

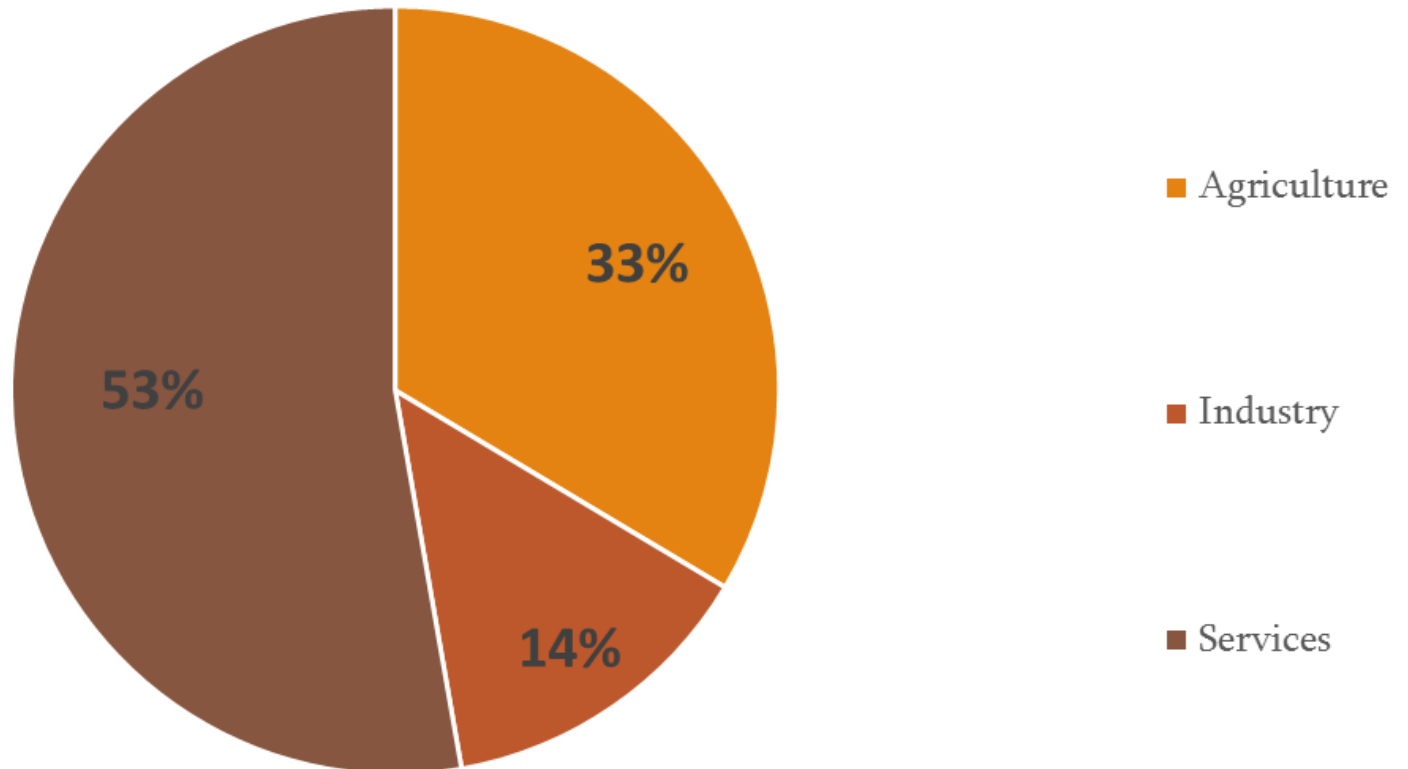
WTO Services Waiver: Exploring opportunities and challenges for Nepal

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(SAWTEE)

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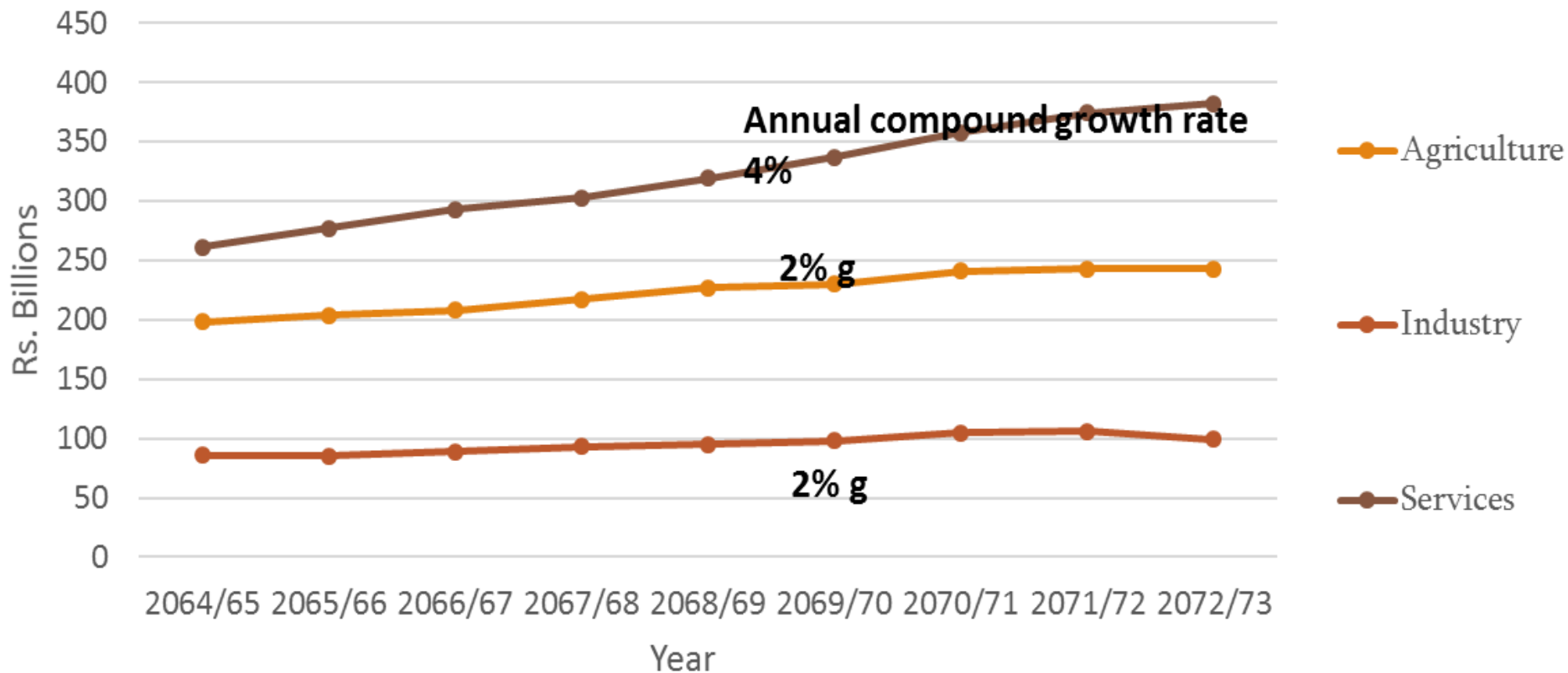
Structure of Nepalese Economy (1)

Share in GDP, 2072/73

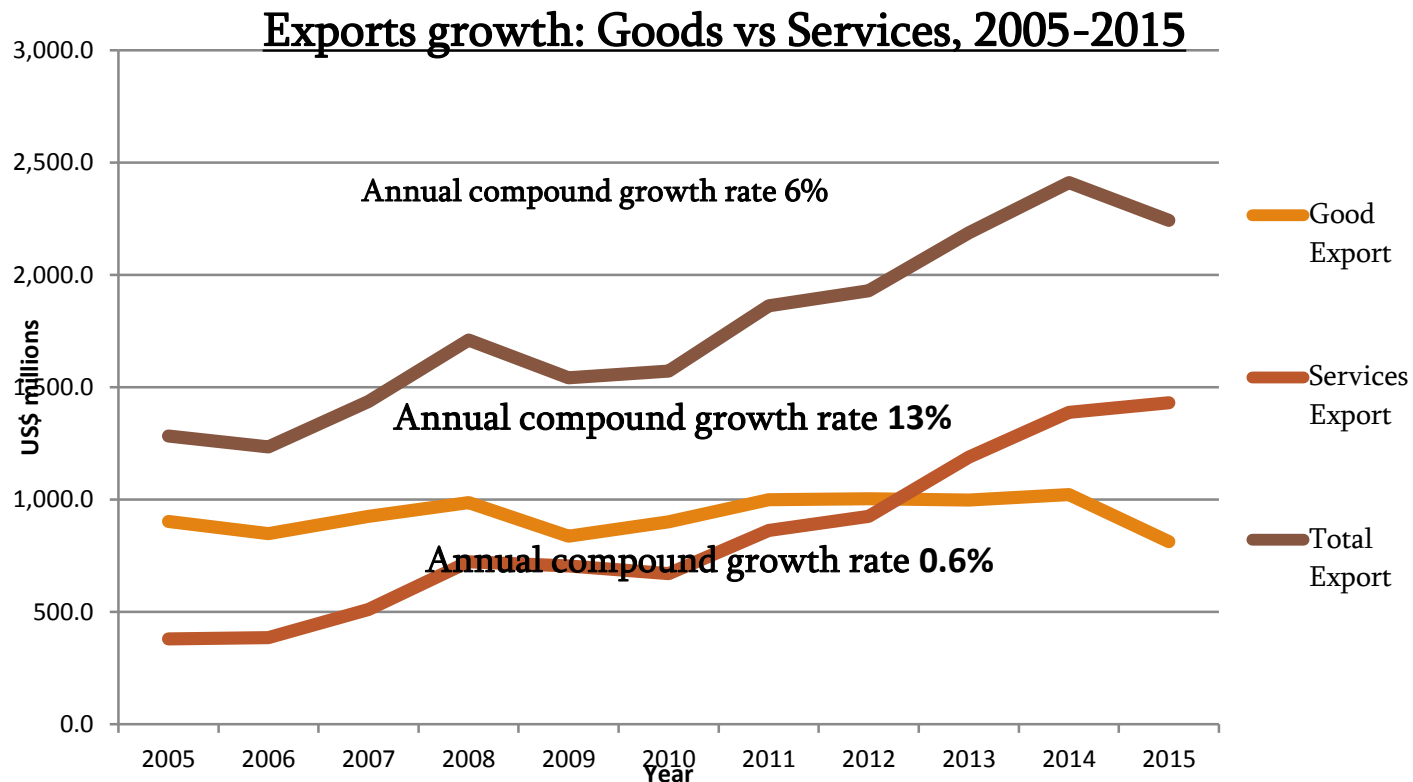


Structure of Nepalese Economy (2)

Sectoral growth rates, 2064/65- 2072/73



Nepal's trade in services



GATS coverage of services

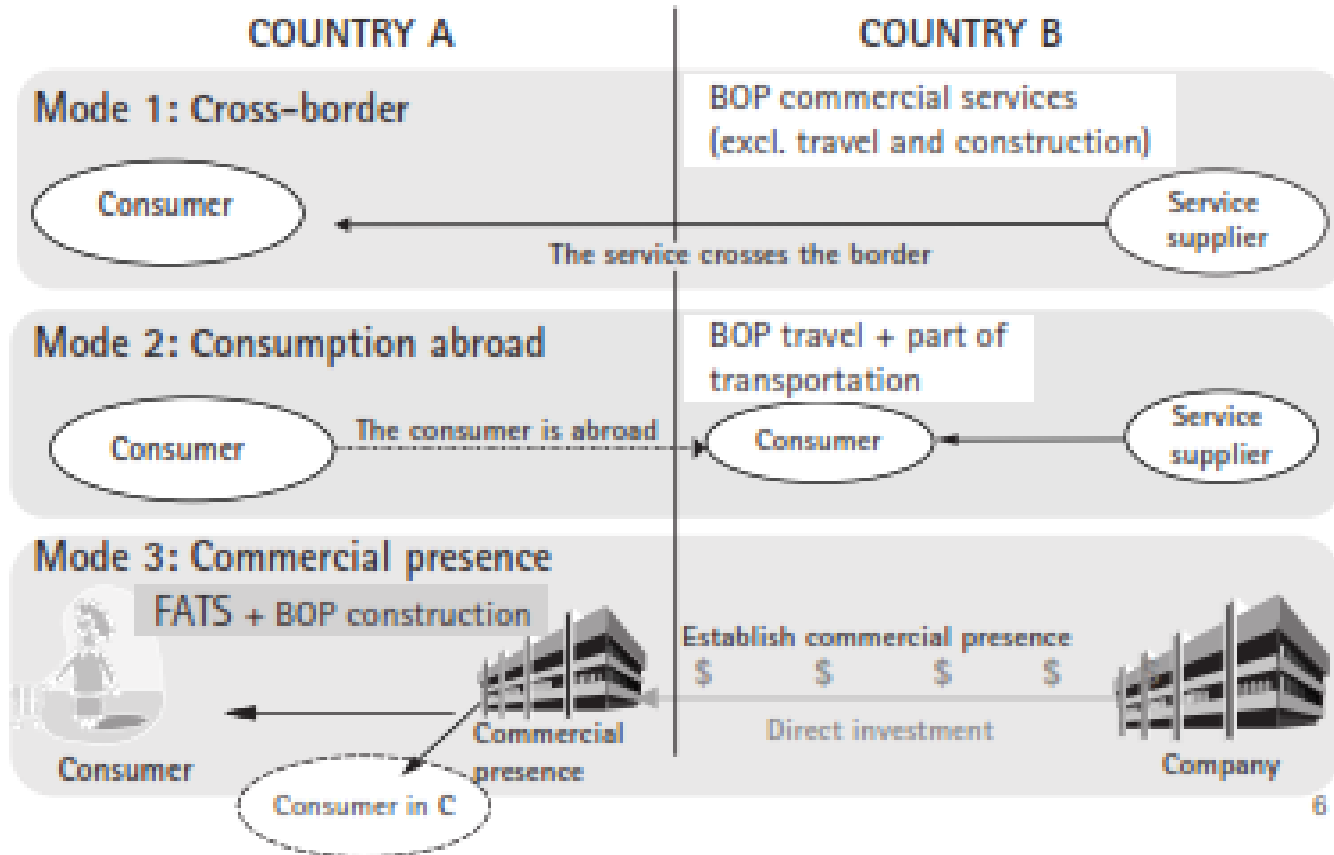
Instead of precise definition, GATS has listed all important services sectors

- Business services
- Communication services
- Construction services
- Distribution services
- Education services
- Environmental services financial services
- Financial services
- Health-related and social services
- Tourism and travel related services
- Recreational, cultural and sporting services
- Transport services
- Other services not elsewhere

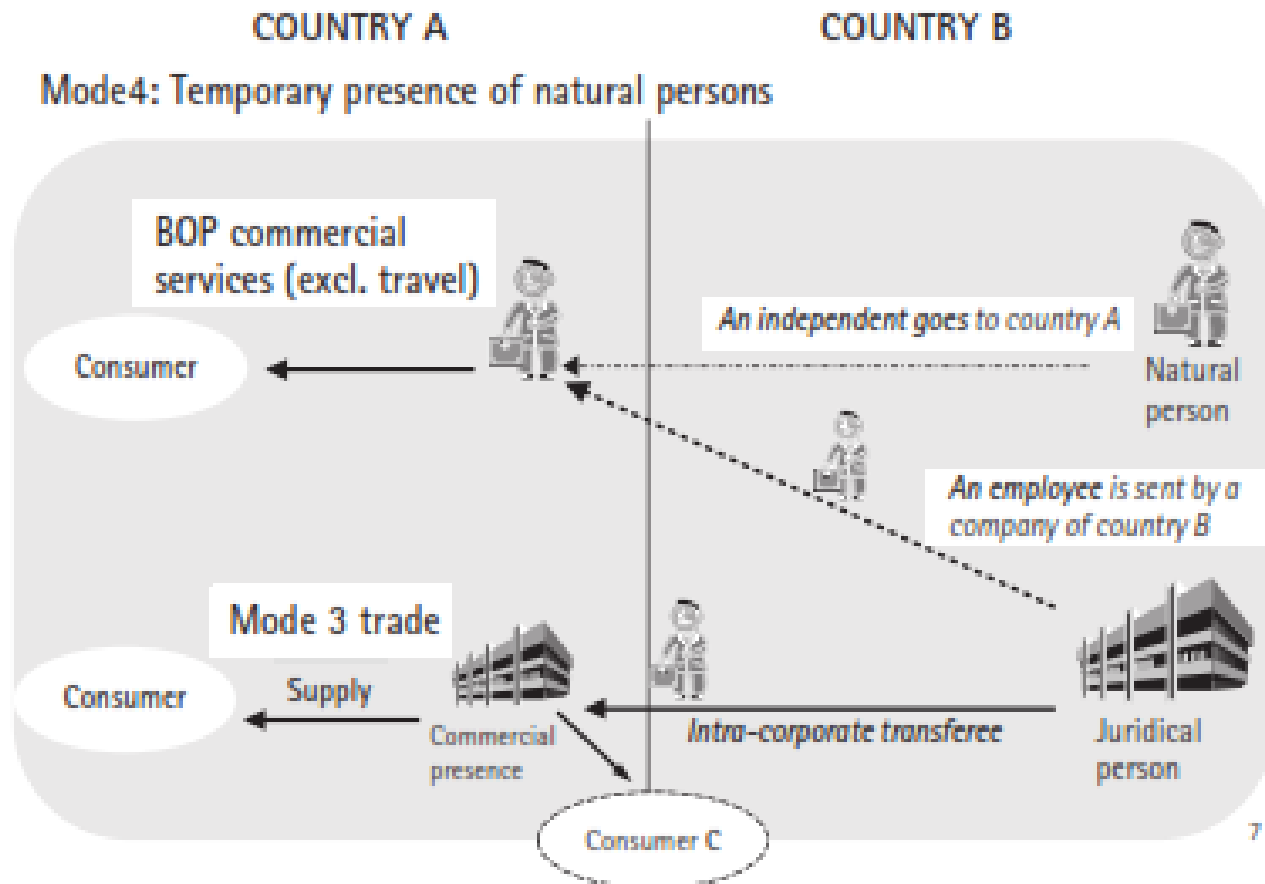
How services are traded? (1)

- **Cross Border (Mode 1)** : services supplied from the territory of one member into the territory of another, example: software services.
- **Consumption Abroad (Mode 2)** : services supplied in the territory of one member to the consumer of another, example: tourism, education, health, aircraft repair etc.
- **Commercial Presence (Mode 3)** : services supplied through any type of business or professional establishment of one member in the territory of another, example: branch of a foreign bank.
- **Presence of Natural Persons (Mode 4)**: services supplied by national of one member in the territory of another.

How services are traded? (2)



How services are traded? (3)



General Agreement on Trade in Services (GATS) disciplines (1)

- **Unconditional General Obligations**- rules that must be respected by all Members in all sectors covered by the GATS, regardless of the existence of specific commitments
 - **Most -Favored Nation (MFN)** treatment, however there is possibility for members, at the time of entry into force of the Agreement (or date of accession) to seek exemption (Article II)
 - **Transparency** – publication and information requirements, including establishment of enquiry points (Article III)
 - **Domestic regulations** – access to domestic judicial mechanism (Article VI:2)
 - **Monopolies** – consultation requirements concerning restrictive business practices (Article IX) trade distorting subsidies (Article XV:2)
- **Conditional Obligations**- disciplines whose scope is confined to those sectors and modes for which a member has undertaken specific commitments

General Agreement on Trade in Services (GATS) disciplines (2)

- **Conditional General Obligations:**
 - **Domestic regulations** – measures of general application are to be administered ‘in a reasonable, objective and impartial manner’ (Article VI:1); specific commitments are not nullified or impaired through regulatory requirements (licensing and qualification requirement and technical standards)
 - **Monopolies** – to prevent monopolists from abusing their position and act inconsistently with the specific commitments (Article VIII)
 - **Payments and transfer-** Members are required to allow international transfers and payments for current transactions relating to specific commitments (Article XI)
- **Conditional Specific Commitments** : Each Member is required to assume specific commitments relating to market access and national treatment in designated sectors

General Agreement on Trade in Services (GATS): Framework disciplines (3)

Market Access (Article XVI)

Members are not allowed to have restrictions in a scheduled sector unless it has inscribed the relevant limitations:

- Number of service suppliers,
- Total number of service transactions or assets,
- Total number of service operations or the total quantity of service output,
- Total number of natural persons that may be employed in a particular sector,
- Specific types of legal entity through which a service can be supplied,
- Foreign equity participation (i.e. maximum equity participation),

General Agreement on Trade in Services (GATS): Framework disciplines (4)

National Treatment (Article XVII)

‘In the sector inscribed in its schedule, and subject to any conditions and qualifications set out therein, each member shall accord to service and service suppliers of any other members, in respect of all measures affecting the supply of services, treatment no less favorable than that it accords to its own like services and service suppliers’

It does not ask for formally identical treatment but identical condition of competition, i.e. *de facto* nondiscrimination

Additional Commitments (Article XVIII)

Members may also undertake additional commitments with respect to measures not falling under the market access and national treatment obligations and may relate to the use of standards, qualification or licenses.

LDC Services Waiver

WTO Eighth Ministerial Meeting of December 2011 made a decision on service waiver, under this waiver WTO members are authorized to grant preferences to services and service providers of LDCs

Members may provide preferential treatment to services with respect to the following measures

- number of services suppliers allowed;
- value of transaction or assets;
- total quantity of service output;
- number of natural persons that may be employed;
- types of legal entity through which a services supplier is permitted to supply a service;
- participation of foreign capital in terms of limits on foreign equity or the absolute value of foreign investment.

Contents of the Services Waiver (1)

Members may provide preferential treatment to services with respect to the following measures

- number of services suppliers allowed;
- value of transaction or assets;
- total quantity of service output;
- number of natural persons that may be employed;
- types of legal entity through which a services supplier is permitted to supply a service;
- participation of foreign capital in terms of limits on foreign equity or the absolute value of foreign investment.

Any other measures as annexed to waiver

Contents of the Services Waiver (2)

- ▶ Each member according preferential treatment pursuant to this waiver shall submit a notification to Council for Trade in Services
- ▶ Members affected by such preferential treatment can request for consultation
- ▶ Objective of the Waiver is to promote export of LDCs but not to raise the barriers
- ▶ Annual review to determine whether exception circumstances justifying the Waiver still exist
- ▶ The Waiver shall terminate upon the expiration of a period of 15 years
- ▶ Nothing in the Waiver precludes the right of a member to have recourse to the Dispute Settlement Body

Recent progress on Services Waiver

- Duration of the 2011 waiver decision is 15 years, but as no member made use of it by the end of the first two years,
- Ministers agreed at the Bali Ministerial Conference in 2013 to a new decision to ensure that the waiver was used.
- The Bali decision added a requirement that LDCs prepare a collective request for waivers.
- Six months after the submission of the request, the WTO Council for Trade in Services (CTS) was instructed to convene a High-Level Meeting where members, in a position to do so, would indicate their intentions to accord preferential treatment for LDC services and suppliers.
- In accordance with the Bali decision, the LDC Group submitted its collective request on 21 July 2014
- In response, 23 WTO Members, both developed and developing, offered preferences

Collective request (Horizontal-1)

Waive Article XVI, Market Access and Article XVII, National Treatment Restrictions on LDC Services Suppliers

Horizontal

- Create a special temporary entry visa subcategory to allocate quotas for LDC service suppliers
- Waive all economic needs tests and labour market tests, or other procedures of similar effect, for LDC suppliers within existing or newly created quota systems
- Waive restrictions on contractual service suppliers, whose entry and stay is under contract with a bona fide employer (private or public)
- Waive restrictions on independent professionals with an offer or a contract from a bona fide consumer operating in the host country

Collective request (Horizontal-2)

Horizontal

- Waive restrictions on natural persons who are installers and servicers of machinery and/or equipment,
- Waive Mode 3 restrictions for all LDC services suppliers
- Waive residency requirements for services provided by LDC professionals
- Waive discriminatory regulations or other measures on salaries, health, and other benefits
- Waive social security, income tax and other similar deductions to remuneration of all LDC services suppliers

Collective request (Sectoral -1)

Travel, Tourism, Hospitality and Conference Services

- Waive Mode 1 and 2 restrictions for travelers to LDCs
- Waive restrictions on the entry of LDC tour guides, tour operators, catering, and hospitality services providers
- Waive restrictions, such as ENTs, repatriation of capital and profits, land ownership, maximum lease terms, access to SME incentives on LDC tour operators and starred hotels
- Where existing initiatives allow tax deductions for costs associated with conferences held abroad, accord and adapt the same benefit to conferences held in LDCs
- Where feasible, set up approved destination status or similar regimes for Mode 2 tourist
- Waive transit taxes/passenger movement charges and expedite transit visa procedures for tourists of LDC destinations.
- Expedite visas and permits to undertake twining or other exchange training in tourism and hospitality services

Collective request (Sectoral -2)

Banking, Non-Bank and Insurance Services

- Waive Mode 3 restrictions on the establishment of non-bank (e.g., check cashing, currency exchange, money transfer, and insurance firm, etc.), offices and branches
- Waive restrictions, other than those of a prudential nature, on the provision of Mode 1 and Mode 4 non-bank services of LDC suppliers
- Simplify licensing procedures for LDC remittance and money transfer operators
- Waive restrictions on national treatment for branches of LDC banks
- Waive Mode 1 and 2 restrictions on the portability of insurance when LDCs are chosen for hospital and other medical services.
- Waive travel insurance provided by LDC suppliers for travel to foreign destinations.

Collective request (Sectoral -3)

Transport and Logistics Related Services

- Waive restrictions on domestic maritime towing and pushing services
- Waive restrictions to truck size, number of trucks, and nationality of drivers licenses
- Waive Modes 1, 2 and 3 restrictions on all logistics-related and freight transport agency services
- Provide preferential treatment for permits and visas for LDC nationals who are intra-corporate transferees

Collective request (Sectoral -4)

Education and Training-Related Services

- Waive Mode 2 restrictions to use government tuition financial assistance to pay for study abroad in higher education institutions in LDCs
- Waive restrictions on Mode 2 access for LDC students to attend universities where they are admitted for study in a host country WTO Member
- Waive restrictions on access of LDC students to grants, loans, scholarships, teaching and research assistantships, and on and off-campus jobs
- If training in the host country is a prerequisite employer/contractor must provide online training for the LDC employee/trainee
- Allocate, and if it is a private sector restriction enable, preferential quotas for LDC students at higher education institutions

Collective request (Sectoral -5)

Information Communication Technology (ICT), Business Process Outsourcing (BPO) Services

- Waive Mode 1, 2, 3 and 4 restrictions for all LDC suppliers of BPO services
- Waive Mode 1, 3, and 4 restrictions on software development, computer programming and implementation services
- Provide preferential treatment for permits and visas for LDC nationals who are intra-corporate transferees
- Waive financial security requirements as a precondition to apply for visas or work permits for ICT professionals

Collective request (Sectoral -6)

Creative Industry Services Including Performers, Entertainers, Dance and Cultural Troupes, Sports Professionals, and Artists

- Waive requirement of social security deductions from LDC performers
- Waive financial security requirements as a precondition to apply for visas or work permits for performers
- Waive Modes 1, 2, 3 and 4 barriers to the provision of audio-visual services
- Waive fees on equipment.
- Waive Mode 1, 3 and 4 restrictions on the sectors that were identified in offers tabled in the DDA negotiations – contractual service providers, independent professionals, architectural services, Construction and related engineering services, computer reservation services etc. (76 categories)

Collective request (visa, work permit, residence permit measures)

Across all sectors waive visa, work permit, residence permit measures

- Waive residence permit, licenses, and work permit fees and any other processing fees, for LDC contractual service suppliers or independent professionals or intra-corporate transferee
- Waive all fees associated with LDC service supplier applications for patents, trademarks, geographical indications registration and other trade and professional fees
- Expedite procedures in granting visas, licenses, residence, or work permits
- Simplify all documentation requirements including registration forms and procedures
- Grant work permits for the duration of a bona fide contract
- Waive financial security requirements as a precondition to apply for visas or work permits
- Waive stamping on LDC service supplier passports that a visa was denied
- Provide reasons for denial of visas and provide guidance and assistance on how to correct deficiencies

Collective request (recognition of qualifications)

Waive any restrictions to recognition of qualifications of LDC professionals and accreditation of LDC institutions

- Enable conclusion of agreement within a period of one year
- Waive reciprocity as a condition of recognition of LDC professional bodies where reciprocity is required
- Enable recognition of diplomas and degrees from LDC accredited educational institutions that meet the same or minimum requirements in the host country
- Provide capacity building assistance for and enable assessment of skills and accreditation visits and audits
- Waive English or other language testing where the services supplier has been educated in the language
- Enable conclusion of memorandum of understanding (MOUs) or other types of agreements for all professional services areas where LDCs have demonstrated special priority
- Enable online testing for suppliers from LDC countries so that, where applicable, travel to the testing country is not required.

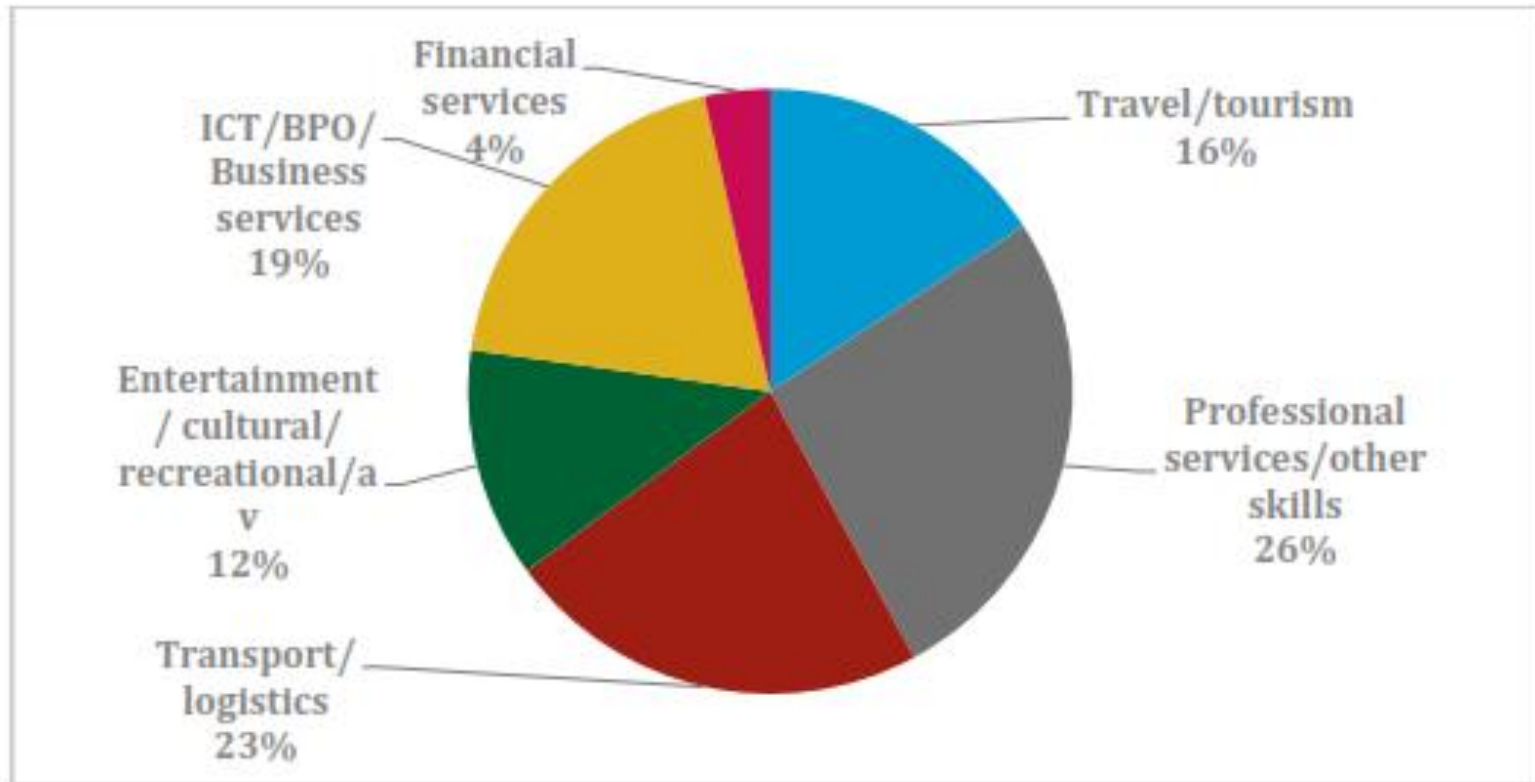
Collective request (technical assistance)

- Provide specific assistance and capacity building programmes
- Provide incentives to their enterprises to transfer technology to LDC services suppliers

Responses by WTO Members

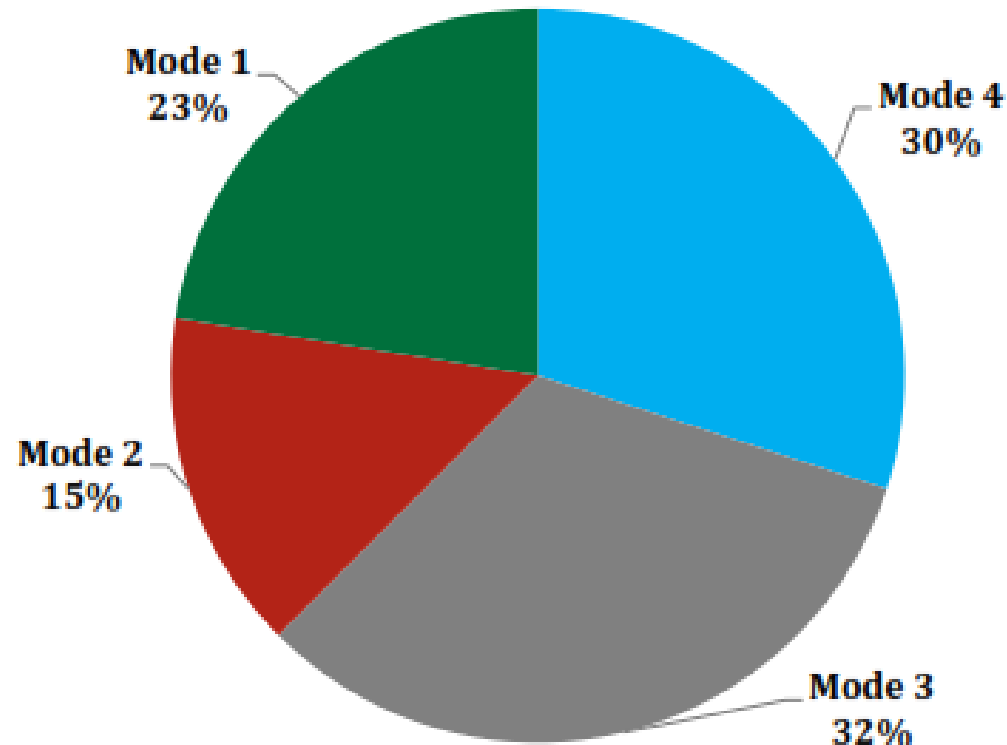
- Canada
- Australia
- Norway
- Republic of Korea
- China
- Hong Kong, China
- Chinese Taipei
- Singapore
- New Zealand
- Switzerland
- Japan
- Mexico
- Turkey
- United States
- India
- Chile
- Iceland
- Brazil
- European Union
- Liechtenstein
- South Africa
- Uruguay
- Thailand

Responses of WTO members- sectors coverage



Source: Summit Alliances International Sarl.

Responses of WTO members- mode of supply



Source: Summit Alliances International Sarl.

Responses of WTO members (Australia-1)

- Mode 4 Contractual service suppliers (including independent professionals/specialists), subject to employer sponsorship, may enter for periods of stay up to 12 months, with the possibility of further stay
- Tourism
 - Travel agencies and tour operator services (Mode 1, 2, 3)
- Transport services
 - Maritime auxiliary services (Mode 2, 3)
 - Customs clearance services (Mode 2, 3)
 - Maritime agency services (Mode 1, 2, 3)
 - Air transport services, including ground handling, Airport operation services, selling and marketing of air transport services (Mode 2, 3),
 - Aircraft repair and maintenance services (Mode 1,2,3)
 - Rail transport, including freight transportation, pushing and towing services, Supporting services for rail transport services (Mode 1, 2, 3)

Responses of WTO members (Australia (2))

- Road transport, including freight transportation, rental of commercial vehicles with operator (Mode 1,2,3)
- Services auxiliary to all modes of transport (Mode 2, 3)
- Computer and related services (Mode 1, 2, 3)
- Other business services
 - Professional Services (Mode 1, 2, 3)
 - Rental/leasing services without operators (Mode 1, 2, 3)
 - Technical testing and analysis services (Mode 1, 2, 3)
 - Services incidental to manufacturing (Mode 1, 2, 3)
 - Maintenance and repair of equipment (Mode 1, 2, 3)
 - Packaging services (Mode 1, 2, 3)
- Services not included elsewhere
 - Washing, cleaning and dyeing services (Mode 1, 2, 3)
 - Hairdressing and other beauty services (Mode 1, 2, 3)

Responses of WTO members (China)

Mode 4

- Business visitors from an LDC Member is permitted to enter into China and stay up to 6 months

Business services

- Building cleaning services (Mode 3)
- Printing services (Mode 3)

Air transport

- Computer reservation services – joint ventures with Chinese partners (Mode 3)

Domestic regulation

- Preferential treatment to LDCs in domestic regulation in the tourism sector including authorized destination status;

Capacity building and comprehensive assistance

- training programs on medical services, tourism services, as well as software and information technology services for LDCs' services suppliers
- construction of the infrastructures essential to tourism services
- construction of their services facilities such as schools, hospitals, gymnasiums, stadiums and theatres

Responses of WTO members (European Union (1))

Mode 4

- Contractual Service Suppliers (double stay period from 3 to 6 months and introduce broader sectoral coverage than in existing commitments and DDA offers attached to statement)
- Graduate trainees up to 1 year stay
- Independent professionals up to six months at a time in wider EU
- Intra-corporate transferee and skilled professionals for up to 6 months at a time (30 sectors)

Sectors

- Accounting and bookkeeping
- Advertising
- Architectural
- Computer and related
- Construction (site investigation work)

Responses of WTO members (European Union (2))

- Engineering
- Environmental services
- Higher education services (only privately funded)
- Integrated engineering
- Legal advisory services non-EU law
- Maintenance and repair of aircraft and parts thereof
- Maintenance and repair of metal products of (non-office) machinery, of (non-transport and non-office) equipment and personal and household goods
- Maintenance and repair of motor vehicles, motorcycles, and road transport equipment, etc. Maintenance and repair of rail transport equipment
- Maintenance and repair of vessels
- Management consulting
- Market research and opinion polling

Responses of WTO members (European Union (3))

- Medical and dental
- Midwives
- Nurses, physiotherapists and paramedical personnel
- Related scientific and technical consulting
- Research and development
- Services related to management consulting
- Taxation advisory
- Technical testing and analysis
- Tourist guides services
- Translation and interpretation services
- Travel agencies and tour operators
- Urban planning and landscape architecture
- Veterinary

Responses of WTO members (European Union (4))

Beyond DDA offer

- Convention services
- Financial services including payment services
- Information Communications Technology and outsourcing services
- Transport and logistics services
- Travel and tourism

Responses of WTO members (India (1))

Mode 4

- Contractual service suppliers – engineering services, integrated engineering services, computer and related services, management consulting services, project management services, hotel and other lodging services, travel agency and tour operator services, tourist guide, language teacher, specialist chefs, sports person
- Independent professional - engineering services, integrated engineering services, computer and related services, management consulting services, project management services, hotel and other lodging services, travel agency and tour operator services, tourist guide
- Installer or servicers

Responses of WTO members (India (2))

Sectoral

- Professional services
 - Engineering services (Mode 1, 2 and 3)
 - Integrated engineering services (Mode 1, 2 and 3)
- Computer and related services (Mode 1, 2 and 3)
- Other business services
 - Management consulting services (Mode 1, 2 and 3)
 - Project management services (Mode 1, 2 and 3)
 - Building cleaning services (Mode 1, 2 and 3)
 - Packaging services (Mode 1, 2 and 3)
 - Convention services (Mode 1, 2 and 3)
- Hotel and other lodging services (Mode 1, 2 and 3)
- Travel agency and tour operator services (Mode 1, 2 and 3)
- Entertainment services (Mode 2 and 3)

Responses of WTO members (India (3))

- Sporting and other recreational services (Mode 1, 2 and 3)
- Maritime transport and auxiliary services
 - Maritime Towing and pushing services (Mode 2 and 3)
 - Maritime cargo handling services (Mode 2 and 3)
 - Storage and warehousing services (Mode 2 and 3)
 - Customs clearance services (Mode 2)
 - Maritime agency services (Mode 2)
 - Maritime freight forwarding services (Mode 2 and 3)
 - Maintenance and repairs of sea going vessels (Mode 2 and 3)

Technical assistance- training in financial services, consultancy course, hotel management course

Visa fee exemption for business and employment visas

Responses of WTO members (USA (1))

- Foreign Legal Consulting Services (Mode 1, 3 and 4 with few state limitations)
- Accounting, Auditing and Bookkeeping Services (Mode 1, 3 and 4 with few state limitations)
- Integrated Engineering Services (Mode 1, 3 and 4)
- R&D services on natural sciences, social sciences and humanities, and interdisciplinary R&D services, excluding R&D financed in whole or in part by public funds (Mode 1, 3 and 4)
- Technical testing and analysis services, other than government-mandated services or services financed in whole or in part by public funds (Mode 1, 3 and 4)
- Other business services:
 - Translation and interpretation services (Mode 1, 3 and 4)
 - Mailing list compilation and mailing services (Mode 1, 3 and 4)
 - Specialty design services (Mode 1, 3 and 4)

Responses of WTO members (USA (2))

- Other Competitive Delivery Services (Mode 1, 2, 3 and 4) with limitations
- Information services (the offering of a capability for generating, acquiring, storing transforming, processing, retrieving, utilizing, or making available information via telecommunications, and includes electronic publishing) (Mode 1, 3 and 4)
- Higher Education Services (except flying instruction) (Mode 1, 2 and 4)
- Motion Picture & Video Tape Home Video Entertainment Production and Distribution (mode 1, 3 and 4)
- Environmental Services (Mode 1, 3 and 4 with limitations in some states)
- Physical well-being services (Mode 1, 3 and 4 with limitations in some states)
- Road freight transport (Mode 1, 3 and 4)
- Cargo-handling services (except maritime or air transport services) (Mode 1, 3 and 4)
- Storage and warehouse services (except maritime or air transport services) (Mode 1, 3 and 4)
- Freight transport agency services (except maritime or air transport services) (Mode 1, 3 and 4)

Issues to be discussed

- What are the sectors and destination markets to be prioritized/ focused to utilize the services waiver?
- What are the barriers we are facing in the export of services in destination market?
- What are the national rules and regulations that hinder export of services?
- How can we ensure domestic preparedness for services export?

Thank you

FOR YOUR KIND ATTENTION.