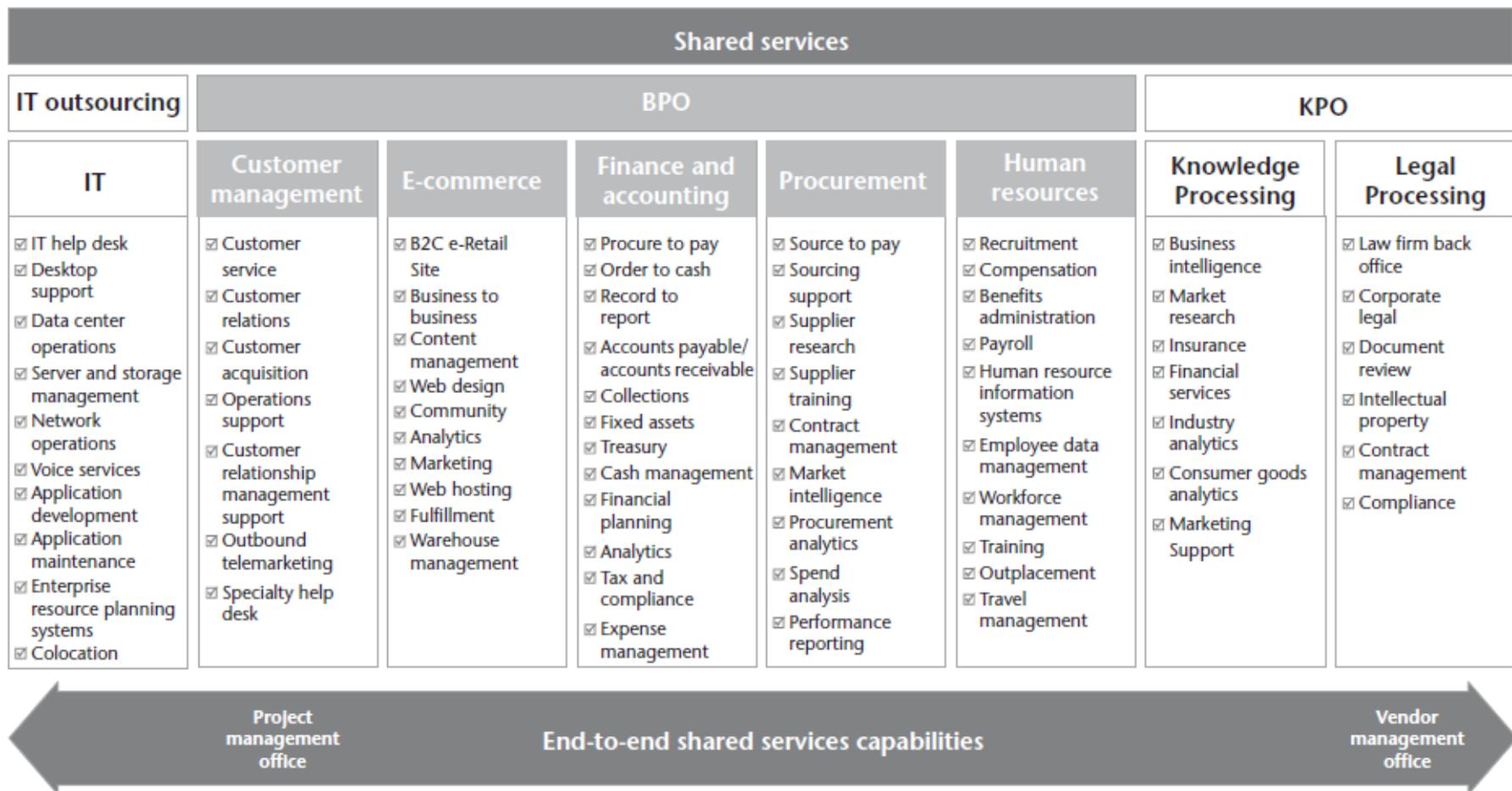
The undisputed champion of ICT enabled service exports is India, which in 2012 generated \$47.134 billion of exports, comprising 34% of its total services exports. India's case is interesting because the country is classified by the ITU as one of the 42 Least Connected Countries (LCCs) countries.¹⁸⁵

The majority of LCCs are in Africa and they closely match the list of least developed countries (LDCs). Among the factors holding back improved access to ICTs in LDCs are low education and literacy rates, a generally poor infrastructure and limited or lack of access to electricity. However, Bhutan, both LLDC and LDC, is not considered a LCC, which shows that even LDCs can achieve a higher level of ICT development. Similarly, the case of some non-LDCs among the least connected, most notably such populous economies as India, demonstrate that while a country as a whole might be suffering from gaps in broadband connectivity and literacy, large parts of the society may still be well-connected and highly skilled so as to provide ICT services.

LLDCs governments that wish to adopt a successful ICT policy need to address a series of constraints that hamper the development of the sector. First among the issues to address is the removal of any policy impediments to private investment, mainly those that hinder FDI. Second, a vibrant ICT sector needs appropriately skilled workforce, which point to the need of raising educational standards. Other challenges to address include inadequate provision of electricity, unreliable water supply, and lack of wired or wireless broadband. Finally, there is a need for an appropriate regulatory environment that adheres to international requirements and standards in terms of personal data protection and data transfer security. In terms of trade policy, the ICT sector faces little or no sector-specific trade measures, but a number of other government policies and horizontal restrictions do have an impact on trade in ICT services.

¹⁸⁴ Engman, M. (2010), *ibid*

¹⁸⁵ The world's Least Connected Countries (LCCs) are the group of 42 countries that fall within the low IDI group (IDI: the ITU's ICT Development Index), based on a categorization that divides the 166 countries included in the IDI into four groups (high, upper, medium, and low). In the LCCs, levels of ICT access and usage are extremely low. International Internet bandwidth availability is very limited, thus constraining Internet connectivity and driving up ICT prices, which in turn hampers usage of ICTs. Few households (less than 5% in the majority of LCCs) are connected to the Internet and fewer than 5% of households in all LCCs have a computer.



Source: Dihel et. al. (2012)

The development of the ICT sector is closely linked to the telecom sector as the latter is providing its enabling infrastructural service. Therefore, regulations promoting competition in broadband, leased lines, mobile and satellite services, i.e. the infrastructural means of delivery for ICT, are key factors determining its competitiveness. As a result, the industry is more sensitive today to a variety of regulations affecting telecommunications.

The export of ICT services is also dependent on the temporary movement of natural persons (Mode 4). The presence of the exporter's professionals may be required by project requirements, and a series of other tasks, such as transfer of knowledge and information, work coordination and monitoring, software implementation, etc. Movement of personnel either on a temporary basis (Mode 4) or linked to commercial presence (Mode 3) is also needed when a foreigner establishes for example its computer company. Therefore, immigration and labor market policies have an impact on the openness of the computer services sector. The most frequently used restrictions include quantitative limits to work permits and undefined economic needs tests. For example Lesotho has very restrictive labour policies affecting Mode 4, legal requirements prevent the employment of a foreigner unless the National Employment Service certifies that there is no citizen who is qualified and available for the job for which the work permit is sought. Another example is that of Swaziland whose "localisation and training" policy requires that a foreigner cannot be employed unless there is a lack of local person with similar skills and moreover the work permit is subject to the obligation to train a citizen of Lesotho to replace the foreign person after two years, which can be extended to 4 years.

Other major restrictions in LLDCs include horizontal measures, such as foreign equity limitations in local companies, the obligation to form a joint venture with nationals very often associated with a limit on foreign share, and the restriction on the number of foreign person who can work in a firm – wholly domestic owned or not – at a given time.

LLDCs' GATS Commitments

Only ten LLDCs made market access and/or national commitments in the Computer and Related Services Sectors, seven of them being "recently" acceded Members, i.e. they became WTO Members after 1995 as a result of accession negotiations. Almost all are transitional economy countries.

Table 8 presents the GATS commitments for LLDCs in computer and related services.

It is notable that Armenia, Kyrgyzstan, Laos, Former Yugoslav Republic of Macedonia and Moldova made full (unrestricted) market access and national treatment commitments in Modes 1, 2 and 3 for all services classified under the category of Computer and Related Services.

Table 8. Summary of GATS Commitments made by LLDCs for Computer and Related Services
(sub-sectors partially or wholly covered under Section 1.B of the *Services Sectoral Classification List*)

	01.B.a.	01.B.b.	01.B.c.	01.B.d.	01.B.e.	Total
Armenia	●	●	●	●	●	5
Botswana	●	●	●	●	●	5
FYR Macedonia	●	●	●	●	●	5
Kyrgyz Republic	●	●	●	●	●	5
Lao PDR	●	●	●	●	●	5
Lesotho	●	●	●	●	●	5
Moldova	●	●	●	●	●	5
Nepal	●	●	●	●	●	5
Swaziland	●					1
Tajikistan	●	●	●	●	●	5

Note: 01.B.a.: Consultancy Services Related to the Installation of Computer; 01.B.b.: Software Implementation Services; 01.B.c.: Data Processing Services; 01.B.d.: Data Base Services; 01.B.e.: Other

Source: Author based on GATS schedules of commitments

IV.4.3. Tourism Services

Economic importance of tourism

The tourism sector is a conglomerate of various services sectors. Despite international efforts to bring about a coherent definition of the tourism industry, various definitions exist at national levels. The difficulties of defining and measuring the sector lie in the fact that this industry involves the provision of many heterogeneous products, which are all inputs from other sectors.

Tourism is an important source of job creation. Through significant backward and forward linkages¹⁸⁶ with other sectors, it generates economic growth and development and contributes to poverty alleviation in many developing and least developed countries. Over the years, tourism has become one of the largest and fastest growing sectors in the world economy.

In 2013, travel and tourism's total contribution to the global economy rose to 9.5% of global GDP (US\$7 trillion), not only outpacing the wider economy, but also growing faster than other significant sectors such as financial and business services, transport and manufacturing. In total, nearly 266 million jobs were supported by travel and tourism in 2013, equaling 1 in 11 of all jobs in the world. The sustained demand for travel and tourism, together with its ability to generate high levels of employment, continues to prove the importance and value of the sector as a tool for economic development and job creation.

¹⁸⁶ Backward linkages relate to inputs from other goods and services sectors, e.g. the supply of agricultural and manufacturing goods, as well as a great variety of services, such as transport, construction, telecommunications, energy and water and sanitation. Forward linkages denote the supplies (or inputs) of tourism to other sectors.

In the OECD region, tourism directly contributes, on average, around 4.7% of GDP and 6% of employment, and 21% of exports of services. In terms of the total impact of tourism on the economy (i.e. including direct, indirect and induced impacts), tourism represents around 9% of GDP and employment. In Africa, the direct contribution of travel and tourism to GDP in 2013 was USD 71.6 billion (3.6% of GDP). This was expected to rise by 4.4% to USD 74.7 billion in 2014. This primarily reflects the economic activity generated by industries, such as hotels, travel agents, airlines and other passenger transportation services (excluding commuterservices). Of more importance are the indirect effects, which occur through the tourism value chain. Tourism draws on inputs from the food and beverage, construction, transportation and furniture sectors, as well as many others. Evidence suggests that in developing countries, this inter-sectoral impact adds an extra 60-70% on top of the direct effects of tourism. There are some destinations, such as Luang Prabang in Laos, where one third to one half of the income poor people derive from tourism comes via the supply chain.¹⁸⁷ The travel and tourism sector also contributes to GDP through a wide range of dynamic effects. These induced income impacts may also be important from a development perspective. For example, in Africa the total contribution of travel and tourism to GDP (including the wider impacts from investment, the supply chain and induced income) was USD 170.7 billion in 2013 (8.5% of GDP) and is expected to grow by 4.1% to USD 177.8 billion in 2014.¹⁸⁸ The tourism sector's direct contribution to GDP is rather low in Swaziland (1.8%), Zambia (2.2%) and Botswana (2.5%).

Tourism and travel is an important export sector making a significant contribution to overall export revenues around the world. The sector directly accounts for approximately 3% of global GDP¹⁸⁹ and employment, and around 6% of the global service sector output. The sector's contribution to world services exports is disproportionately higher: international tourism spending (technically described as visitor exports), which are a crucial component of service sector exports, represented 28% of global service sector exports and 5.4% of global goods and services exports in 2013. Such flows generate much-needed foreign exchange and financial stability for many countries, particularly for emerging economies.¹⁹⁰

Developing countries are playing an increasingly prominent role in the tourism sector, which is one of the top three export sectors for LLDCs.

¹⁸⁷ Ashley et. al. (2007)

¹⁸⁸ WTTC (2014b)

¹⁸⁹ 9.5% if direct + indirect contribution is considered.

¹⁹⁰ WTTC (2014a)

Regulatory frameworks

Reflecting the highly fragmented nature of the tourism sector with enterprises belonging to a number of very different industries such as transportation, accommodation, food services, travel trade (tour operators and travel agencies), recreation and entertainment, the sector is impacted by a host of measures intended to regulate other sectors. Compared to other service sectors, the tourism sector is generally freer from sector-specific protectionist regulations. As the tourism industry matures and consumer protection laws become more widespread, the case for traditional heavy forms of regulation of tourism services becomes less persuasive in many countries. In recent years, several countries have accelerated deregulation programmes – Belgium, Greece, Israel, the Netherlands, Spain and the United Kingdom – in particular relating to travel agents, guides and classification of accommodation. In the Netherlands, the United Kingdom and some other countries, deregulation is being pursued as an integral part of an overall enterprise policy designed to reduce the regulatory burden on industry.¹⁹¹ Many of the remaining regulations in developed countries affecting tourism appear to be by-products of horizontal regulations reflecting economic, political and social concerns applying to a number of sectors. Such measures notably include immigration and security controls together with documentation requirements, as well as any restrictions on currency movements, which might be applied to individual tourists or tourism businesses.¹⁹²

Specific regulations applying to the tourism sector might have such objectives as consumer protection, ensuring financial responsibility, or the development of the local economy and the domestic tourist industry.¹⁹³

As international trade in tourism and travel services depends on the ability of persons to travel freely across borders, a range of policies and measures influencing travel mobility and limiting the free movement of people, have impacted trade in this sector. Safety and security, customs and visa policy, access infrastructure and aviation regulations are just some of the issues, which can influence the direction and volume of trade. In particular, visas are one of the main policy instrument used to control the movement of people across national borders.

Tourism in the GATS

In the GATS framework, the level of commitments made by WTO Members for Tourism and Travel Related Services is greater than for any other sector. As of May 2009, 133 WTO Members committed this sector to varied degrees both in terms of modes and sub-sectors.¹⁹⁴ Regarding LDCs, 30 out of 32 have made specific commitments for this sector.

The high number of WTO Members making commitments in the tourism sector indicates the wide recognition of the important complementing role that the GATS can play in tourism development, although the complete liberalisation of the industry is far from being achieved. That is reflected in the

¹⁹¹ OECD (2014)

¹⁹² WTO (1998)

¹⁹³ Idem.

¹⁹⁴ WTO Secretariat Background Note on tourism services, document S/C/W/298

remaining modal and sub-sectoral imbalances in the commitments and, most importantly, the generally low level of commitments in related sectors.¹⁹⁵ In terms of sub-sectors, all of the WTO Members who made commitments for tourism, covered the “Hotels and restaurants” sub-sector, and a much smaller number (110) made commitments for “Travel agencies and tour operator services”. Even less was the number of WTO Members (67) who committed “Tourist guides services”, and only 17 made commitments for the unspecified “Other” tourism services.

Owing to the cross-sectoral linkages of the tourism sector, higher levels of liberalisation in telecommunications and financial services could significantly contribute to the growth of the sector. Commitments by WTO Members reflecting reforms undertaken in recent years in the critically important transport sector, especially for maritime and air transport services, would also greatly contribute to a predictable regulatory environment for tourism.¹⁹⁶

Tourism services received particular attention in the early stages of the Doha negotiations when the cross-sectoral dimension of tourism was acknowledged by a number of developed and developing country Members.¹⁹⁷ Two main issues that were lengthily discussed merit mention:

The issue of classification of tourism services was addressed because the GATS Classification List offers a very narrow definition of “Tourism and Travel Related Services”, which include only Hotels and restaurants (incl. catering); Travel agencies and tour operator services; Tourist guides services; and an “Other” category, and excludes a number of related services. A proposal was made by some WTO Members to create an Annex on Tourism Services that would add services activities to the W/120 tourism classification.¹⁹⁸ The proposed Annex on Tourism contained a very wide definition of the tourism sector classified in three categories: “C: tourism characteristic services”; “CN: tourism connected services” and “NS: tourism non-specific services”.¹⁹⁹ In a subsequent communication²⁰⁰ these Members proposed a reduced list of services (“Cluster of Tourism Industries”), which included only “tourism *characteristic* products”. The argument in favour of this list was that it corresponded to the Tourism Satellite Account (TSA) as adopted by the United Nations Statistical Commission (see Box 28).

The Annex was subsequently joined by a number of other developing countries and nine other negotiating proposals followed, all of which stressed the widespread connection that tourism has with most other services sectors. A “checklist” approach was suggested as a possible way forward in the negotiations.²⁰¹ So far, discussions on the proposal to add additional services activities to the W/120 tourism classification have not received enough support. The opponents’ view is that whilst the proposed Cluster of Tourism Industries covered a wide range of Tourism *characteristic* services, there

¹⁹⁵ Grosso, M. G., Leshner, M. & Pinali, E. (2007). Services Trade Liberalisation and Tourism Development. *OECD Trade Policy Working Paper No. 57*, OECD document TD/TC/WP(2006)37/FINAL, 12 November

¹⁹⁶ Grosso *et al* (2007), *idem*

¹⁹⁷ Grosso *et al* (2007), *idem*

¹⁹⁸ WTO document S/C/W/127

¹⁹⁹ The proposed Annex also suggested a series of disciplines to remedy anti-competitive behaviour affecting developing countries T&T service providers.

²⁰⁰ WTO document S/CSS/W/19

²⁰¹ Geloso Grosso (2007)

is not any classification issue which hinders WTO Member's ability to make commitments on tourism using the present GATS list.

The other major topic, also suggested in the proposed Annex, was the development of pro-competitive safeguards to address international anticompetitive practices in tourism and related industries along the lines of the Telecoms Reference Paper.

Grosso (2007) notes that

Anticompetitive practices in tourism and related sectors can indeed be a bottleneck to the development of the industry and can arise at different stages of the tourism value-added chain according to the type of service supplied. The vertical relationship between holiday package providers, retailers and tourism service suppliers can be an important source of anticompetitive behaviour. Anticompetitive practices can arise from the unbalanced market power of tour operators compared to that of independent suppliers. Although tour operators can play a key role in the development of the sector, their power (and increasingly of their allied agencies) can be used to bid down the margins of suppliers in destination countries. These suppliers, particularly in developing countries, have a weak bargaining position and lack negotiating skills, often resulting in unfavourable contractual conditions. Similarly, destination management operators acting as intermediaries for international tour operators may abuse their dominant position to the detriment of small local service providers.

Box 28. Tourism Satellite Accounts

As emphasised by the UNWTO, statistical information is the prerequisite for consistent economic analysis. Moreover, while the development component of tourism is generally accepted (i.e. a set of varied economic activities and products, many of which overlap with other industries and sectors), the lack of reliable tourism statistics and subsequent analysis of its macro-economic contribution remains an important barrier to defining and fostering tourism policies.

"Satellite account" is a term developed by the United Nations to measure the size of economic sectors that are not defined as industries in national accounts. Tourism, for example, is regarded as an amalgam of industries such as transportation, accommodation, food and beverage services, recreation and entertainment and travel agencies. The key aspect is associating tourist purchases to the total supply of these goods and services within a country.

TSA are used to provide the following data: tourism's contribution of GDP; tourism's ranking compared to other economic sectors; the number of jobs created by tourism in an economy; the amount of tourism investment; tax revenues generated by tourism industries; tourism consumption; tourism's impact on a nation's balance of payments; and characteristics of tourism human resources.

Twelve tourism industries are identified as part of TSA:

1. Accommodation for visitors
2. Food and beverage serving industry
3. Railway passenger transport
4. Road passenger transport

5. Water passenger transport
 6. Air passenger transport
 7. Transport equipment rental
 8. Travel agencies and other reservation services industry
 9. Cultural industry
 10. Sports and recreational industry
 11. Retail trade of country-specific tourism characteristic goods
 12. Country-specific tourism characteristic industries
- (Each industry is defined in terms of the UN International Classification of Economic Activities (ISIC Rev.4).)

As part of the TSA development process, the UNWTO considers it essential to develop the System of Tourism Statistics (STS). STS should be understood as that part of the national statistical system providing reliable, consistent and appropriate statistical information on the socio-economic aspects related to tourism, integrated within all the economic and social statistics related to other fields, at different territorial levels. The new International Recommendations for Tourism Statistics 2008 (IRTS 2008) and 2008 Tourism Satellite Account: Recommended Methodological Framework (TSA: RMF 2008) constitute the updated reference framework for the STS. As a consequence, they should be used as a basis for harmonisation, coordination and integration of available tourism statistical information.

Source: WTO (2009)

While the need for developing safeguards to address private anticompetitive business practices in tourism and related sectors was widely acknowledged, the proposal was not endorsed. This was mainly due to the difficulties to apply disciplines to the wide range of services that are related to tourism.²⁰² In particular, the fact that the Annex would have applied to air transport services, which are excluded from the scope of the GATS, made it difficult to accept by most WTO Members and also by the airline industry.²⁰³

LLDCs' GATS Commitments

All LLDCs, which are Members of the WTO, made some commitments in at least one sub-sector covered under Section 9 of the *Services Sectoral Classification List* as shown in While the global picture appears rather positive in terms of sectoral coverage for hotel and restaurant services, travel agencies, and tour operators, many restrictions remain. This is as reflected in the horizontal and sector-specific parts of the Schedules, mainly for Modes 3 and 4. For example, Botswana, Lesotho and Swaziland restrict the employment of foreigners through economic needs tests and labour market tests. In Lesotho, some tourism activity licenses are reserved for citizens. In addition, in Swaziland a work permit is subject to "localisation and training", meaning that the work permit is linked to the employee's obligation to train a citizen to replace the foreign employee after the 2nd year of stay. In Lao PDR, foreign equity participation in travel agencies and tour operator firms is limited to 70%, and for lodging services commercial presence is allowed only for establishments with three stars rating or higher. In Tajikistan tour guides must be citizens.

²⁰² Geloso Grosso (2007)

²⁰³ See IATA's statement made at the WTO Symposium on Tourism Services, https://www.wto.org/english/tratop_e/serv_e/iata_omc_tourism.doc

Table 9.

While the global picture appears rather positive in terms of sectoral coverage for hotel and restaurant services, travel agencies, and tour operators, many restrictions remain. This is as reflected in the horizontal and sector-specific parts of the Schedules, mainly for Modes 3 and 4. For example, Botswana, Lesotho and Swaziland restrict the employment of foreigners through economic needs tests and labour market tests. In Lesotho, some tourism activity licenses are reserved for citizens. In addition, in Swaziland a work permit is subject to “localisation and training”, meaning that the work permit is linked to the employee’s obligation to train a citizen to replace the foreign employee after the 2nd year of stay. In Lao PDR, foreign equity participation in travel agencies and tour operator firms is limited to 70%, and for lodging services commercial presence is allowed only for establishments with three stars rating or higher. In Tajikistan tour guides must be citizens.

Table 9. Summary of GATS Commitments made by LLDCs in the Tourism sector

(sub-sectors partially or wholly covered under Section 9 of the *Services Sectoral Classification List*)

	09.A.	09.B.	09.C.	09.D	TOTAL
Armenia	●	●	●		3
Bolivia	●	●			2
Botswana	●	●			2
Burkina Faso	●	●			2
Burundi	●	●	●		3
Central African Republic	●	●	●	●	4
Chad	●	●			2
FYR Macedonia	●	●	●		3
Kyrgyz Republic	●	●	●	●	4
Lao PDR	●	●		●	3
Lesotho	●	●	●		3
Malawi	●	●	●	●	4
Mali	●				1
Mongolia	●	●	●		3
Niger	●	●	●		3
Paraguay	●	●	●		3
Rwanda	●				1
Swaziland	●				1
Tajikistan	●	●		●	3
Togo	●	●	●		3
Uganda	●	●			2
Zambia	●	●	●	●	4
Zimbabwe	●	●	●		3

Note: Service Sectors: 09.A.: Hotels and Restaurants (incl. catering)

09.B.: Travel Agencies and Tour Operators’ Services

09.C.: Tourist Guides Services

09.D.: Other

Source: Author based on GATS Schedules

IV.5. How to draft a Services Schedule?

The technicalities for preparing a GATS Schedule that WTO Members and acceding governments use is contained in the Guidelines for the Scheduling of Specific Commitments under the GATS, adopted by the Council for Trade in Services on 23 March 2001 (document S/L/92 plus S/L/92/Corr.1 for the French version). Another basic document that guides the preparation of a Schedule is the GATS Services Sectoral Classification List adopted during the UR (document MTN.GNS/W/120, dated 10 July 1991, hereinafter “W/120”), as well as the UN Central Product Classification, version Provisional (CPC Prov.) to which the GATS Classification refers through CPC codes. The following provides a brief summary of the Scheduling Guidelines.

The Schedule identifies for the Member concerned (1) the service sectors, sub-sectors or services – depending of the level of disaggregation of the codes in W/120 to which it agreed to apply the Market Access and National Treatment obligations as defined in GATS Articles XVI and XVII, and (2) specifies any exceptions from those obligations it wishes to maintain. The commitments and limitations are in every case entered with respect to each of the four modes of supply which constitute the definition of trade in services in Article I of the GATS.²⁰⁴

It is only through a Member’s Schedule that it can be assessed to which services sectors and under what conditions the Market Access and National Treatment apply within that Member’s jurisdiction. In addition, in cases where a Member has also taken MFN exemptions, its list of exemptions also needs to be scrutinized in order to gauge the extent of its preferential treatment to its trading partners.

All GATS Schedules have a standard format. For each service sector or sub-sector that is offered, the Schedule must indicate, with respect to each of the four modes of supply, any limitations on Market Access or National Treatment which are to be maintained. A commitment therefore consists of eight entries, which indicate the presence or absence of Market Access or National Treatment limitations with respect to each mode of supply. The first column in the standard format contains the sector or subsector which is the subject of the commitment; the second column contains limitations on Market Access; the third column contains limitations on National Treatment. The fourth column is the place where governments may enter any additional commitments, which are not subject to scheduling under Article XVI or Article XVII.

The Schedule is split into two parts: in the first part governments enter their “horizontal” commitments which stipulate their Market Access and/or National Treatment limitations that apply to all of the sectors included in the second part. The second part is reserved for Market Access and/or National Treatment limitations, which are specific to the committed sectors or sub-sectors. Any evaluation of commitments must therefore take into account both the sector-specific and the horizontal entries. The standard format of Schedules, shown in the following example, requires that both the horizontal and the sector-specific parts be structured along the four modes of supply and the three types of commitments: Market Access, National Treatment and additional commitments.

²⁰⁴ See supra in V.2.4.3

The terminology used in Schedules has also been standardised and Members are required to use them wherever possible. Information, which has to be inscribed in each column of the Schedules are the following:

1. The first column indicated the committed sector or sub-sector: this column must contain the clear definition of the sector, subsector or activity that is the subject of the specific commitment. Members are free, subject to the results of their negotiations with other participants, to identify which sectors, subsectors or activities they will list in their Schedules, and it is only to these that the commitments apply. In the great majority of Schedules the order in which the sectors are listed corresponds to the Services Sectoral Classification List (W/120). In most cases, the sectoral entries are accompanied by references to the UN CPC Prov. codes, which gives a detailed explanation of the coverage of committed services, although the use of CPC codes and definitions are not required. The Annex on Financial Services to the GATS is sometimes used for the scheduling of commitments in this sector. For telecoms, the Notes for Scheduling Basic Telecom Services Commitments is often used as a reference along with the Services Sectoral Classification List. In the great majority of Schedules the order in which the sectors are listed corresponds to the Services Sectoral Classification List (W/120). In most cases, the sectoral entries are accompanied by references to the UN CPC Prov. codes, which gives a detailed explanation of the coverage of committed services, although the use of CPC codes and definitions are not required.
2. The second column indicates Market Access commitments: when a Member undertakes a commitment in a sector or subsector it must indicate for each mode of supply what limitations, if any, it maintains on market access. Article XVI:2 of the GATS lists six categories of restrictions, which may not be adopted or maintained unless they are specified in the Schedule. All limitations in Schedules therefore fall into one of these categories. They comprise four types of quantitative restriction plus limitations on types of legal entity and on foreign equity participation.
3. The third column contains the Member's National Treatment commitments: Article XVII of the GATS requires that a Member accords to the services and service suppliers of any other Member treatment no less favourable than is accorded to domestic services and service suppliers. Therefore, a Member wishing to maintain any limitations on National Treatment, i.e. any measures which result in less-favourable treatment of foreign services or service suppliers, must indicate these limitations in the third column of its Schedule.
4. The last column is that of Additional commitments: if a Member decides to make additional commitments in a given sector relating to measures other than those subject to scheduling under Articles XVI and XVII, for example qualifications, standards and licensing matters, such commitments must be entered in this column.

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
I. HORIZONTAL COMMITMENTS (APPLICABLE TO ALL SECTORS INCLUDED IN THIS SCHEDULE)			
<ul style="list-style-type: none"> - Subsidies and other forms of State support - Land ownership - Participation in privatization and privatized companies 	<p>Unbound with respect to privatization of State and public property.</p>	<p>(3), (4) Unbound for:</p> <ul style="list-style-type: none"> - Subsidies and other forms of State support, including those related to research and development. <p>(1), (2), (3), (4) Unbound with respect to land ownership except under the following conditions.</p> <p>Foreign natural and juridical persons are not allowed to obtain land for lifelong inherited use as a primary land user.</p> <p>Unbound with respect to privatization of forms of State and public property.</p>	
<ul style="list-style-type: none"> - Commercial presence - Temporary entry and stay of natural persons 	<p>(3) Representative offices are not allowed to perform any commercial activity, including the supply of services.</p> <p>Unbound with respect to commercial presence through constitution, acquisition or maintenance of a non-commercial organisation (unless otherwise provided in the Sector-specific commitments of this Schedule).</p> <p>(4) Unbound except for measures concerning the entry and temporary stay of the following categories of natural persons providing services:</p> <ul style="list-style-type: none"> - The Government sets an annual quota for attracting of foreign workforce, based on declared demand, as a percentage of the economically active population . "Business visitors" do not fall under the quota system. 5 years after the date of accession, the application of the quota system to "intra-corporate transferees" will be eliminated. 	<p>(3) Unbound with respect to commercial presence through constitution, acquisition or maintenance of a non-commercial organisation (unless otherwise provided in the Sector-specific commitments of this Schedule).</p> <p>(4) Unbound except for measures concerning the categories of natural persons referred to and committed in the Limitations on Market Access column.</p>	

Modes of supply: (1) Cross border supply (2) Consumption abroad (3) Commercial presence (4) Presence of natural persons

Sector or Sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
II. SPECIFIC SECTOR COMMITMENTS			
1. BUSINESS SERVICES			
A. Professional Services			
(a) Legal services: Legal advisory services on foreign law and international law (part of CPC 861)	(1) None. (2) None. (3) None, except the following: - Commercial presence is allowed only in the form of a juridical person of the Republic; - After 10 years from the date of accession, commercial presence in the form of a branch will be allowed; and - Individual advocates ² can also carry out advocates' activities. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	
(e) Engineering services (CPC 8672) (f) Integrated engineering services (CPC 8673)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic . (4) Unbound except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound except as indicated in the horizontal section.	
(h) Medical and dental services (part of CPC 9312, includes private linked services and excludes all public linked services and medical services financed out of State funds)	(1) None. (2) None. (3) None, except the following: - commercial presence is allowed only in the form of a juridical person of the Republic. (4) Unbound, except as indicated in the horizontal section.	(1) None. (2) None. (3) None. (4) Unbound, except as indicated in the horizontal section.	

For the entries the Schedules use uniform terminology:

1. Where there are no limitations either on Market Access or National Treatment in a given sector and mode of supply, the entry reads “NONE”. When the term “NONE” is used in the sector-specific part of the Schedule it means that the Member commits not to apply any limitation to Market Access or discrimination of foreign services and services providers relative to like domestic services and services providers. It must be borne in mind that, as noted above, there may be relevant horizontal limitations in the first part of the Schedule.
2. All committed services in a Schedule are fully bound unless otherwise specified. Therefore, where a Member wishes to remain free in a given sector and mode of supply to introduce or maintain measures inconsistent with Market Access or National Treatment, the Member has to enter in the appropriate space the term “UNBOUND”.
3. In cases where the provision of a service in a particular mode is technically not possible, the term “UNBOUND” has been used, usually in conjunction with an explanatory footnote stating “Unbound due to lack of technical feasibility”.

In many cases Members and acceding government use textual descriptions of their binding commitments on Market Access and National Treatment. Textual descriptions do not use uniform terminology but are generally based on one of two common approaches:

1. The entry describes the nature of the limitation, indicating the elements, which make it inconsistent with GATS Articles XVI and XVII.
2. Sometime Members choose to indicate a limited commitment by describing what they are offering rather than the limitations they are maintaining.

V. CROSS-CUTTING NEGOTIATION AREAS

V.1. Trade Related Intellectual Property Rights (TRIPS)

The protection of intellectual property (IP) provides incentives for investors and companies to invest in research, innovation, knowledge and development. Without the protection of IP, it is likely that there would not be the depth and scope of research witnessed for such industries as pharmaceuticals and high-technology products. However, the conferring of rights can also create monopolist situations, and in particular limit the ability to use what might be public goods. Thus, a balance between the need for protection and the benefits extending from IP usage to society at large needs to be reached. Various multilateral agreements exist for the protection of IP, including those set within the context of WIPO and the WTO. We review the key agreements and their implications for developing countries and LLDCs in particular.

V.1.1. Background to Trade Related Intellectual Property Rights

Intellectual Property, as defined by the World Intellectual Property Organization (WIPO), is the creations of the mind, such as:

- Inventions;
- Literary and artistic works;
- Designs; and
- Symbols, names and images used in commerce.

Implementing and protecting intellectual property rights (IPRs) provides incentive for innovation, research and development. Protection of IPRs is mostly through the form of patents, copyrights and trademarks. IPRs allow the creator or owner of the right to fully enjoy the financial and non-financial benefits from the exploitation of its intellectual asset.²⁰⁵ The legal basis of IPRs' protection helps to deter unwarranted utilisation from third parties by rendering it illegal and punishable by law.

On top of the obvious moral, ethical and cultural impacts, economic benefits that are engendered from enforcing IPR laws provide a strong case for safeguarding IPRs. One of the major economic benefits is the promotion of research and development (R&D) and the level of investment, enterprise development, and employment etc., it encourages. Under the Endogenous Economic Growth Theory, R&D is proven to be an important driver of economic growth through both theory and empirical evidence²⁰⁶. A strong correlation is also found between the strength of IPR

²⁰⁵ See <http://www.wipo.int/about-ip/en/>

²⁰⁶ See, for example, Scully, G. W. (1988) The Institutional Framework and Economic Development in *Journal of Political Economy*, June 1988

protection level and inflows of Foreign Direct Investment, which is also a major economic growth factor, where FDI enterprises represent the majority of export-led output in proportional terms.

The international framework for IPRs is based on several treaties and conventions that cover the different aspects of intellectual property protection. A total of 26 treaties are administered by the WIPO,²⁰⁷ covering both the industrial rights and the artistic rights. Several cross-border systems are also in place to facilitate international protection of IPR, such as the International Patent System, International Trademark System, International Design System, Lisbon system for the appellations of origin and the Article 6ter²⁰⁸, which protects names, abbreviations, flags and other emblems of governmental and intergovernmental organisations. Additionally, fast, flexible and cost-effective arbitration, mediation and expert determination services for dispute settlement are provided to WIPO Member States.²⁰⁹

V.1.2. TRIPS Agreement

The Trade-Related Intellectual Property Rights (TRIPS) Agreement was negotiated for the first time in a multilateral agreement during the Uruguay Round. It imposes obligations on WTO Member States to protect intellectual property rights in the form of copyrights, industrial designs, trademarks, geographical indications, patents, integrated circuits and undisclosed information. The TRIPS agreement states that Members should extend a minimum standard of protection (or minimum exclusive rights that a patent or trademark owner may enjoy) without requiring members to extend “more extensive” forms of protection²¹⁰.

TRIPS enables countries to override the principle of compulsory licenses in cases of national emergency or other circumstances of extreme urgency, provided that efforts are first made to obtain a voluntary licence from the patent holder. This later condition can be overturned for non-commercial or public compulsory licencing conditions²¹¹.

Member States are entitled to implement the TRIPS Agreement’s provisions according to their own national legal system. Though the agreement significantly contributes to a certain degree of

²⁰⁷ See <http://www.wipo.int/treaties/en/>

²⁰⁸ Article 6ter of the Paris Convention for the Protection of Industrial Property of 1883 (1967 Stockholm Act) was introduced into the Paris Convention by the Revision Conference of The Hague in 1925. It underwent through modifications, at the Revision Conference of London in 1934, and by the Revision Conference of Lisbon in 1958 (see http://www.wipo.int/article6ter/en/general_info.htm)

²⁰⁹ See <http://www.wipo.int/services/en/>

²¹⁰ TRIPS, Art 1.1

²¹¹ Fink, C. (2006) Intellectual Property and Public Health: The WTO’s August 2003 Decision in Perspective. *Newfarmer, R. (ed) Trade, Doha and Development: A Window into the issues*, World Bank

harmonisation, because of the different legal systems in place, it leaves considerable freedom in many areas to legislate at the national level²¹².

The TRIPS Agreement includes both National Treatment and Most Favoured Nation provisions, such that Member States must accord to the nationals of other member states treatment no less favourable than that it accords to its own nationals (with exceptions permitted such as compulsory licensing) and if the protection is conferred to the national of one WTO Member State, it must grant conditions no less favourable to a national from another WTO Member State. Countries may deviate from MFN treatment for Intellectual Property Rights registered before the entry in force of the TRIP agreement, and notified to the Council of TRIPs, provided that they do not constitute arbitrary or unjustifiable discrimination against nationals of other Members²¹³.

V.1.3. Special and Differential Treatments for TRIPS

The agreement highlights the conflicting yet mutually reinforcing nature of how protection of IPs needs to strike a balance between the rights of economic operators and those of consumers.

*The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to the balance of rights and obligations.*²¹⁴

Such a balancing act has been similarly emphasised by some developed countries in bilateral trade negotiations (see Box 29).

The TRIPS Agreement does not allow any country to deviate from the core principles enshrined in Article 1, namely the application of minimum standards. The agreement, on the other hand, did foresee transition periods which were extended in length for developing countries, as well as a specific provision relating to promoting the transfer of technology for LDCs.

While developed countries were obligated to apply the TRIPS Agreement provisions at the start of 1996, developing countries were given until the start of 2000 to do so. Developing countries were additionally entitled to delay the application of the pharmaceutical patent protection until the start of 2005. LDCs were accorded a longer transition period for the application of the TRIPS Agreement until the start of 2016, and the application of TRIPS to pharmaceutical products until the end of 2016.

²¹² TRIPS, Art 1.1

²¹³ UNCTAD (1999). *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators from Least Developed Countries*. UNCTAD

²¹⁴ TRIPS, Art 7

Box 29. Balancing the rights and obligations between users and owners of IPRs

Outside the realm of the MTNs, the EU has enshrined similar language within the definition of its objective for IPR chapters in bilateral negotiations, namely as attaining a level of protection akin to the levels in place in the EU, without overlooking the level of development of the countries. The latter is an important factor because, as pointed out by academic research, a protection level that ignores the economic status of the country can have *counterproductive effects that include monopolisation of markets by foreign firms, higher prices of IPR-related products, public health, access to knowledge, food security, environment, labour rights, technology transfer monopolisation of markets by foreign firms.*²

The EU has taken into account the level of economic development of the partner country while defining objectives other than the implementation of the appropriate IPR protection level. For developed countries, the EU also aims at propping up the creation and two-way trade of innovative products. For developing countries, encouraging bi-lateral technology transfer is defined as an objective. The EU has even gone one step further in its agreement with Central American countries (EU-CAAA) by providing for an additional objective that encourages financial and technical cooperation relating to IPR.

1. See http://ec.europa.eu/trade/policy/accessing-markets/intellectual-property/index_en.htm

2. Martinez, A.L., (2012) *Report on Implications of an IPR Chapter in a Hypothetical Free Trade Agreement between Vietnam and the European Union*. MUTRAP.

Source: Baker, P. et al (2014). *Sustainable Impact Assessment between the EU and Vietnam*. MUTRAP.

While developed countries were obligated to apply the TRIPS Agreement provisions at the start of 1996, developing countries were given until the start of 2000 to do so. Developing countries were additionally entitled to delay the application of the pharmaceutical patent protection until the start of 2005. LDCs were accorded a longer transition period for the application of the TRIPS Agreement until the start of 2016, and the application of TRIPS to pharmaceutical products until the end of 2016.

The provision for transfer of technology from developed countries to LDCs²¹⁵ was aimed at incentivising the business environment (and legal framework) in LDCs to foster technology adoption and transfer. Such provisions offer an opportunity to enhance the technology driven environment in LDCs, even if they have not been invoked to date.

Additionally, technical assistance and financial cooperation is included in the Agreement²¹⁶, although it is couched in non-committal language, such that the provision of assistance is provided on a request basis and according to mutually agreed terms and conditions.

²¹⁵ TRIPS Art 66.2

²¹⁶ TRIPS, Art 67

V.1.4. TRIPS and Access to Medicines

At the WTO's Doha Ministerial Declaration in 2001, Member States reaffirmed the right of governments to use compulsory licenses. A debate did arise in the Doha Round regarding the eligibility of importing countries for generic drugs, the range of drugs which could be produced and what should be the reporting requirements and safeguards in place to prevent such drugs reaching developed countries²¹⁷. In response to the Doha Ministerial Declaration, Members of the WTO agreed a waiver to certain provisions in the TRIPS agreement in order to promote access to medicine for the world's poor in August 2003²¹⁸. The access to medicine extended to such fields as Antiretroviral (AV) drugs to fight HIV/AIDS and combat tuberculosis and Malaria. The waiver explicitly aimed to entitle generic producers to manufacture patented goods at lower costs in order to supply drugs in developing countries. As mentioned earlier, the purpose of the waiver was not to build domestic industries or to be used for commercial policy objectives, but specifically to respond to cases of national emergency.

Some of the key features of the 2003 Ministerial Decision included that the applicability of the waiver is not limited to certain diseases and neither to emergency situations only. The beneficiaries of the waiver are LDCs and any other developing countries that do not have the capacity to manufacture pharmaceuticals. Importing Member States of generic pharmaceuticals must notify the WTO of their intention to grant compulsory licenses. Proper labelling and packaging and other distinguishable features of the generic pharmaceutical product are required to avoid the likelihood that generic drugs are sold illegally in developed markets.

V.1.5. Trade Negotiations on TRIPs and LLDCs

The basic objectives of the TRIPS agreement is to facilitate the production and commercialisation of innovative and creative products amongst Member States and achieve an adequate and effective level of protection and enforcement of intellectual property rights in order to foster investment in research and development.²¹⁹ IP protection under the TRIPS agreement is extended to Copyrights, Trademarks, Geographical Indications, Designs and Patents. Protection of plant varieties, Genetic resources and traditional knowledge should also be considered. Other aspects concerning the application for protection of rights, protection of data and the broader administrative, legal and related issues also need to be followed by LLDCs which will be impacted by any changes in TRIPS.

²¹⁷ Abbott, F. M. (2005). The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health. *American Journal of International Law*, Vol 99.

²¹⁸ Matthews, D. (2004). WTO Decision on Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health: A solution to the access to essential medicines problem? *Journal of International Economic Law*, Vol 7. No 1., Oxford University Press

²¹⁹ See: http://trade.ec.europa.eu/doclib/docs/2009/october/tradoc_145180.pdf

Obtaining special and differential treatment for the application of TRIPS provisions with regard to technology transfer is relevant not only to LDCs, but also to all LLDCs, simply because of the natural disadvantage that these countries face in engaging in international trade. The additional trade costs related to importing also should legitimise the application of waivers on the production or importation of patented pharmaceuticals. The application of compulsory licensing procedures for pharmaceutical procedures would reduce the cost of public health, which would be instrumental in achieving the development objectives of LLDCs.

Finally, it would be equally important to increase investment in public health infrastructure and public social services requiring technical assistance, and often financial resources, under a public-private partnership framework. Technical assistance should also be aimed at supporting the creation of legal and regulatory frameworks in LLDCs in order to incentivise research and development in areas of national interest.

V.2. Rules on Regional Trade Agreements

V.2.1. Background to the Rules on Regional Trade Agreements

Free trade agreements are specific trade arrangements between two or more Member States. FTAs play a major role and are prominent features in international trade. WTO members are free to form and join any FTA be it regional or bilateral (provided the formation is in accordance with the guiding rules or principles). Members participating in such arrangements are encouraged to notify the WTO when new agreements are formed.

Regional trade Agreements (RTAs) are reciprocal trade agreements between two or more partners. They include FTAs and customs unions. RTAs can either be bilateral or plurilateral. Preferential trade arrangements (PTAs) in the WTO are unilateral trade preferences.

RTAs have become increasingly prevalent since the early 1990s. As of mid-June 2014, some 585 notifications of RTAs had been received by the GATT/WTO, and of these, 379 were in force. All RTAs notified to the WTO share the common attribute of being reciprocal trade agreements between two or more partners. Some of the most widely known RTAs include the European Union (EU), The European Free Trade Association (EFTA), The North American Free Trade Agreement (NAFTA), The Southern Common Market (MERCOSUR), The Association of Southeast Asian Nations Free Trade Area (AFTA), and The Common Market of Eastern and Southern Africa (COMESA).

Under the Doha Round, WTO Members agreed to initiate negotiations aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying RTAs, taking

into account developmental aspects. These negotiations take place within Negotiating Group on Rules (NGR) which reports to the Trade Negotiations Committee (TNC).

V.2.2. Interaction between RTAs and the MTNs

While RTAs are important to the multilateral trading system, they cannot substitute it²²⁰, as there are many major issues that can only be tackled in an efficient manner in the multilateral context through the WTO. RTAs pre-date the multilateral system because they were the seeds which grew into the GATT, they co-exist with the multilateral system and can help build the edifice of global trade rules and liberalisation²²¹.

Over 80% of notified RTAs are bilateral, but larger membership regional agreements are becoming common, especially among developing countries. Most RTAs today make deeper and more extensive commitments, and have moved beyond commitments on market access in goods. Contentious issues such as Trade Facilitation were successfully negotiated in the WTO because it makes no economic sense to cut red tape or simplify trade procedures at the border for one or two countries but instead needs to be done for all countries.

A major concern with RTAs is that the geographical scope of RTAs tend to exclude the smallest and most vulnerable countries. Another concern is that intra-industry trade in many RTAs remains very low. Reasons for this include the fact that tariff liberalisation is often back-loaded for many members of the RTA and the level of implementation of the goods and services schedules of commitments remains low (particularly with regard to non-tariff measures and customs cooperation). Another reason is that rules of origin are relatively complicated to administer and reach, by following a line-by-line approach with rules devised for a specific product or sector²²². Other factors include the fact that in many cases the level of trade complementarity between parties is low and the reason behind the RTA is politically motivated rather than economically motivated. Finally, there are often numerous non-tariff barriers that make it costly to trade across regional borders, including cumbersome customs procedures, inefficient transport services and infrastructure, an inappropriate or discriminatory use of norms and standards, and other behind the border measures²²³.

²²⁰ WTO (2014). Speech by the WTO Director-General Roberto Azevêdo on 25 September 2014 in closing the WTO Seminar on Cross-Cutting Issues in Regional Trade Agreements (RTAs)

²²¹ WTO (2014), *ibid*

²²² Naumann E (2011) Rules of origin in the tripartite FTA: reflection on the status quo and the challenges ahead, in I Hartzenberg et al. (eds) Cape to Cairo: Making the Tripartite Free Trade Area Work. TRALAC: Stellenbosch.

²²³ Baker, P. & Deleplancque, V. (2015) Achievements and Challenges of Trade Integration, in *International Trade and Investment Review*, Vol.1 (1), International Economics

V.2.3. GATT provisions for RTAs

RTAs may be agreements between countries that do not necessarily belong to the same geographical region. The coverage of RTAs regarding preferential treatment varies from one RTA to another. While modern RTAs tend to go far beyond tariff-cutting exercises and provide for increasingly complex regulations governing intra-trade and often provide for regulatory framework, “the most sophisticated RTAs go beyond traditional trade policy mechanisms, to include regional rules on investment, competition, environment and labour”²²⁴.

RTAs include free trade agreements and customs unions, notified under Article XXIV:7 of the GATT 1994, and paragraph 2 (c) of the Enabling Clause, and Economic Integration Agreements under Article V:7 of the GATS. The increase in RTAs coupled with regional politics and preference shown for concluding bilateral trade agreements has produced the phenomenon of overlapping membership. According to the WTO, this is “because each RTA will tend to develop its own mini-trade regime” and different countries would wish to join the different RTAs within their geographical region.

V.2.4. Doha Negotiations on Rules on Regional Trade Agreements

WTO rules on RTAs require meeting certain requirements which are not always clear and open to interpretation. It is the work of the Committee on Regional Trade Agreements to review the consistency of RTAs with the provisions set out in the GATT 1994 and WTO agreements. In the Doha Ministerial Declaration of 2001²²⁵, WTO Members agreed to negotiate a solution, giving due regard to the role that these agreements can play in fostering development.

The declaration mandates that negotiations aim at “clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.”

These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The original deadline of 1 January 2005 was missed and the next deadline was to finish the talks by the end of 2006. The 2003 Fifth Ministerial Conference in Mexico was intended to take stock of progress, provide any necessary political guidance, and take decisions as necessary. Negotiations take place in the Negotiating Group on Rules (NGR).²²⁶

With regard to negotiations on procedural issues relating to RTAs, on 14 December 2006, the

²²⁴ WTO Website

²²⁵ WTO (2001). *Doha Ministerial Declaration*. WT/MIN(01)/DEC/1. 20 November 2001. para 29

²²⁶ WTO. (2002). *Compendium of Issues Related to Regional Trade Agreements*. Negotiation Group on Rules. TN/RL/W/8/Rev.1. WTO. 1 August

General Council established on a provisional basis a new transparency mechanism for all RTAs²²⁷. The new transparency mechanism was negotiated in the Negotiating Group on Rules and is implemented on a provisional basis. Members are to review, and if necessary modify, the decision, and replace it by a permanent mechanism adopted as part of the overall results of the Doha Round. This review is currently taking place in the Negotiating Group on Rules.

The transparency mechanism specified the time at which an RTA should be notified by Members since it is currently not precisely formulated nor homogeneously expressed in WTO rules, as reflected in the provisions reproduced in the Annex. In practice, many RTAs are notified when their texts have already been sealed or even when the RTA is already in force, and it has been argued that this restrains the effectiveness of the ensuing examination process. It has been suggested that the terms «shall promptly notify» and «deciding to enter» in GATT Article XXIV:7(a) should be interpreted to mean that the notification and submission of information should take place, at least, before the entry into force of the RTA.

The quantity and quality of statistics requested from RTA parties have been highlighted in the context of the examination of RTAs under GATT Article XXIV. GATS Article V:7(b) requires the parties to an RTA implemented on the basis of a time-frame to «report periodically» to the Council for Trade in Services (CTS) on its implementation.

RTAs notified to the WTO are subject to surveillance in various Bodies, at various levels of depth and complexity, depending upon which provision the notifying Member avails itself of. Homogeneity of the surveillance process and the requirements of what should be monitored appears to be unclear. This is under discussion in the negotiations.

GATT Article XXIV and GATS Article V require that “substantially all trade” shall be liberalised. What constitutes substantially is under discussion, as is the level of flexibility which should be offered to developing countries within the rules. The question of the application of preferential tariffs lower than the MFN rates but higher than zero has been raised. For example, does a lower preferential tariff imply liberalisation and does this then benefit from the coverage in the calculation of “substantially all”.

V.2.5. Negotiations of Rules on Regional Trade Agreements and LLDCs

Trade agreements have emerged as the key driver for the global organisation of production, investment and trade, and of the commercial success and economic welfare of nations. The success of multilateral agreements requires effective negotiations structures, effective negotiating strategies, and leverage coalition building to push through proposals. Trade agreements now address a wide range of measures, not only market access issues. This has made

²²⁷ WTO (2006). *Transparency Mechanism for Regional Trade Agreements*. WT/L/671. WTO. 18 December

negotiating and managing a country's participation in trade agreements an increasingly important but challenging task for LLDCs, which sometimes lack the capacity to prepare adequately for the negotiations and prepare a coordinated position.

LLDCs should investigate the impact and prepare a common position with regard to how RTAs may adversely impact them, for example, through trade diversions and what kind of mechanism could be put in place to ensure that preferences are not eroded for LLDCs. At the same time, LLDCs should strive for flexibilities in the thresholds and periods of liberalisation under GATS Article V and GATT Article XXIV. At the same time, LLDC may require technical assistance to fulfil new rules with regard to transparency and notification of RTAs, including more stringent demands on statistics. The LLDCs should ensure that such support is provided through Aid for Trade facilities.

VI. POLICY OPTIONS FOR LLDCs IN THE MTNS

VI.1. Introduction

This handbook's primary purpose is to give an overview of the multilateral trade negotiations, with a particular focus on the LLDCs. Numerous handbooks already exist and cover, in both non-technical and technical fashions, the different topics being negotiated and discussed at the level of multilateral negotiations, such that this handbook attempted as far as possible to not duplicate what is already in existence but rather to tailor it to the special context of LLDCs.

Numerous studies document and find a systematic bias against LLDCs owing to the uncertainties, costs and transport times incurred by being landlocked. Trade volumes for land-locked developing countries tend to be lower than other countries, and the cost of engaging in cross-border trade is significantly higher, requiring more procedures and time, owing to the fact that transit is required. The additional costs have been shown to impact on trade flows, as well as on investment flows. Policies that facilitate a greater integration of LLDCs in the world economy have, therefore, been proposed in multilateral forums through regional economic integration efforts.

It was noted that some countries have performed extremely well in terms of export and economic growth. Nevertheless, even high performing countries tend to be exporting on a narrow range of products and a concentrated number of export partners, making them quite vulnerable to changes and cycles in market demand. The fact that production is highly concentrated also leads to problems of inequalities, and more importantly can lead to difficulties in diversifying to other industries owing to the very restricted level of economic complexity²²⁸.

The handbook also cites the findings of a number of recent studies which indicate that LLDCs, whilst being disadvantaged, often apply policies which renders them even more disadvantaged to participate and compete in a global economy. Slow customs procedures, lack of implemented commitments taken in multilateral and regional agreements, weak institutional frameworks and uncertainty surrounding policies, are all factors which in many LLDCs compound the existing constraints of being landlocked. The handbook therefore strongly advises LLDCs to adopt more business enabling environments, and improve the public administration's capacity and agility in responding with effective policies, which can assist their business community to adapt to changing market conditions. Most importantly, the handbook also focuses on the need to better articulate trade and investment policies in LLDCs, improve preparation in multilateral trade negotiations, strengthen the participation of individual countries and the voice of the group, and improve the

²²⁸ Beyond purely economic considerations, environmental costs caused by the textile industry and the extractive industries also constrain the sustainability of economic growth in the longer term.

monitoring of implementation of commitments to ensure that the agreements are yielding the results which were desired in the first place when LLDCs sit at the negotiation table.

We conclude the handbook by proposing a series of actions that are expected to improve the policy environment and assist the business community in integrating more fully into the multilateral trading system, particularly the SME sector which will yield a better distribution of economic growth amongst all cohorts of the population.

VI.2. Preparing for the Negotiations

LLDCs are aware of the benefits associated with their WTO membership and this was eloquently demonstrated by their prominent voice in the negotiations on the Trade Facilitation Agreement. Apart from the area of Trade Facilitation, however, LLDCs have not been pro-active in other negotiation areas of the Doha Round. This might be attributed to various factors and most likely because they have not yet identified strong LLDC-specific issues in the WTO negotiating agenda. This is a very likely explanation since many LLDCs have been active in the negotiations as members of existing coalitions or regional groups. The issues on which some LLDCs let their voice be strongly heard – apart from TF – either individually or members of groups, are not LLDC-specific such as cotton subsidies, agricultural liberalisation, Doha liberalisation commitments sought from RAMs, the work programme on SVEs, etc.

Another aspect of the lack of a visible LLDC-label in the WTO is their geographical dispersion, which points to the fact that many of the issues relating to landlockedness might be more efficiently addressed in a regional context, especially when it comes to transit connections, regional transport infrastructures and cross-border trade facilitation measures. In addition, cooperation between like-minded countries – whether they are LLDCs or not – belonging to the same regional organisation might be more efficient and may find it easier to produce results. For example CAREC, COMESA, SADC and UNESCAP do have a series of programmes and projects that are LLDC-specific. Another dimension to the issue is the existence of preferential and regional trade agreements, which offer the promise of resolving market access issues more expeditiously – at least with the preferential partners – than in the WTO. Nevertheless, no one should forget that RTAs don't substitute to the MTS and actually LLDCs, as small developing countries, do have a strong systemic interest in maintaining and strengthening the MTS.

Therefore, an important question for LLDCs is how they can derive more benefits from their WTO memberships. The prerequisites of an effective participation in the WTO are the same for all countries, but the practical implementation seems to face some particular challenges in the case of LLDCs, in particular in the case of those with small trade administration in the capitals.

LLDCs are not a homogenous group, some of them have already been GATT Contracting Parties and have had some positive experience in WTO participation, and some others are RAMs and are

in the early stage of learning the functioning of the WTO. In the following chapter, a quick guide to actions that LLDCs need to take in order to take advantage of the WTO membership and participation in MTNs is provided.

The first element that LLDCs need to have is a “WTO strategy”. A WTO strategy is part of the country’s overall trade policy and is therefore “owned” by the government as a whole (not just by the ministry in charge of trade) and is endorsed by major stakeholders and representatives of the society as a whole, from businesses to civil society organisations, including academia. The need for such large ownership is due to the fact that all WTO matters – unlike narrow issues that the old GATT dealt with – have implications impacting large parts of the economy and the society as a whole. The failure of some past initiatives in the WTO, such as negotiations on competition and investment, and, in particular, some dramatic events, have taught governments that in order to have acceptable results at the negotiating table, large ownership of trade negotiating proposals is unavoidable.

The main components of the WTO strategy must be the major areas where activities need to be undertaken in order to achieve the LLDC’s policy objectives in the multilateral trading system.

A possible WTO strategy is divided into the following broad categories:

Meeting the technical requirements - This category includes measures to establish within the Ministry in charge of Trade the technical knowledge and working procedures relating to maintaining contacts with the WTO. This is a very important area for many LLDCs, which generally are geographically distant from the WTO headquarters and have a small diplomatic presence in Geneva. The staff of a small Permanent Mission (sometimes only one or two diplomats) cannot cover all the issues that are otherwise important for an LLDC and can even less attend important meetings taking place simultaneously. Capital-based officials need to therefore maintain direct working contact with particular Divisions of the WTO Secretariat from time to time.

Implementing commitments and obligations - Fulfilling WTO obligations is an important element in establishing and maintaining a WTO Member’s credibility. Demonstrating that the LLDC is a reliable negotiating partner that meets its obligations in good faith is the most important capital it has at the negotiating table. Only this can create the basis for furthering its interests in the WTO. This is especially important for new WTO Members, which have accession commitments to be phased in. The WTO strategy must identify which obligations and commitments need to be implemented sorted by deadlines, responsibilities and coordination tasks.

Establishing the priorities of participation and negotiations - Identifying the WTO committees (regular WTO activities) and the Doha negotiating groups which bear interest to the LLDC, and establishing the priority order of participating in there is an important element. This, of course, should be primarily based on the major areas identified above. The respective responsibilities of

the Permanent Mission, the Ministry in charge of trade and other line ministries (in case of trade in services negotiations) for representing the LLDC must be clearly established, including reporting channels.

Establishing the framework of participation and negotiations - An important issue to be addressed in the WTO strategy, especially for small LLDCs, is that they need to be more efficient when participating in the WTO. Negotiations in the WTO always imply some form of coordination of positions between like-minded countries, but it can also take the form of *ad hoc* joint actions, coalition building and participation in country groupings on a more lasting basis. The WTO strategy needs to propose options which can be different for various issue areas or, if the LLDC's interests are limited to a few issues, to joint representation with other LLDC(s) with similar situations and interests.

Improving LLDC participation involves improving skills and institutional capacity to analyse, take stock of, and manage the workings of existing agreements as a precondition for designing adequate positions in follow-up negotiations. Thus, cooperation with like-minded countries can also take the form of joint studies and issues analysis to maximise the LLDCs' individual analytical capacities. Collective participation is an important question especially for countries without a Geneva presence, though at present there is only one LLDC whose diplomatic representation is located outside Geneva (Table 10).

Table 10. LLDC Resources in Geneva

LLDCs' presence in Geneva for WTO matters		
WTO Members	Geneva Mission	Number of WTO staff
Armenia	Yes	1
Bolivia	Yes	5
Botswana	Yes	11
Burkina Faso	Yes	10
Burundi	Yes	4
Central African Republic	Yes	3
Chad	Yes	7
Kyrgyzstan	Yes	4
Lao PDR	Yes	4
Lesotho	Yes	4
FYR Macedonia	Yes	2
Malawi	No	2
Mali	Yes	3
Moldova	Yes	1
Mongolia	Yes	4
Nepal	Yes	6

Niger	Yes	5
Paraguay	Yes	7
Rwanda	Yes	7
Swaziland	Yes	5
Tajikistan	Yes	3
Uganda	Yes	9
Zambia	Yes	5
Zimbabwe	Yes	12
Observer governments		
Afghanistan	Yes	2
Azerbaijan	Yes	3
Bhutan	Yes	3
Ethiopia	Yes	8
Kazakhstan	Yes	4
Uzbekistan	Yes	6

Building human resources - A training plan to increase the human capacities in the Ministry in charge of trade should be an inherent part of the WTO strategy. Capacity building activities also need to be extended to other parts of the Government for matters which require their involvement, e.g. rules of origin, Trade Facilitation, TBT and SPS matters, GATS issues and Trade in services agreement negotiations, to mention a few. In addition, raising awareness in the private sector regarding the legal aspects of international trade (e.g. preferential rules of origin, certification systems, GSP, etc.) is also important, and some training to business organisations should also be provided in order to achieve that end. The training plan should identify sources of technical assistance e.g. the WTO Training Institute.

Enhancing domestic policy coordination and communication on WTO matters - Finally, the domestic communication and coordination system between the Ministry in charge of trade and other Departments of the Government, as well as business organizations, NGOs and other civil society organizations, on WTO matters should be an important element of the strategy.

Box 30. How to prepare for WTO Negotiations

Preparing for multilateral trade negotiations poses multiple challenges particularly for developing countries with limited administrative and negotiating capacities.

A country needs to gather significant knowledge before it can submit sensible liberalisation requests to its key trading partners and make informed market-opening offers.

In addition to putting in place the proper channels of communication with key stakeholders inside and outside the government as well as preparing a full inventory of relevant measures to ensure full knowledge of the regulatory regime and its possible shortcomings, governments need to identify opportunities and challenges for their exporters, determine the capacity building needs of the negotiators, ministries, and regulatory

agencies, and assess the likely economic and social impacts of various liberalisation scenarios. These are challenging tasks even for developed country governments whose resources, human and financial, are typically far greater than those of developing countries.

A precondition for successful negotiations is that negotiators and policy officials should master the legal provisions of the WTO agreements. For many LLDCs, LDCs, small and SVEs, as well as WTO acceding countries acquiring this knowledge remains an important task, particularly as their trade expertise is especially weak or embodied in very few officials inside trade and foreign ministries.

An even more important task for negotiators preparing for multilateral trade negotiations is to analyse and determine a country's readiness for trade liberalisation. This includes the development of government-wide negotiating strategies; assessment of the gender, poverty alleviation, and human health impacts of market openings; and the identification of the assistance to be given to domestic stakeholders to take full advantage of the market access opportunities arising from multilateral liberalisation.

For the most part, this entails the documentation (in the form of country/region and sector-specific case studies) and dissemination of knowledge on best practices in both developed and developing countries.

Ideally, preparing for international negotiations should come *after* the establishment of national development strategies. That is often not the case, as countries become involved in negotiating processes that cannot wait for overall national policy positions to be determined. This is why many developing countries often have a feeling of precariousness when negotiating—a sense that they are not ready, both from a political and an administrative perspective, to respond to the complex regulatory and policy issues that arise in multilateral trade negotiations. It is particularly the case when negotiations involve more mature partner countries that are likely to formulate highly informed negotiating demands.

While governments should know what they want from negotiations before they negotiate, there is typically little time available for such an assessment. Thus, the only remaining option is often to progressively identify the objectives *during the negotiating process*. Negotiations in this sense require clarifying and eventually rectifying sub-optimal situations and mapping out proper sequences between internal trade and economic reform and external liberalisation.

In preparing for trade negotiations, an important first step is to set up a credible, transparent, and efficient coordination process. Such coordination often rests with the foreign and/or trade ministries – typically, the ministries responsible for conducting the negotiations themselves. Intra-governmental coordination counts among the most crucial of negotiating inputs - an issue of such importance that it alone is liable to determine the effectiveness of a country's participation in international negotiations. The last thing a government wants is for different ministries and/or agencies to be saying different things about the same set of negotiations or, worse yet, for trading partners to be confused as to where the negotiating authority and accountability are ultimately vested.

The main objective of internal coordination is the establishment of national positions regarding all issues dealt with in specific negotiations. A secondary objective is the achievement of consistency and coherence in the way a particular country or government manages its external trade environment. This is an important demand placed on coordinating agencies since it requires an additional check on positions taken across various negotiating fora (e.g., WTO vs. RTAs). While coordinating for WTO negotiations, a government will need to be mindful of positions taken or interests pursued in other negotiating fora, and to seek overall consistency and coherence.

While governments must ultimately assume the responsibility of carrying out their country's trade negotiation strategy, the legitimacy of this will only be secured if the coordination effort expands to include all key external stakeholders in the process, that is, the private sector and civil society at large.

Multilateral trade negotiations tend to be complex affairs, not least because modern trade policy goes well beyond traditional border issues of trade and linkages with other policies, e.g. environment, intellectual property protection, investment, human rights. Therefore, a first concern for governments in conducting multilateral trade negotiations is how the talks are actually going to be organised and to identify key issues that will require attention early on. For example, since services negotiations involve a number of important but highly heterogeneous sectors, the question of composing delegations for negotiating meetings is crucial, all the more so given the budgetary constraints most developing countries face, and that sector-specific expertise cannot realistically be maintained in Geneva. This implies a minute monitoring of the negotiating process and a good means of information going back in capitals so as to maintain relevant officials ready for participation when needed.

The implementation part of the negotiating cycle is as important as the preparation for and the conduct of the negotiations. Since the Uruguay Round agreements emerging from MTNs this is a major challenge especially for developing countries alike. The WTO agreements have brought a broad set of obligations for developing economies that went well beyond the traditional border measures of the old GATT, and into disciplines with a far wider development impact. This is plain to see in the services field with its coverage of sectors such as finance, telecommunications and transportation services whose economy-wide, infrastructural properties are of critical importance, as well as in sectors where a host of public policy concerns and sensitivities arise, such as health, education, and environmental services.

The administrative and financial burden of complying with WTO obligations will tend to be particularly acute for WTO-acceding economies, especially least developed economies, as accession is almost certain to involve far-reaching commitments to substantive legal and institutional reforms. Moreover, the cost of implementing WTO agreements is not just associated with legal compliance. These costs also comprise the ancillary measures and costs to *effectively* obtain and support the benefits derived from implementation and liberalisation. Such costs and capacity-building requirements will be diverse and vary according to the domestic circumstances, and in resource-constrained environments may at times need to be assessed against competing, more compelling, domestic priorities.

Source: Haddad (2007)

VI.3. Participating in the Negotiations

Once a WTO strategy is in place, capacity is given to all key stakeholders to contribute to negotiations and the necessary analysis has been conducted to establish the priority areas of interest and the best alternatives to a negotiated agreement. At that point, LLDCs should focus on building a cohesive position in areas where LLDCs have an interest in cooperating. The Almaty Programme of Action (2003) and the recent Vienna Programme of Action (2014) provide crucial, though very limited, areas of common interest, including some services, trade facilitation and transportation agreements.

In the area of goods, the handbook highlights a number of areas covered by the Doha Round where countries would have an interest to build a LLDC coalition. These are presented in summary in Table 11. They have been broken down into key focal areas and with a prioritisation and expected timeline for implementation.

Table 11. Perceived Negotiation Interests for LLDCs

Agreements	Focus Areas	Priority	Timeline
Agriculture	Food security, subsidies	Medium	Medium-Term
NAMA	Formulas Flexibilities Transition Period Preference Erosion	High	Short Run
Non-Tariff Measures	SPS Agreement TBT Agreement Capacity Building	High	Medium
Trade Facilitation	Flexibilities Capacity Building Transit Country Focus	High	Short Run
Rules of Origin	Preferential Rules of Origin Non-Preferential Rules of Origin	Low	Long-Term
Dispute Settlement	Rules	Low	Long-Term
RTAs	Rules	Low	Long-Term
Trade Remedies	Safeguards CVM	Medium	Short-Term
TRIPs	Access to Medicine Cooperation on Technology	High	Medium-Term
Environmental	Environmental Goods and Services	Medium	Long-Term

Finally, the analysis of services commitments also highlighted the degree of service sector restrictions which still remain in LLDCs, as well as the level of commitment taken under the GATS. Often the degree of restriction remains very high and the level of commitment is quite weak, save for recently acceded members. In order to improve the business environment, the LLDC group re-affirmed its commitment to tackle services as a means of enhancing productivity and competitiveness. As mentioned earlier in chapter V of the handbook, an efficient services sector has a crucial importance in overcoming the extra costs of landlockedness by making available low-cost and high-quality producer services capable of enhancing the overall productivity and competitiveness of LLDCs.

In this light, the LLDC group should have a clearly articulated strategy for trade in services, which can leverage the WTO negotiations to increase investment into their service industries, as well as

enjoy greater market access in third markets. The handbook focused on transportation services, tourism, and ICT. An in depth study on the domestic regulatory environments, on the economic competitiveness of sectors and sub-sectors and the commitments taken in the WTO should be re-appraised and be discussed in the LLDC group to find common positions to take in Multilateral Trade Negotiations, much as it was achieved in the trade facilitation area.

VI.4. After the Negotiations

The successful outcome of a negotiated agreement is, however, only the starting point for LLDCs to begin reaping the benefits from it. The Handbook highlighted the difficulties many countries still face in implementing the different provisions of the agreement, particularly in cases where a functional institutional framework is required. For example, many countries face tremendous challenges to establishing a SPS, TBT or GATS enquiry point owing to the demands it makes in coordinating information sources to supply relevant information, on top of requiring an ICT interface. While technical assistance can facilitate and enhance the speed for implementing commitments, it cannot replace the effort required by the country itself. The LLDCs should be realistic as to what is possible, and should organise themselves better by way of coordination committees and report openly to stakeholders progress, assigning responsibilities to individual departments. ASEAN, for example, produces an independent evaluation of the progress made in implementing the ASEAN Blueprint using a balance scorecard approach. Such monitoring and evaluation of the implementation of commitments is important.

At the same time, the agreement must serve an offensive interest too, and LLDCs need to set up a monitoring unit or an observatory of trade performance, market access limitations in third markets and facilitate the recording of non-tariff measures in third markets and use commercial diplomacy to resolve constraints faced in the multilateral trading system. This is done by developed countries and should be done by LLDCs. It was also successfully achieved by the business community in Africa under the tripartite initiative to collect non-tariff measures, through the use of an on-line reporting system.

Owing to limited resources, LLDCs should consider building some economies of scale through cooperation rather than each establishing their own institutions. This could be achieved through an existing institution such as the UN OHRLLS or the International Think Tank for LLDCs, UNCTAD, World Bank, etc. However, it should be a dedicated institution and receive contributions from LLDCs and not only be funded by donor funds in order to ensure ownership and continuity.

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