



TRADE IN SERVICES

PRESENTATION TO TRALAC CONFERENCE

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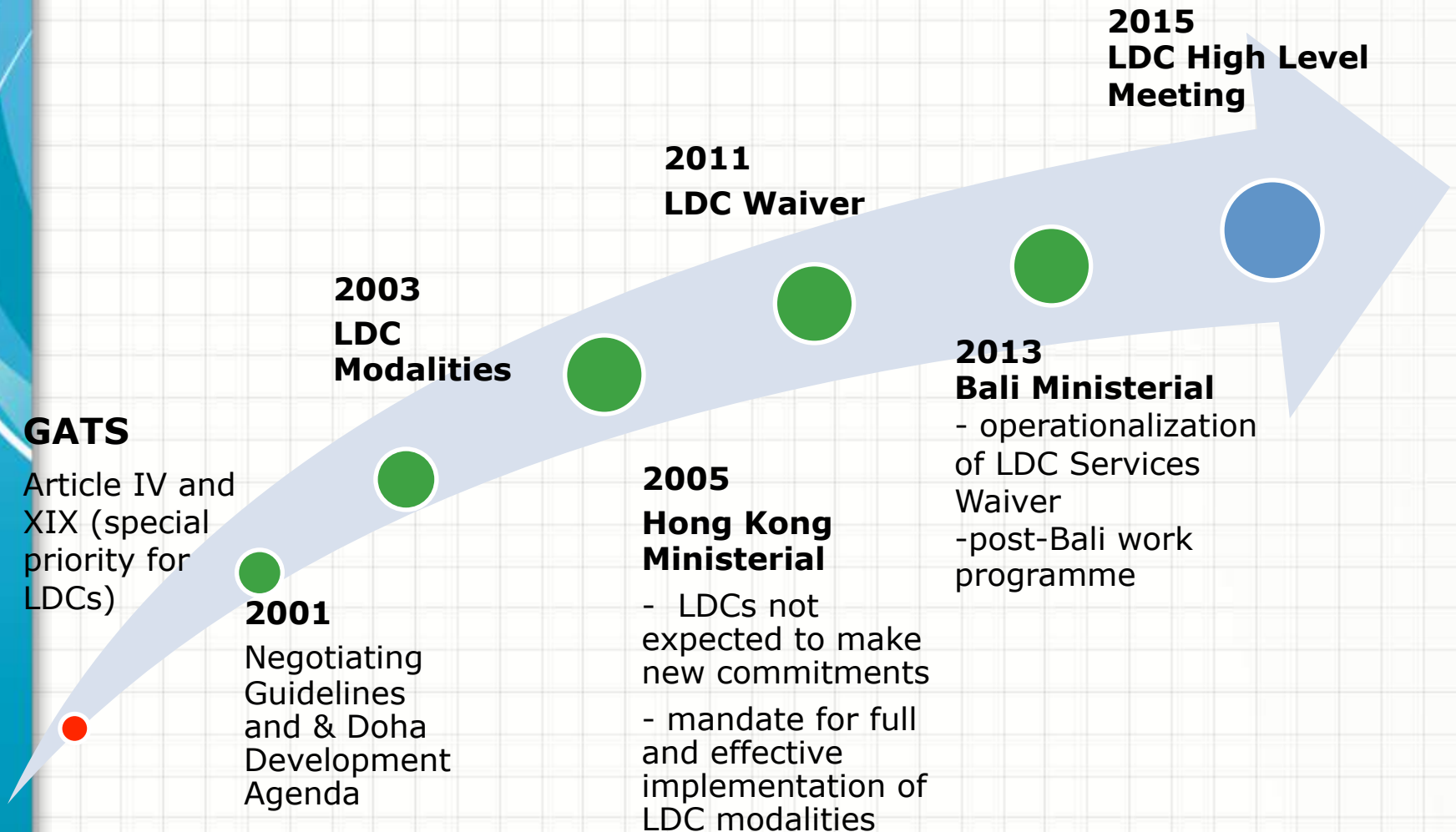
Outline

1. LDC Services Waiver
2. SADC Trade in Services Negotiations



**WTO LDC SERVICES
WAIVER**

Implementation of LDC provisions in the GATS



Instead of S&D – “special priority” and “flexibility”

GATS Art IV

- ***Increasing participation of developing countries through negotiated commitments***, relating to
 - Strengthening domestic service capacity
 - Improvement of access to distribution channels and information networks
 - Liberalization in sectors and mode of interest
- ***Contact Points*** by developed countries for info for service suppliers
- Special priority to LDCs in implementation of para 1 and 2
- Account taken of difficulty of making specific commitments

GATS Art XIX: “appropriate flexibility for individual developing countries” in making fewer commitments, and maintaining limitations in line with Art IV

Negotiating Guidelines and Procedures (S/L/93, para 15)

- When reviewing progress in the negotiations, consideration of the extent to which Art IV has been implemented, and suggest ways and means of promoting its goals
- Consideration also to be given to the needs of small service suppliers of developing countries
- Evaluation, before completion of the negotiations of the results attained in terms of the objectives of Article IV

LDC Modalities (TN/S/13)

- Maximum flexibility for LDCs, basis for negotiations
- Members to exercise restraint in seeking commitments from LDCs
- Limited commitments by LDCs ... in line with their development situations
- Priority in providing market access
- Members must develop 'appropriate mechanisms' for implementation of GATS Art IV and take measures to increase participation of LDCs in world services trade

From “Modalities” to Waiver

- Hong Kong Ministerial Declaration (2005 - para 47) calls on Members to implement the LDC Modalities and give priority to sectors and modes of interest to LDCs
- HK Annex C – calls for full and effective implementation of the LDC Modalities and in particular requires Members to develop appropriate mechanisms for according special priority in sectors and modes of interest in accordance with Article IV:3 and paragraph 7 of the LDC modalities (para 9a)
- Increasing sense that “special priority” for LDCs can only be effectively conveyed through a legal mechanism that allows for preferential treatment for LDC services and service suppliers

LDC Services Waiver (WT/L/847, 2011)

- Basic mechanism: Under Waiver any Member may:
 - Grant preferential (non-MFN) treatment to any service or service supplier from and LDC Member with respect to the 6 categories of market access measures (or other measures if approved by the Services Council)
- Key points: Under Waiver any preferential treatment:
 - Must be better than GATS scheduled commitments
 - Waiver permits preference granting country to “violate” MFN but no right to the preferential treatment to LDCs
 - Any preferences would apply to all LDC country Members
 - 15 years duration

2013 Bali Ministerial Decision on Operationalization of LDC Services Waiver (WT/L/918)

- Following 2 years without notification of a single preference - intended to encourage actual granting of preferences
- Services Council instructed to initiate process for “expeditious and effective operationalization” of waiver
- LDCs to prepare “collective request”
- High-level meeting to be convened by CTS six months after collective request
- Capacity building recognized as important element
- Potential preference granters encouraged to grant preferences also before receipt of collective requests

LDC collective request (S/C/W/356, July 2014)

A. Market Access and National Treatment

- Greater access for all modes of supply, especially Mode 4
- Focus on category of ***contractual service suppliers*** and ***independent professionals***

B. Priority Sectors

- Travel, tourism, hospitality and conference services
- Banking and other financial services
- Transport and logistics services
- Education and training related services
- ICT and business process outsourcing services
- Creative industries, performing and entertainment services

LDC Collective Request (S/C/W/356, July 2014)

- C. List of 72 service occupations for which preferences are sought**
- D. Waive visa, work permit, residence permit requirements, and related fees**
- E. Recognition**
 - Enable conclusion of agreements, establish agreements with relevant LDC institutions
 - Waive reciprocity as a condition of recognition of LDC professional bodies
 - Provide capacity building assistance for and enable assessment of skills and accreditation visits and audits so that verification of skills can be completed within no more than two months
 - Waive English or other language testing where the services supplier has been educated in the language
 - Enable online testing for suppliers from LDC countries

High-Level Meeting on the Operationalization of the LDC Services Waiver, (5 February 2015)

- High-Level Meeting to be convened six months after submission of the collective request by LDCs
- “Developed and developing country Members, in a position to do so, indicate sectors and modes where they intend to provide preferences to LDC services and service suppliers”
- High Level-Meeting brought indications of “preferential treatment” from close to 30 Members
- Next steps:
 - Assessment of indications in context of next CTS (18 March 2015)
 - Endeavour to submit notifications as soon as possible, and no later than 31 July 2015

After the High-Level Meeting: issues to consider

- Indications of “preferences” appear to relate to the following items:
 - Confirmation of ***existing open regimes***
 - Indication that treatment in ***DDA offers*** could be granted to LDCs
 - Indications that treatment under ***preferential agreements*** could be granted
 - Specific preferences (e.g. Thailand, Singapore - unclear whether treatment is preferential in nature)
 - Preferential quotas (e.g. India – quota for tour guides, waiving of visa fees)
 - Issues outside the GATS (training, access for students, etc.)
- Notification from Canada (S/C/N/792, 5 March 2015)
- Next Steps for LDCs?



SADC TRADE IN SERVICES NEGOTIATIONS

Purpose of negotiations as set out in TIS Protocol

- Deeper regional integration and sustainable economic growth and development
- To meet the challenges of globalisation
- Diversified SADC economies through greater services trade
- Integrated regional market for services, complemented by cooperative mechanisms
- New opportunities for a dynamic business sector
- Strengthened services capacity, efficiency and competitiveness
- Expanded services exports

Qualifications in TIS Protocol

- Existence of asymmetry between Member States
- Member States' right to regulate
- Appropriate pacing and sequencing of reform (regulatory, institutional, administrative) and liberalisation
- Liberalisation on the basis of fair, mutually equitable and beneficial trade arrangements, complemented by and in consistency with Protocols in specific services sectors

Priority sectors

- Communication
- Construction
- Energy-related
- Financial
- Tourism
- Transport

Negotiating deadline (TiS Protocol)

- Article 16 (Progressive Trade Liberalisation)

“State Parties shall enter into successive rounds of negotiations”

“This first round of negotiations shall be concluded no later than three (3) years after the commencement of such negotiations.”

Signature and ratification of TIS Protocol

- Signature
 - 12 Member States have signed
 - Not signed: Madagascar, Namibia, South Africa
- Ratification
 - 3 Member States have ratified (Botswana, Mozambique, South Africa)

Offers by sector / mode of supply

- In each sector / mode of supply
 - Some Member States have made full offers
 - Some have made no offers at all
 - Some have made partial offers – amounts to no offer where sub-sectors omitted
 - Some have made offers in certain sectors in only certain modes of supply

Quality of offers

- Some offers repeat GATS-level commitments in certain sectors (including some sectors beyond priorities)
- Some offers contain significant GATS-plus – new sectors, more commitments by mode of supply
- A few contain GATS-minus
- Some requests made by certain MS have not been met, but which remain of interest or concern – affects all sectors and all Member States

Annexes / Reference Papers

- Introduced to complement market access/ national treatment and help add quality to negotiation outcome
- Some provisions necessary for legal reasons – e.g. “prudential carve-out” for financial services
- Some provisions introduced in order to promote pro-competitive regulation/ regulatory principles in support of trade, e.g. telecoms RP
- Some aim to support recommendations from sector studies

Pro-competitive regulatory principles

- Basic telecommunications:
 - Access to and use of networks – interconnection
 - Anti-competitive cross-subsidisation
 - Use of essential facilities
 - Transparency and sharing of information
 - Universal service
 - Independent regulator
- Similar for network services (e.g. energy) and postal services

Pro-competitive regulatory principles

- Transport services:
 - Facilitating the free flow of goods and passengers by road
 - Third country rule; cabotage; corridor development
 - Road user charges?
 - Vehicle and drivers rules – harmonisation, standardisation
 - Access to and use of ports
 - Investment in railways
 - Air services – regional liberalisation?
- What pro-competitive principles can help reduce transport costs?

Pro-competitive regulatory principles

- Financial services:
 - Access to finance
 - Link to CISNA
 - Access to national payment systems
 - Pro-competitive regionally standardised systems of supervision

Pro-competitive regulatory principles

- Tourism services:
 - Anti-competitive practices
 - Consumer protection
 - Access to and use of information
 - Access to tourism infrastructure
 - Promotion of tourism
 - Mutual recognition of certificates, qualifications, accommodation standards
 - Trans-frontier conservation and regional value chains



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