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Council for Trade in Services

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## **SUBMISSION BY THE DELEGATION OF UGANDA ON BEHALF OF THE LDC GROUP**

### **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**

The following communication, dated 21 July 2014, from the delegation of Uganda on behalf of the LDC Group, is being circulated to the Members of the Council for Trade in Services.

## **1 INTRODUCTION**

1.1. In fulfilment of the commitment of World Trade Organization (WTO) Members that Least-Developed Countries (LDCs) receive special priority in services sectors and modes of supply of interest as provided in the General Agreement on Trade in Services (GATS) Article IV.3, the 2003 Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (TN/S/13), and Annex C of the 2005 Hong Kong Ministerial Declaration, Ministers at the WTO's Eighth Ministerial Conference (MC8) (WT/L/847) held in December 2011, agreed for the first time to allow WTO Members to waive GATS Article II.1 in order to provide preferential treatment to LDC services and services suppliers. However, after two years under the Decision, no concrete steps were taken by any Member to operationalize that decision and grant preferences to benefit LDC suppliers. Therefore, Ministers agreed in Bali at the WTO's Ninth Ministerial Conference (MC9) on a decision (WT/L/918) to operationalize the MC8 Decision.

1.2. The Bali Decision provides that after the submission of a collective request by LDCs, a high-level meeting is to take place six months thereafter where Members, in a position to do so, shall indicate the preferences in services sectors and modes of supply in favour of LDCs. The Decision also provided, in paragraph 1.3, that, nevertheless, Members, in their individual capacities, are encouraged at any time to extend preferences to LDC services and service suppliers, which have commercial value and promote economic benefits to LDCs. Such preferential treatment may be accorded through the elimination of economic needs tests and other quantitative limitations and that a Member may accord preferences similar to those arising from preferential agreements. The LDC Group urges Members to take initiatives in their individual capacity under paragraph 1.3 of the Decision, which is a procedure independent from the process under 1.2 of the Bali Waiver Decision. Such preferences may be notified at any time in accordance with paragraph 2 of the MC8 Waiver Decision. However, the LDC Group herewith submits its collective request, pursuant to paragraph 1.2 of the Bali Waiver Decision, to all non-LDC Members of the WTO, with a view to securing responses at the high-level meeting to take place under the auspices of the Council for Trade in Services (CTS), immediately six months after the date of the submission of this request.

1.3. The LDC Group is keen to hear from Members in a position to do so, the preferences they intend to grant in response to this request.

## **2 OBJECTIVES OF THE REQUEST**

2.1. The WTO has recorded that the average growth in LDC services exports between 2000 and 2012 has risen by 6 percent.<sup>1</sup> In addition, the services sector accounts for nearly 47% of LDC

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<sup>1</sup> WT/COMTD/LDC/W/58, p. 22.

GDP.<sup>2</sup> However, in contrast with these results, services represent only 11.6% of total LDC goods and services exports and LDC participation in commercial services exports remained a meagre 0.6%. These data reflect the fact that much potential remains for LDC services suppliers to benefit from initiatives such as the WTO LDC Waiver in order to catalyse market opportunities for them and facilitate their integration into the multilateral trading system. The LDC Group has further substantiated their services export priorities in the last several years and continues to identify preferences that might be granted in accordance with the decisions taken at the WTO since 2001.

2.2. The following request is based on country studies, research, interviews, experiences, and analysis so far, conducted by the LDC Group in order to identify the sectors and modes of supply of key interest to the LDC Group. Due to a number of barriers and encumbrances, it is clear that LDC services suppliers are experiencing difficulties in being able to supply services sought by existing and potential consumers and clients in a number of WTO Members, both developed and developing countries. Underpinning such difficulties are for example, obstacles to recognition of LDC educational institutions, diplomas, and professional skills; imposition of transit taxes and other fees on tourists traveling to LDCs; and onerous application fees for visas, licenses, and residence and work permits, which for many LDCs are tantamount to one month's salary for their families — a detriment, but also a severe loss if the visa is not granted and when the fees are not returned. Visa denials stamped on passports, or similar stamps with the same implication, and other measures, serve to stigmatize qualified LDC suppliers who have been presented with offers or are contracted abroad.

2.3. Suppliers raised concerns stemming from burdensome or prohibitive documentation, application, and registration requirements and associated delays in response to visa applications, where an LDC service supplier has obtained a contract with a consumer of their services in the host country.<sup>3</sup> These measures are impediments to the ability of LDC services suppliers to deliver on contracts and occasionally caused loss of clients.

2.4. Other barriers range across several sectors impacting Modes 1, 2, 3 and 4 market access and national treatment. But the most staggering market access, administrative and other barriers were in Mode 4, where, as noted above, LDC services suppliers indeed have secured customers abroad. Some LDC companies willing to enter markets and establish under Mode 3 are also facing barriers similar to those they face under as natural persons<sup>4</sup> under Mode 4.

### 3 THE REQUEST

<b>A. Waive Article XVI, Market Access and Article XVII, National Treatment Restrictions<sup>5</sup> on LDC Services Suppliers as follows:</b>	
<b>Horizontal</b>	
1.	Through administrative, regulatory or other means, create a special temporary entry visa subcategory to allocate quotas within existing or newly created quota systems, for LDC contractual service suppliers or independent professionals (see also 2 and 3 below) operating under bona fide offers or contracts from legitimate public or private entities or nationals.
2.	Waive all economic needs tests and labour market tests, or other procedures of similar effect, for LDC suppliers entering in accordance with a bona fide contract and for a duration of two years, renewable.
3.	Waive restrictions on <u>contractual service suppliers</u> , whose entry and stay is under contract with a <i>bona fide</i> employer (private or public), where the employer has engaged the LDC services supplier to assist in fulfilling a contract between the employer and a bona fide consumer lawfully operating in the host Member. The contractual service supplier shall receive their remuneration from the employer (public or private). Wage parity will not be.

<sup>2</sup> International Trade Centre, Technical Paper, LDC Services Exports: Trends and Success Stories (2013), p. 6.

<sup>3</sup> The term "host country" refers to the potential WTO Member in a position to grant preferences pursuant to this request and the LDC Services Waiver Decisions.

<sup>4</sup> See GATS Article 1.2 and Article XXVIII (j) definitions.

<sup>5</sup> Some entries under sectors may not fall under Article XVI or XVII.

	a pre-condition of entry, but does not preclude the application of minimum wage and salary thresholds
4.	Waive restrictions on <u>independent professionals</u> with an offer or a contract from a bona fide consumer operating in the host country, who will receive their remuneration from the bona fide consumer operating in the host country and the independent professional must have minimum educational and professional qualifications relevant to the services agreed to be provided under the offer or contract.
5.	Waive restrictions on natural persons who are <u>installers and servicers of machinery</u> and/or equipment, where such installation and/or servicing by the supplying company is a condition of purchase of the said machinery or equipment, but without the requirement of commercial presence, and the contract not to exceed 3 months in a given twelve month period.
6.	Waive Mode 3 restrictions for all LDC services suppliers, including but not limited to waiver of conditions on local hires, sponsorship or guarantor requirements, prohibitions on repatriation of capital investments, and profits, ownership restrictions, restrictions on maximum lease terms and ownership of land, economic needs tests (ENTs), restrictions against double taxation benefits, and expedited refunds and other tax administration benefits.
7.	Where applied, waive residency requirements for services provided by LDC professionals.
8.	Waive discriminatory regulations or other measures on salaries, health, and other benefits and access to hospitals for LDCs supplying the same or similar type of services as nationals with similar qualifications.
9.	Waive social security, income tax and other similar deductions to remuneration of all LDC services suppliers across all sectors and modes of supply if the LDC services supplier is only supplying services under a services contract and not as a salaried employee of the consumer.
<b><i>The following sector entries are for purposes of organization and to supplement, not replace, the horizontal requests found in this submission. Therefore, Members are urged not to simply provide preferences on the basis of only a single sector or by simply selecting an element from a sector. This section is also without prejudice to other sectors of interest to LDCs, including those reflected in the non-exhaustive list in the Annex to this request.</i></b>	
<b>Travel, Tourism, Hospitality and Conference Services</b>	
10.	Waive Mode 1 and 2 restrictions on the ability of LDC travel agencies to book flights for tourists who are traveling to the LDC Member.
11.	Waive restrictions on the entry of LDC tour guides, tour operators, catering, and hospitality services providers under the contractual service supplier and independent professionals (including trainees) category for three years, renewable.
12.	Waive restrictions, such as ENTs, repatriation of capital and profits, land ownership, maximum lease terms, access to SME incentives, against access to double taxation benefits, on LDC tour operators and starred hotels to open their representative or branch offices in preference providing countries.
13.	Where existing initiatives allow tax deductions for costs associated with conferences held abroad, accord and adapt the same benefit to conferences held in LDCs, including those LDCs with tourism attraction policies.
14.	Where feasible, set up <u>approved destination status or similar regimes</u> for Mode 2 tourist trade to all LDC Members and grant <i>on arrival</i> and other expedited visa procedures for tourists required to transit in order to travel or vacation in LDCs.
15.	Waive transit taxes/passenger movement charges and expedite visa procedures for tourists transiting through a preference providing country in order to reach LDC destinations.
16.	Expedite visas and permits to undertake twining or other exchange training in tourism and hospitality services with hotels and other hospitality and tourism institutions including schools, for durations commensurate with the terms of the training programme.

<b>Banking, Non-Bank, and Insurance Services</b>	
17.	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, namely type of legal entity, local content requirements burdensome fees and capital requirements, and restrictions on repatriation of capital and profits.
18.	Waive restrictions, other than those of a prudential nature, on the provision of Mode 1 and Mode 4 non-bank services of LDC suppliers.
19.	Simplify licensing procedures for LDC remittance and money transfer operators, including facilitation of authorized payment institution status, or similar regime, where applicable.
20.	Waive restrictions on national treatment for branches of LDC banks including national treatment, or better than national treatment on deposit requirements.
21.	Waive or where it is a private sector only restriction, enable waiver of, Mode 1 and 2 restrictions on the portability of insurance when LDCs are chosen for hospital and other medical services.
22.	Waive, or where it is a private sector only restriction enable waiver of restrictions on, travel insurance provided by LDC suppliers for travel to foreign destinations.
<b>Transport and Logistics Related Services</b>	
23.	Waive restrictions on domestic maritime towing and pushing services, including anchor handling, servicing petroleum exploration and production and facilitation of registration of LDC ships on registries and relaxation of equity ownership rules.
24.	Waive restrictions, such as but not limited to, truck size, number of trucks, and nationality of drivers licenses, and any onerous environmental restrictions, on road transport services, and transit services, including hauling services and related services identified in paragraph 39 below.
25.	Waive Modes 1, 2 and 3 restrictions on all logistics-related and freight transport agency services, including the imposition of withholding or other taxes.
26.	Provide preferential treatment for permits and visas for LDC nationals who are intra-corporate transferees, including specialists, to provide services in host country express delivery and logistics companies and branches.
<b>Education and Training-Related Services</b>	
27.	Waive Mode 2 restrictions on the ability of students from a preference providing WTO Member to use government tuition financial assistance to pay for study abroad in higher education institutions in LDCs.
28.	Waive restrictions on Mode 2 access for LDC students to attend universities where they are admitted for study in a host country WTO Member.
29.	Waive restrictions on access of LDC students to grants, loans, scholarships, teaching and research assistantships, and on and off-campus jobs, when admitted to study in a host country WTO Member.
30.	If training in the host country is a prerequisite before taking up a services contract in a host WTO Member in a position to grant preferences, and the training is not funded by the employer or contractor in the host country, employer/contractor must provide online training for the LDC employee/trainee.
31.	Allocate, and if it is a private sector restriction enable, preferential quotas for LDC students at higher education institutions.
<b>Information Communication Technology (ICT), Business Process Outsourcing (BPO) Services</b>	
32.	Waive Mode 1, 2, 3 and 4 restrictions for all LDC suppliers of BPO services such as but not limited to, call centre and back office operation services. Restrictions include but are not limited to local content requirements where applied and relevant, type of legal entity, limitations on access to short numbers, national treatment for access to government projects, and any limitations on legitimate outsourcing services.
33.	Waive Mode 1, 3, and 4 restrictions on software development, computer programming and implementation services.

34.	Provide preferential treatment for permits and visas for LDC nationals who are intra-corporate transferees, including specialists, to provide services in host country ICT companies and branches.
35.	Waive financial security requirements as a precondition to apply for visas or work permits for ICT professionals, who enter to deliver a service for not more than 90 days.
<b>Creative Industry Services Including Performers, Entertainers, Dance and Cultural Troupes, Sports Professionals, and Artists</b>	
36.	Waive requirement of social security deductions from LDC performers and other professionals entering the host country to perform services for less than six months.
37.	Waive financial security requirements as a precondition to apply for visas or work permits for performers who enter to deliver a service for not more than 90 days.
38.	Waive Modes 1, 2, 3 and 4 barriers to the provision of audio-visual services including access to co-production agreements.
39.	Waive fees on equipment.
<b><i>To complement preferences provided in response to the requests above, provide preferences in favor of LDCs related to the following services categories selected from offers tabled in the Doha Development Agenda (DDA) negotiations that are of interest to LDCs. There may be overlap with sectors mentioned above and in the non-exhaustive Annex to the request.</i></b>	
40.	<p>Waive Mode 1, 3 and 4 restrictions on the supply of the following services and sectors that were identified in recent offers tabled in the DDA negotiations:</p> <ul style="list-style-type: none"> <li>▪ Contractual services suppliers</li> <li>▪ Independent professionals</li> <li>▪ Airfreight storage and warehousing services;</li> <li>▪ Airport management services</li> <li>▪ Accounting, auditing and bookkeeping services</li> <li>▪ Architectural Services</li> <li>▪ Bank branches of subsidiaries</li> <li>▪ Building cleaning services</li> <li>▪ Building completion and finishing work services (including glazing work and window glass installation work, plastering and painting work, floor and wall tilling work, floor laying, wall covering and wall papering work, demolition, scaffolding, foundation work including pile drilling, water well drilling, and ornamental and interior fitting work)</li> <li>▪ Construction and related engineering services</li> <li>▪ Construction work for multi-dwelling buildings</li> <li>▪ Construction work for warehouses and industrial buildings</li> <li>▪ Construction work for commercial buildings</li> <li>▪ Convention services</li> <li>▪ Commission agent services</li> <li>▪ Computer reservation systems services</li> <li>▪ Data processing and tabulation services</li> <li>▪ Electrical wiring and other fitting work</li> <li>▪ Engineering design services</li> <li>▪ Engineering Services</li> <li>▪ Entertainment services</li> <li>▪ Franchising services</li> <li>▪ General Construction Work for Buildings</li> <li>▪ General Construction Work for Civil Engineering</li> <li>▪ Ground handling services (ground administration, passenger handling, baggage handling, freight and mail handling, ramp handling, aircraft services, fuel and oil handling, flight operations and crew administration, surface transport)</li> <li>▪ Guidance and counselling services not elsewhere classified related to children</li> </ul>

- Hairdressing and other beauty services
- Hotel and restaurant services
- Input preparation services
- Installation and assembly work
- Integrated Engineering Services
- Interior design services
- Investigation and security services, including security consultation services and alarm
- Landscape services and landscape architectural services
- Mailing list compilation services
- Maintenance and repair of vessels
- Market research services
- Medical and dental services
- Maintenance and repair of office machinery, computers, fixtures, etc.
- Maritime agency services
- Other lodging services
- Other supporting services for air transport
- Other engineering services during the construction and installation phase
- Other supporting services for air transport
- Packaging services
- Passenger transport services – rail and road.
- Photographic services
- Placement and supply services of personnel
- Printing and packaging of materials services
- Road freight transport services
- Rental of commercial vehicles with an operator services
- Rental and Leasing Services without Operators
- Selling and marketing air transport services
- Services auxiliary to all modes of transport
- Services auxiliary to insurance
- Services auxiliary to maritime transport including cargo handling, storage and warehousing, freight forwarding, customs clearance services, and container station depot services
- Services incidental to agriculture, hunting and forestry
- Services incidental to animal husbandry
- Services incidental to fishing
- Services of medical laboratories
- Services provided by midwives, nurses, physiotherapists
- Specialty design services
- Sporting and other recreational services
- Technical testing and analysis services of motor vehicles
- Telephone answering services
- Time sharing services
- Tour guide services
- Translation and Interpretation Services
- Travel agency and tour operator services
- Transport feeder services related to international cargo
- Veterinary services
- Wood and metal joinery and carpentry work
- Welfare services not delivered through residential institutions
- Washing, and cleaning and dyeing services

<b>B. Across all sectors, especially those found in the Annex, waive visa, work permit, residence permit measures in the following manner:</b>	
1.	Waive residence permit, licenses, and work permit <u>fees and any other processing fees</u> , for LDC contractual service suppliers or independent professionals, operating under an offer or a contract facilitated by a bona fide consumer or employer (public or private), in professions, including, but not limited to, those found in the Annex to this request, which is not exhaustive. Alternatively, host employer is to bear all processing, recruitment, passport, health, and other costs equivalent to one month salary.
2.	Waive residence permit, licenses, and work permit <u>fees and any other processing fees</u> , for Intra-corporate transferees, including specialist trainees, from LDC countries to the LDC companies established in host countries under Mode 3.
3.	Waive all fees associated with LDC service supplier applications for patents, trademarks, geographical indications registration and other trade and professional fees.
4.	Expedite procedures in granting visas, licenses, residence, or work permits for LDC national contractual service suppliers, independent professionals, and business visitors, who are operating under an offer or a contract, from a bona fide consumer, and service suppliers who need to participate in meetings and events required under the relevant contract.
5.	Simplify all documentation requirements including registration forms and procedures and reduce turnaround time to issue visas, work and residency permits, and licenses, applied for by or on behalf of LDC services suppliers, across all modes of supply.
6.	Grant work permits for the duration of a bona fide contract. If a renewal is required, the renewal period will be linked to a period no less than the duration of a bona fide contract.
7.	Waive financial security requirements as a precondition to apply for visas or work permits for all services and providers listed in the Annex who enter to deliver a service for not more than 90 days.
8.	Waive stamping on LDC service supplier passports that a visa was denied or any other stamp that amounts to the implication that a visa was denied.
9.	Provide reasons for denial of visas and provide guidance and assistance on how to correct deficiencies. If an LDC visa is denied, return visa fee.
<b>C. Waive any restrictions to taking the following actions in order to allow recognition of qualifications of LDC professionals and accreditation of LDC institutions:</b>	
1.	Within a period of one year, enable conclusion of agreements and where the regime allows, establish agreements with relevant LDC institutions and enable registrations to recognize minimum qualifications required of LDC service providers for any of, but not limited to, the professions, listed in the Annex to this request, where relevant. The list is not exhaustive.
2.	Waive reciprocity as a condition of recognition of LDC professional bodies where reciprocity is required.
3.	Enable recognition of diplomas and degrees from LDC accredited educational institutions that meet the same or minimum requirements in the host country.
4.	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.
5.	Waive English or other language testing where the services supplier has been educated in the language.
6.	Enable conclusion of memorandum of understanding (MOUs) or other types of agreements for all professional services areas where LDCs have demonstrated special priority.
7.	Enable online testing for suppliers from LDC countries so that, where applicable, travel to the testing country is not required.

3.1. The LDC Group informs Members that it is examining issues of format to memorialize preferences that will be registered at the high-level meeting or otherwise announced by Members.

Therefore, it may be useful for the CTS to decide on the instrument for recording the preferences as legally binding in accordance with the waiver.

3.2. In addition to the above request, the LDC Group requests that Members provide specific assistance and capacity building, and facilitate training and orientation in any programmes to orient suppliers on the preference benefits available so that LDC suppliers can utilize the preferences granted. Members are also requested to provide incentives to their enterprises to transfer technology to LDC services suppliers that will enhance their capacity in the supply of services.

3.3. The LDC Group requires that any responses to this request and any granting of preferences to wider LDCs pursuant to this request do not diminish any existing preferential programmes and schemes in favour of particular groups of LDCs or individual LDCs, including under any specialized regional seasonal temporary worker programs or other programs.

3.4. In furtherance of preparations for the high-level meeting to be held in six months, the LDC Group welcomes positive engagement and consultations in the intervening period with Members in a position to grant preferences. The LDC Group also welcomes any written comments and questions, sufficiently in advance of the high-level meeting. It is recalled that the LDC Group has capacity constraints in the number of meetings its members must follow at the WTO and at other organizations in Geneva and that the Group must observe its coordination requirements. Therefore, with regard to meetings for consultations to discuss the request, Members are asked to consider the scheduling priorities of LDCs.

3.5. The LDC Group reserves the full right to modify the content of this request, if necessary, before the high-level meeting takes place. In that regard, the LDC Group expects Members to take any modifications into account in preparation for the meeting. However, any modifications, consultations, and receipt of questions are without prejudice to the commencement of the high-level meeting immediately six months from the date this request is submitted to the CTS by the LDC Group.

Inquiries should be addressed to the Coordinator of the LDC Group:

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**ANNEX**

Non-exhaustive list of services and services professions of interest to LDCs<sup>6</sup>:

- Accounting, auditing, and bookkeeping
- Agricultural professionals and workers,
  - including agrologists
- Architects
- Assembly workers
- Care workers
- Catering
- Chauffeuring
- Chefs, cooks, and other culinary specialists
  - in traditional or indigenous cuisine
- Clerks, including bank clerks,
- Consultancy
- Construction, including construction engineering
- Creative Industry services– including entertainers, artists, performers, and cultural troupes
- Designers
- Doctors, dentists, and medical technicians
- Domestic workers, attendants and other personnel for officials posted in preference providing country
- Engineering, all types
- Financial services
- Hair stylists/dressers, including barbers, beauticians
- Information Communications and Technology (ICT) services including, data processing, computer and software programmers, developers and technicians
- Installers, masons, and servicers of machinery, including piping and drainage, and other supply of maintenance and repair services.

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<sup>6</sup> Due to the diversity of interests and perspectives within the LDC Group, this non-exhaustive list is a hybrid of professions and services identified in the United Nations Provisional Central Product Classification (CPC), W/120, International Standard Classification of Occupations of the ILO, and other lists. At this time, the intention of the LDC Group is not to assign CPC or other codes. Preference providers are welcome to indicate to the LDC Group if they wish to ascribe coding in preferences they intend to grant.

- Landscaping and gardening
  - Lawyers
  - Loaders
  - Mechanics, including auto and electrical
  - Nurses, midwives
  - Physiotherapists
  - Practitioners of traditional therapies
  - Sales professionals, attendants, including at fuelling stations
  - Security services
  - Sports/athletic and recreational services
  - Suppliers of services incidental to mining, agriculture and fishing.
  - Teachers and professors
  - Travel agents
  - Tour guides and tour operators
  - Trainers
  - Transport services providers, including maritime, rail and road transport related services
  - Valets
  - Washing, cleaning, and/or dyeing services suppliers
-