LDC services waiver: Challenges and way forward

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In order to help the least-developed countries (LDCs) increase their services export, the 8th WTO Ministerial Conference, held in Geneva on December 17, 2011, adopted a waiver to enable developing and developed-country members to provide preferential treatment to services and service suppliers of least-developed country members. Preferential treatment covered by the LDC waiver may be accorded to any LDC, whether a member or not, but this treatment must be extended "immediately and unconditionally" on an MFN (most favoured nation) basis to all LDC members.

This LDC Services Waiver would operate as 'An LDC-Only Enabling Clause for Services'. It is a mechanism to give effect to the LDC Modalities of 2003 for Special Treatment to LDC country members in the negotiations on Trade in Services and Annex-C of the 2005 Hong Kong Ministerial declaration. This waiver exempts developing and developed-country members from their legal obligation to provide non-discriminatory treatment to all trading partners. The waiver thus permits 'legal positive discrimination' in favour of the LDCs in the services sector to give them preferential treatment without extending the same to the whole membership. It will be valid for 15 years from the date of its adoption.

POSITIVES OF THE WAIVER: Services waiver provides legal positive discrimination for LDC members in getting market access in different service sectors and modes of export interest to them including mode 4. Non-trade issues or other issues cannot be linked as a precondition to preferences under the waiver. Another good side of the waiver is the incorporation of Rules of Origin (ROO) in the Waiver. The ROO contained in the Waiver would help avoid free-riding, e.g., by non-LDC providers creating shell companies in LDCs to benefit from waiver preferences.

The waiver, as agreed, offers two types of preferences: (i) market access preferences for LDCs and (ii) non-market access preferences. Market access preferences (e.g., to allow midwifes from LDCs to provide services (mode 4) under an LDC-only quota) are direct and automatically allowed while other permissible preferences for non-market access measures relating to domestic regulations, national treatment and subsidies need to be authorised by the Council for Trade in Services (CTS). For example, if a developed/developing country wants to recognise qualifications based on practical experience (e.g., X years of experience) for LDC professionals while requiring formal degree/diploma for others, authorisation from CTS will be required. Some other regulatory/other preferences such as lower capital requirements for banks from LDCs and automatic coverage of state-sponsored health insurance in a developed country (e.g., country Y) for its tourists when travelling to LDC destinations will also need approval of the CTS. The need for CTS's approval in extending such non-market preferences might discourage preference grantors to use the services waiver. This is because getting approval by the CTS to give such preferential treatment to LDCs could be an extra burden for them.

In getting the benefits of the waiver, the main challenge is to have detailed data on economic and regulatory information regarding LDC services exports including sector-wise information, potential of export in various sectors and modes of delivery, current and likely destinations of export and so on. Getting services data is also difficult due to the absence of any standardised/harmonised methodological attempt to put on record the scope and operation of the service.

There are other challenges to operationalise the LDC services waiver as well. Market access under Services Waiver is not automatically available. The reason being that the Waiver authorises preferential treatment but does not oblige members to grant preferences. In other words, this waiver is neither a substantive right of the LDCs nor an obligation imposed on developed and developing state members of the WTO. LDCs are dependent on the autonomous decisions of developed and developing members and the granting member can withdraw market access any time. True realisation of preferences under this waiver remains largely uncertain as the granting of preferential access is voluntary on the part of the developed and developing countries. These countries may lack political will in giving preferences for the sectors and modes of export interest to the LDCs citing different grounds.

Other constraints that LDCs may face in getting preferential access under the waiver includes: taxes and charges, non-recognition of skills/academic degrees obtained in the LDCs, certification of the services, difficulties in obtaining licences, quota for foreign professionals, lack of market information with regard to services demand in developed countries' markets etc. The waiver also does not specify any method for determining the potential sectors of export interest to the LDCs. Hence, it is possible that the economic interest of the grantor would take precedence over the interest of the LDCs.

DIFFICULTY FOR BANGLA-DESH: Bangladesh lacks information on the number of service providers in various services fields, their modes of operation, potential for export, difficulties and challenges they face and above all, what threats one or more sectors would face if service operators from other members are allowed to operate in the country. This is because services are provided by many agencies in a large variety of service areas. Lack of authentic data on services sector also acts as a barrier when negotiating with trade partners, in particular when it comes to making requests or offers under the request-offer negotiating approach in the services sector. Bangladesh also suffers from supply side capacity to meet demand in areas of global skill shortage such as trained chefs, nurses and domestic aide having proficiency in the language of the destination country.

Under the service sector waiver, Bangladesh as a labour-abundant country, could gain maximum benefit through reaping the scope of preferential market access treatment under mode-4 (Movement of Natural Persons) of the General Agreement on Trade in Services (GATS) agreement. The first priority for Bangladesh would be to identify market opportunities by potential modes and service sectors and then to formulate strategy and implement the same to fully utilise the benefit from the waiver.

WHAT CAN BE DONE: The waiver can be a good opportunity for Bangladesh to increase its export of semi-skilled and skilled manpower in the garments sector, construction sector, ICT sector, care industry and education sector. Realisation of the opportunity, however, depends on bilateral, regional and multilateral negotiations with the member countries where there are demand for skilled manpower. In order to engage in meaningful negotiations with potential export destination countries, Bangladesh must identify: potential service sectors and modes of supply where it is currently competitive or could be competitive in future, potential markets for those service sectors and market access parameters, the domestic and external constraints in exporting services. It is also important to identify market access barriers including immigration hindrances, lack of mutual recognition of skills and the requirements of an economic needs test. Bangladesh must also assess whether it can carve out/negotiate a preferential access niche, the benefit of which cannot be diluted by preferences granted to other LDCs.

While drawing up a list of possible preferences, particular attention should be given to get preferences under mode 4 where Bangladesh has significant export potential. Last but not the least, it is important to address capacity constraints through longer-term human resource development plan and quality-related issues in most services so that the country can meet the skill requirements in both international and domestic markets.

Bangladesh will have to engage in negotiations on the issue of manpower export at multilateral, regional and bilateral levels so that developed nations cannot nullify the waiver benefit by putting difficult conditions. It also needs to initiate engagement with relevant institutions and accreditation bodies in selected target countries to get its degrees/diplomas accredited.

Bangladesh and other LDCs individually and collectively can work to identify the service areas/sectors/modes where they can gain benefits of services waiver. Introduction of more qualitative factors into the exploration exercise might be helpful in identifying potential preferences under services waiver. It is also important to explore whether there are domestic regulations in key markets that would largely affect current or potential services exports from LDCs. Last but not the least, a common (which could be reached through some sort of compromise as the LDCs' interests differ from one country to another) submission by all LDCs on services waiver could help include this issue in the ensuing Bali Conference Agenda.

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