

Addis Ababa
University
(Since 1950)



ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

Potential Challenges and Prospects in Exploiting LDC Waiver in Service Sector:
The Case of Ethiopia

By: -

Melese Abebe Siyoum

April, 2017

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

Potential Challenges and Prospects in Exploiting LDC Waiver in Service Sector:
The Case of Ethiopia.

A Thesis Paper Submitted To Addis Ababa University, School Of Graduate
Studies, And School Of Law In Partial Fulfillment Of The Requirements For
The Degree Of Master Of Laws (LL.M) In Public International Law.

By:-

Melese Abebe Siyoum

Advisor:-

Martha Belete (Assistance professor)

April, 2017

ADDIS ABABA UNIVERSITY
SCHOOL OF GRADUATE STUDIES
SCHOOL OF LAW

Potential Challenges and Prospects in Exploiting LDC Waiver in Service Sector:
The Case of Ethiopia

By:

Melese Abebe Siyoum

Approved By Board of Examiners

Advisor _____

Examiners

1. _____

Signature

2. _____

Signature

Table of content

ACKNOWLEDGEMENT.....	IV
ACRONYMS.....	V
ABSTRACT.....	VI
CHAPTER ONE.....	1
1. INTRODUCTION.....	1
1.1. BACKGROUND OF THE STUDY	1
1.2. STATEMENT OF PROBLEM	4
1.3. RESEARCH QUESTIONS	4
1.4. OBJECTIVES OF THE STUDY	5
1.5. SIGNIFICANCE OF THE STUDY	5
1.6. METHODOLOGY	5
1.7. LIMITATION OF THE STUDY.....	6
1.8. ORGANIZATION OF THE PAPER	6
CHAPTER TWO.....	7
2. THE CONCEPT OF LDC SERVICE WAIVER.....	7
2.1. INTRODUCTION: - DEFINING SERVICE AND INTERNATIONAL TRADE IN SERVICES.....	7
2.2. CURRENT TREND IN GLOBAL TRADE IN SERVICE	11
2.2.1. <i>LDCs in international trade in service.....</i>	12
2.2.2. <i>Ethiopia in international trade in service.....</i>	14
2.3. SPECIAL AND DIFFERENTIAL TREATMENTS (SDT) UNDER GATS.....	15
2.3.1. <i>The Concept of LDCs Service Waiver.....</i>	18
2.3.2. <i>Main Conditions and Procedural Requirements.....</i>	20
2.3.3. <i>Scope of LDC Services Waiver.....</i>	23
CHAPTER THREE.....	27
3. POTENTIAL PROSPECTS UNDER LDC SERVICE WAIVER.....	27
3.1. INTRODUCTION.....	27
3.2. COLLECTIVE REQUEST VS. PREFERENCES NOTIFIED.....	28

3.2.1.	<i>Service Sectors</i>	29
3.2.2.	<i>Modes of supply</i>	32
3.2.3.	<i>Type of preferences</i>	33
3.3.	POTENTIAL PROSPECTS UNDER LDC SERVICE WAIVER.	33
3.3.1.	<i>Stimulate service export</i>	34
3.3.2.	<i>Attract foreign direct investment (FDI)</i>	36
3.3.3.	<i>Promote Knowledge and Technology transfer</i>	37
3.3.4.	<i>Lesson for Ethiopia</i>	37
CHAPTER FOUR		39
4. POTENTIAL CHALLENGES IN EXPLOITING LDC SERVICE WAIVER		39
4.1.	INTRODUCTION	39
4.2.	LACK OF MANDATORY PROVISIONS	40
4.2.1.	<i>Inefficiency</i>	40
4.2.2.	<i>Uncertainty</i>	41
4.3.	LIMITED SCOPE OF SERVICE WAIVER	42
4.4.	CHALLENGES POSED BY PARALLEL NEGOTIATIONS	43
4.5.	RULE OF ORIGIN	44
4.6.	STUMPY POLITICAL COMMITMENTS	45
4.7.	BRAIN DRAIN PROBLEMS	45
4.8.	SUPPLY SIDE CONSTRAINTS	46
CHAPTER FIVE		48
5. CONCLUSION AND RECOMMENDATION		48
5.1.	CONCLUSION	48
5.2.	RECOMMENDATION	50
BIBLIOGRAPHY		52

Declaration

I, the undersigned, declare that this thesis is my original work, has not been presented for a degree in any other University and that all sources of materials used have been appropriately acknowledged.

Name _____

Signature _____

Addis Ababa University

April, 2017

Acknowledgement

Above all I would like to give praise to my almighty Lord for the eternal love of Him on me. Thank you God for you have been my provider, guidance, and strength throughout my life and in this career as well. I also take this opportunity to acknowledge and express my heartfelt gratitude for the continued professional and intellectual support and advice of my supervisor, Martha Belete who relentlessly guided me up until the successful completion of this task. I also would like to extend my sincere gratitude to my parents for their relentless prayer, support and encouragement. My special thanks also go to my lovely Kalkidan Worku for her encouragement and companionship, not only in my career to this thesis, but also throughout my stay at Addis Ababa University. I am also thankful to all my Friends, especially Yohannes Debebe, who have been the source of inspiration and strength all along my way.

Acronyms

CTS	Council of Trade in Service
EU	European Union
GATS	General Agreement on Trade in Service
GATT	General Agreement on Trade and Tariff
GDP	Gross domestic product
GTP I	First Growth and Transformation Plan
GTP II	Second Growth and Transformation Plan
ITC	International Trade Centre
LDC	Least Developed Countries
MFN	Most favored Nation
NT	National treatment
OECD	Organization for Economic Co-operation and Development
RTA	Regional Trade Agreement
SDT	Special and differential treatment
UN	United Nations
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
WTO	World Trade Organization

Abstract

LDC service waiver is a specific preferential treatment of LDCs in service trade. The main objective of this preferential treatment scheme is to boost the participation of LDCs in international trade in service. To this effect, the waiver decision waived the MFN obligations of GATS to the extent necessary to permit WTO members to provide preferential treatment to services and services suppliers of LDCs without according the same treatment to like services and service suppliers of all other members. All LDCs whether member to WTO or not, such as Ethiopia, are similarly made beneficiaries.

Taking in account, the indispensable importance of international trade in service for poverty eradication and over all development of Ethiopia on one hand; and the limited capacity of the country to compete in international trade in service because of many internal and external factors on the other hand, the service waiver preferential treatments scheme incorporated many potential opportunities for Ethiopia. However, there are some internal and external potential challenges that the country should seriously concern with for the effective exploitation the preferential treatment.

Thus, Ethiopia should devise appropriate strategy to solve these problems or at least minimize their impacts and to fully exploit the prospects under the service waiver preferential treatment.

Key words; - LDC service waiver, LDCs, preferential treatments

Chapter one

1. Introduction

1.1. Background of the study

Among many international intergovernmental Organizations so ever established with a view to raising living standard and ensuring sustainable development of human being's¹, WTO is the youngest of almost all but one of the most influential in the area of international trade system.² WTO is and its precedent the legal frame work, "GATTs" was a complex system which mainly stands to assure free trade globally.

Taking the free trade issue as a central objective there are many principles with which international trade is guided. Among these, the cores are most favored nation (MFN) principle and National treatment (NT) principle. The MFN rule state that a product or service made in one member country be treated no less favorably than a like product or service that originates from any other country.³ The national treatment principle on the other hand try to ensures equal treatment of foreign goods or service with like domestic service and goods, in terms of internal taxation, charges, and regulations.⁴ All of this is to ensure free trade globally.

Among the main area of international trade, trade in service is the most recent area of concern but the most growing area of international trade. In today's technologically advanced world, Service represents more than 66.67% of World Gross Domestic Product (GDP).⁵ Depending on the level of development of countries, even in developing and in some LDCs, the production of services is generally become a core economic activity, whose input to GDP is more than that of both industry and agriculture.⁶ In lights of this statistic fact of 2015, World exports of services from WTO members are enlarged and became significant with estimated

¹ See paragraph one of The Preamble of the Marrakesh agreement establishing the WTO(WTO agreement) adopted at Marrakesh on 15 April 1994(entry in to force January 1, 1995), available at <https://treaties.un.org/doc/Publication/UNTS/.../volume-1867-I-31874-English.pdf> (accessed on September 25, 2016)

² Peter Van Den Bossche, *The law and policy of WTO: Text, Cases and Materials*, (2005), Cambridge university press, page 77

³ GATs art 2(1) and article 1(1) of GATTs

⁴ GATs art.17(1) and article 3(4) of GATTs

⁵ WTO, *measuring trade in service*, A training module produced by WTO / OMC, (2010) page 7, available at, https://www.wto.org/english/res_e/.../services_training_module_e.pdf (accessed on may 2016)

⁶ Ibid

value of US\$ 4.87 trillion in 2014.⁷ In fact in 2015, world trade in commercial services declined because of different factors.⁸ All of this fact shows how far service production in general and international trade in-service in particular became the heart for the world economy and at the forefront of any country's economic policy concern.

Today, international trade in service is mostly dominated by a few developed countries. According to the WTO international trade statistics report of 2016, more than 53% of the world's total trade in commercial services in 2015 was totally controlled by ten developed country traders in commercial service.⁹ Amazingly, despite the fact that LDCs represent just about more than 13% of the globe's population in 2015¹⁰, their participation in global trade in service remained insignificant with only 0.8%.¹¹ For example, in Ethiopia the contribution of international trade in commercial service to the GDP is only 5% in 2014, from which the transport service covers 80%.¹² In fact the stumpy participation of LDCs in international trade is not only limited to trade in service, rather it is one of their identification in international trade in general. In other words, the participation of LDCs in international trade in service is even lower than trade in goods. There are many factors which could be either internal or external for LDCs not to have their share in international trade in service.¹³

This history should be changed and this needs a serious effort from the international community to provide comprehensive assistance to LDCs, so as to enable them to use their own share in international trade in service. This could help LDCs members to be able to survive in international free trade play and can also energize accession process of the others. Regarding international trade in service, the first legal instrument incorporating provision allowing favor for LDCs is GATS, even if these provisions are very few and very general

⁷ WTO, *International Trade Statistics 2015*, (2015),page 11, available at https://www.wto.org/english/res_e/statis_e/its2015_e/its2015_e.pdf ,(accessed on may 2016)

⁸ WTO, *world trade statistical review 2016*, (2016), page 10, available at, https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf,(accessed on October, 2016).

⁹ Id, page 17

¹⁰ UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) ,*LDCs in Facts and figures*, (2015), page1, available at <http://unohrlls.org/about-ldcs/facts-and-figures-2/>, (accessed on October 2016)

¹¹ Supra note 8,page 54

¹² Supra note 7,page 59 and page 62

¹³ Trade For Development Programme (TDP) Of The South Centre, *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs*, Analytical Note (SC/TDP/AN/SV/14) (2011), page 3, available at www.southcentre.int/.../AN_SV14_Analysis-of-Draft-Waiver-Decision, (accessed on august 2015.)

which needs further talks. Accordingly, under its Article IV (3), GATS gives a mandate to negotiate mechanisms that could increase the participation of LDCs in the multilateral trade system and obliged members to assume commitments with particular priority for LDCs. On the other hand, article XIX (3) of GATs refers to a special treatment related to progressive liberalization that LDCs are entitled to have.

Depending on these general provisions, favor given for LDCs may have taken three main forms.¹⁴ These are favor providing LDCs with preferential market access in developed and developing countries (may also include LDCs service waiver¹⁵)¹⁶, favor allowing for an intonation of commitment¹⁷, and favor of technical assistance and other support.¹⁸ But since these provisions are very general and not specify the specific favor the LDCs may be given and rather order further negotiation, the real movements for the implementation of those provisions started very late. After many conference and long discussion it is in December 2011, that WTO trade ministers agreed for the first time to a specific favor mechanism in the form of a waiver of the GATS MFN principles. This mechanism aimed at blessing member states with the possibility to depart from the MFN principle and give special and more preferable treatment for LDCs without the obligation to provide this treatment for others as MFN principle dictate.¹⁹ This is the favor extended for LDCs which this writer called “LDCs service waiver” in this paper and which will be main concern in this paper.

One good fact regarding this favor is that, LDCs who are non-members of the WTO are not currently discriminated against. Instead they are beneficiaries of the preferential treatments that are extended to member countries.²⁰ This means on the other hand, Ethiopia which is currently not a member of WTO is also a beneficiary of this special and differential treatment.

¹⁴ Akiko Yanai, *Rethinking Special And Different Treatment In The WTO*, Institute Of Developing Economies, Interdisciplinary Studies Center(2013), page 2 available at www.ide.go.jp/English/Publish/Download/Dp/pdf/435.pdf ,(accessed on June 2016)

¹⁵ WTO, *Preferential Treatment To Services And Service Suppliers Of LDCs*, The WTO Ministerial Conference Decision of 17 December 2011, WT/L/847 , 19 December 2011,Article 1

¹⁶ GATs article IV(1c)

¹⁷ GSTs article XIX(3)

¹⁸ GATs article IV(1a) , article IV(2a) and XXV(1)

¹⁹ Supra note 15

²⁰ Service Waiver decision(WT/L/847), paragraph 1 and 8

This paper will try to give a vivid picture of LDC service waiver scheme and also makes a closer scrutiny to the potential prospects and challenges Ethiopia as any beneficiary state could come across in adequately exploiting the service waiver preferential treatments.

1.2.Statement of problem

As mention has already been made in the background, LDCs service waiver is intended to encourage the integration of LDCs in the world economy in general and to improve their trading prospects in commercial service in particular.²¹ But the waiver itself does not confer any direct economic benefit, it rather, need hard work from LDCs to use the opportunities presented to them. This on the other hand rests on subjective individual performance of each LDC and their subjective internal problems and strengths. This makes the interest of LDCs toward this favor very different and complex as could be understood from the collective request. This is because; LDCs are unlike in many different aspects. But still, this does not mean that, there are no general benefits and challenges under LDC service waiver.

Again the LDCs service waiver scheme as stand today, neither put a binding obligation on developed and developing countries to grant preferential treatment, nor any right to perceive this favor, is assured to LDCs. This still make LDCs service waiver subjective to a type of service and mode of delivery that each benefactor state interested with to include in the scheme.

Thus, taking these facts into account, thus, this research will explore any benefits that LDC service waiver preferential treatment at hand for LDCS in general and for Ethiopia in particular. Potential challenges that could hinder the full exploitation of this preferential treatment scheme by all LDCs in general and by Ethiopia in particular will be also the main concerns of this paper.

1.3.Research Questions

This research which would examines LDC service waiver preferential treatment in general and potential challenges and prospects Ethiopia could come across in exploiting this preferential scheme in particular, would try to answer the following research questions.

²¹ Carlo Perroni, *Special And differential Treatment Of Developing Countries In The WTO*, University of Warwick,(2014) ,page 1, available at <https://www.odi.org/resources/docs/3320.pdf> (accessed on June 2016)

- ❖ What are the potential benefits that LDC service waiver preferential treatment came with for LDCS in general and for Ethiopia in particular?
- ❖ What are the challenges that LDCs in general and Ethiopia in particular could encounter in exploiting the privilege under LDC service waiver?
- ❖ What the Ethiopia need to do, in order to exploit this opportunity to the extent possible?

1.4.Objectives of the Study

While the main purpose of this research is to explore potential prospects and challenges in exploiting LDC service waiver by Ethiopia; it has also the following specific objectives;

- ❖ Giving a clear picture about the legal and institutional regime of LDC service waiver
- ❖ To analyze any benefits that LDC service waiver came with for LDCS in general and for Ethiopia in particular
- ❖ To examine challenges Ethiopia could encounter in exploiting LDC service waiver
- ❖ And suggesting the way forward; the policy direction to be possibly followed internationally and the amendments that our legal system needs accordingly, if any.

1.5.Significance of the Study

The significance of this study stems from the background stated above. This research which would examine the potential challenges and prospects in exploiting LDC service waiver by Ethiopia will have a significant contribution to different stakeholders as it stimulates thinking among policymakers, academics and traders. To begin with, it will help policy and law makers in trade in service area to understand and give informed decisions on issues which able Ethiopia to be a beneficiary from this waiver as much as possible. Apart from this, it will be significant for our international service suppliers in order to understand the opportunity available to them and also to be aware of any challenges they may encounter. Besides these, it would serve as a base for future research on the current contentious issue of viability of LDC waiver in service sector.

1.6.Methodology

The research will employ a combination of different approaches. Literature review would provide the conceptual basis on the subject matter of LDC service waiver and related issues. Analysis of the concerned legal regimes would made by exploring a number of international

laws that have a direct or indirect bearing on LDC service waiver. Besides this, international and national trade in service statistics will be examined based on purposive data selection method.

1.7.Limitation of the study

The research embarks on a relatively recent issue of LDC service waiver and there can be shortage of published material. In fact, there are no published materials which take in to account the Ethiopian situation. And therefore, reliance is made on foreign literatures which could be found in an electronic form. Even in this case, the majority of the relevant sources are not freely available. Poor availability of data and huge discrepancies between official statistics is also the other challenges which hampered the meaningful analyses of services trade of Ethiopia. These hindered the accommodation of diverse views on the issue at hand.

1.8.Organization of the paper

This paper is comprised of five chapters. The first chapter shows the proposal of this thesis. The second chapter, the Concept of LDC service waiver, tries to provide the lying grounds/basic ideas of LDC service waiver. This chapter begins by giving background information about the service and trade in service. Then, the chapter briefly discussed the current trends in international trade in service. Under this part, the growing role of trade in service in international trade, share in countries GDP and current share of LDCS as a group and Ethiopia under international trade in service is discussed. The third and main part of this chapter discussed LDC service waiver preferential treatments in lights of its basic principles and coverage.

The third chapter of this paper explored any benefits that LDC service waiver came with for LDCs in general and for Ethiopia in particular. In doing so, this writer, first tried to find out expectation of LDCs as reflected under collective request and analyzed it in lights with the so far notified preferences of 23 members. The fourth chapter of this paper is dedicated to analyze challenges and gaps within the LDCs service waiver scheme as a system in general and any subjective internal challenges Ethiopia could face in using this preferential treatment scheme. Finally, under the fifth chapter, the synopsis of the issues addressed throughout the thesis; and recommendations are given which in the judgment of the researcher, are points worth praising.

CHAPTER TWO

2. The Concept of LDC Service Waiver

2.1.Introduction: - Defining Service and international trade in Services

As this work dwells on the LDCs service waiver, it is quite indispensable to define what are service and trade in service mean. To begin with, the term service, which encompasses a considerable diversity of intangible, invisible and perishable products and activities which usually require simultaneous production and consumptions, are difficult to explain within a simple definition.²² The WTO legal instruments including the GATS also don't directly define the term services. This is because at the time of GATS negotiation and even latter on, the contracting parties to the GATS could not reach on an agreement in giving a specific definition for the term service.²³ But still it is not uncommon to come across some general purposive definition of the term service. For instance, as per UN manual on statics of international trade in service "Services are the result of a production activity that changes the conditions of the consuming units, or facilitates the exchange of products or financial assets."²⁴ Service may also generally be defined as, 'an economic activity that adds value either directly to another economic unit or to a good belongs to another economic unit',²⁵

So, what the contracting parties opted to do with issue of defining service under GATS is to avoid general definition and simply to classify and list the service sector they belief to be a concern of international trade at the time. Accordingly, as parts of negotiations on GATS, on 10 July 1991 the GATT Secretariat prepared and came with a "Services Sectoral Classification List (MTN.GNS/W/120).²⁶ As per this classification service includes 161 service activities across 12 classified sectors, in which 11 sectors are made to include detail list of service activities(sub-sectors) and leaving the 12th sector open ended which makes it

²²Aditya Mattoo, Robert M. Stern and Gianni Zanini(ed) *A Handbook of international trade in service*, oxford university press(2008),page 5,

²³ Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinaugle (ed), *WTO-Trade in Services*, Max Planck Commentaries on World Trade Law, volume 6, (2008), page 38

²⁴ UN economic and social affair, *Manual on statics of international trade in service 2010 (MSITS 2010)*, (2011)page 8 available at <http://unstats.un.org/unsd/statcom/doc10/bg-msits2010.pdf> (accessed on October 2016)

²⁵ Christopher Findlay and Tony warren(ed), *Impediments To Trade In Service; Measurement and Policy Implication*,(2005), page 18

²⁶ Rüdiger Wolfrum (ed),et al, *supra note 22, page 41*

possible to classify new service activities that may come to picture through time.²⁷ Depending on this classification, GATS under Art I (3b) defines services as “any service in any sector except services supplied in the exercise of governmental authority”. This cannot be in any means definition of service, rather an indication of sectors and subsectors of MTN.GNS/W/120 list, then by indicating and limiting the scope of GATS. This is the result of an opt-in or positive list approach the GATS contracting parties preferred to adopt, where by members are bound only with respect to specific commitments by sector or subsector that they includes under their GATs schedule of commitments.²⁸

Having the above fact at hand, i.e. the fact that, today almost all the liberalization commitments in trade in services under GATS are made on a sectorial and sub-sectorial basis; there is no need to define services on an abstract level.²⁹ Thus, for the sake of this paper it is enough to understand service as it includes any service in any sector and sub-sector as enumerated under W/120 excluding services supplied by government in the exercise of its’ governmental authority,³⁰ and air transport traffic right as made exceptional under GATS.³¹ This is because the concern of this paper is not service in general but only services which are traded commercially and service sectors and sub-sectors to which any state member may made any commitment under GATS.

When we come to the second related concept that we need to define here, we get the term international trade in service. The term international trade in service could generally be explained as; the exchange of service across international borders (between countries).³² Our main legal reference on the area, GATS also define trade in service as a supply of a service through four means or modes of delivery.³³ Under this definition the term “Supply of

²⁷ Uruguay round multilateral trade negotiations ,*GATT secretariat services sectoral classification list of 10 July 1991*(MTN.GNS/W/120),here after MTN.GNS/W/120,available at https://www.wto.org/gatt_docs/English/SULPDF/92120215.pdf (accessed on June 2016)

²⁸ Andreas F Lowenfield, *international economic law* ,2nd edition ,2008 oxford university press, page 126. See also, Raj Bhala, *International Trade Law Interdisciplinary Theory And Practice*,3rd edition,(2008) ,page 1544

²⁹ Markus Krajewski, *Services Trade Liberalization and Regulation: New Developments and Old Problems*, page 158

³⁰ GATS article I(3b)

³¹ GATS, Annex on Air Transport Services, paragraph two.

³² Reem Heakal, Available at <http://www.investopedia.com/articles/03/112503.asp> (accessed on March 2016)

³³ GATS article I(2a-d)

service” itself is defined as to mean the production, distribution, marketing, sale and delivery of a service.³⁴ From this definition, one can discern that, unlike trade in goods which can only be delivered through one mode of delivery; service can be traded through four modes or means of delivery.³⁵

Understanding of these distinct modes of service supply is very important under trade in service. Because the cultural, social and economic effects of liberalizing trade in one service sector or subsector in each mode of supply is very dynamic which needs an independent assessment and decision of each state. That is why Members state, in the process of negotiation of commitment and especially under their trade in service liberalization schedule, determines the conditions of trade in services to which they want to bind themselves with regard to market access and national treatment, not only on a sector-by-sector but also on a mode-by-mode basis.³⁶ Under LDCs service waiver also the preferential treatments accorded to LDCs is specific not only to service sector and subsector but also to modes of service supply. Thus, a state may give preferential treatment regarding some service sector in some mode of supply and denies in other mode.

Until near past services was assumed worthless and economically unproductive³⁷ or to be untraded and made subject only to domestic regulations.³⁸ Accordingly, many states were also not willing to seat for negotiation on trade in service liberalization.³⁹ Because it was believed that, service liberalization almost always impinges on vital and sensitive areas of domestic policy and national sovereignty issues.⁴⁰ Having passed through such stiff challenges through time, some developed countries with the lead of USA, succeeded in placing trade in services for the first time on world trade agenda for multilateral trade in service negotiations, despite of high resistance from developing and LDCs.⁴¹ This period is the conception time of GATS.

³⁴ GATS article XXVIII(a)

³⁵ Accordingly, international trade in service encompasses; cross border supply of service , consumption by foreigners of services, foreign direct investment and the supply of service by temporary migratory of workers.

³⁶ Rüdiger Wolfrum (ed),et al , *supra note 22, page 49*

³⁷ Adam smith,*The wealthy of nations*, (2010, Poland),Page 554, available at <http://political-economy.com/wealth-of-nations-adam-smith/> ,accessed on October ,2016.

³⁸ Rüdiger Wolfrum (ed),et al, *supra note 22, page 1*

³⁹ Raj Bhala, *International Trade Law Interdisciplinary Theory And Practice*,3rd edition,(2008) ,page 1539

⁴⁰ Dietrich Barth, *The Prospects of International Trade in Services*,(1999) Page 34,available at <http://library.fes.de/pdf-files/stabsabteilung/00528.pdf> (accessed on October 2016)

⁴¹ Rüdiger Wolfrum (ed),et al, *supra note 22, page 2*

Accordingly, adopted at Marrakesh on 15 April 1994 and Entering into force on 1 January 1995, GATS is the first set of multilaterally negotiated and legally enforceable rules covering international trade in services.⁴² GATS established a regulatory framework within which WTO Members can undertake and implement commitments for the liberalization of trade in services.⁴³ The agreement covers all measures of Members affecting trade in services.⁴⁴

Under GATS obligation of Non-discrimination is a key concept. There are two main principles of non-discrimination; the MFN obligation and the NT obligation. With this regard, what makes GATS unique is the introduction of a flexible framework of disciplines containing both general (unconditional) and specific (conditional) obligations.⁴⁵ While unconditional obligations apply across the board to measures affecting trade in services, the conditional obligations apply only to service sector and modes of supply for which bindings are being assumed, and then by determining the extent of liberalization undertaken by individual countries.

The unconditional non-discrimination commitment is the MFN principle. Thus, MFN principle obliges members automatically and unconditionally to grant all trade preferences they provide to any other country to all other member states.⁴⁶ On the other hand, specific obligation under GATS (e.g. national treatment and market access) assumes a fundamentally different role of allowing for progressive liberalization of trade in service. This is among the fruits of the somber struggle LDCs made jointly with developing countries at the time of GATS negotiation in securing the necessary privilege of limiting one's own commitments depending on their domestic strength and weakness.⁴⁷

⁴² Peter Pariag, *Concept Paper On Classification Of Service* (2009), Page 8, available at http://archive.caricom.org/jsp/single_market/services_regime/concept_paper_classification_services.pdf (accessed on march 2016)

⁴³ Bossche, *supra* note 2, p. 50

⁴⁴ GATS article I(1)

⁴⁵ Aditya Mattoo, (ed) et al , *supra* note 21, page 25

⁴⁶ GATS article II (1). But as an exception to the MFN general principle a state could be exempted for a fixed period of time from this of its obligation (GATS article II (2) and Annex on Article II Exemptions).

⁴⁷ Dietrich Barth, *supra* note 37, Page 47

2.2.Current Trend in Global Trade in Service

Today Services is the world largest and fastest-growing sector, providing more than 60% of global output and even larger share of employment in many countries.⁴⁸ Trade in Services has for many years been experiencing a fundamental shift in significance and today we are living in world in which the share of trade in service took a substantial share of world trade. Over the last two decades compared with trade in goods, global trade in commercial services increased by 8 per cent on average annually with Certain services sectors, such as computer and information services, and financial services, have often take the lion share of the average.⁴⁹ Compared with trade in goods this is a big growth.

As measured by balance-of-payments statistics⁵⁰, for example in 2014 global exports of commercial service is increased by 5%, while trade in goods increased only by 0.5 percent.⁵¹ To puts this fact in numerical data, in 1995 World exports of commercial service valued US\$1.179 trillion, which is increased to US\$2.516 trillion in 2005, and reached US \$ 4.872 trillion in 2014.⁵² In fact in 2015 because of different economic and political factors the value of world commercial service export fell by 6% to US\$ 4.754 trillion.⁵³ All of this fact shows how far trade in service became at heart of international trade and could be the newly subject area of competition between states.

But today this growth of trade in service is almost dominated by developed countries. Accordingly, “in developed countries, services account for roughly 70 per cent of production, employing nearly 80 per cent of workers in OECD countries.”⁵⁴ For example in 2014 and 2015, top 10 traders in world commercial services represent more than half of the world’s

⁴⁸ Debapriya Bhattachaya and Mia Mitic (ed), *Least Developed Counties And Trade: Challenges Of Implementing The Bali Package*, Studies In Trade And Investment 83,)(2015),page 82 available at <http://ldc4monitor.org/wp-content/uploads/2015/11/LDCs-and-trade.pdf> (accessed on march 2016)

⁴⁹ international statistical report 2015,page 20

⁵⁰ “An economy’s Balance of Payments, namely the services account, can be used to derive estimates covering trade in commercial services for modes 1, 2 and 4. The Balance of Payments does however not include most of the information on services supplied through foreign affiliates that is required to estimate the size of mode 3.International trade in services is therefore considered to be larger than the totals indicated by balance-of-payments figures.” See International trade statistics 2015,Page 160

⁵¹ International trade statistics 2015, page 15

⁵² International trade statistics 2015, page 14

⁵³ World trade statistical review 2016,page 16

⁵⁴ *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs*, supra note 13, page 118

total trade in commercial services with 51.9 percent⁵⁵ and 53 percent⁵⁶ share each year respectively. Europe also accounted for a large fraction of world commercial services trade in 2015 with 46 per cent of exports share.⁵⁷ In individual capacity USA alone cover 13.9 percent of world service export in 2014⁵⁸ and 14.5 percent in 2015 which make her the champion in trade in service.⁵⁹ In contrast to the importunate trade deficit on trade in goods, USA also has constantly being recording a surplus on trade in services.⁶⁰ For example in 2014 the USA trade in services surplus was US\$233.1 billion.⁶¹

2.2.1. LDCs in international trade in service

LDCs are those state recognized as such by the UN.⁶² The UN categorize to this group those state which exhibit the lowest indicators of socio-economic development, that is per capita income, human assets and economic vulnerability parameters rating of all counties in the world.⁶³ As of 11 December 2015 there are 48 countries within this group and 34 of which are African countries including Ethiopia.⁶⁴

Although, today international trade in commercial services is playing an increasingly vital role in countries social and economic development, the participation of LDCs in international services trade remains insignificant, despite making Substantial progress. Even though, LDCs

⁵⁵International trade statistics 2015,page 46

⁵⁶ World trade statistical review 2016,page 21

⁵⁷ Id ,page 23

⁵⁸ International statistical report 2015, Page 46

⁵⁹ World trade statistical review 2016,page 96

⁶⁰ Alexis N. Grimm and Charu S. Krishnan(2015), *U.S. International Services; Trade in Services in 2014 and Services Supplied Through Affiliates in 2013,(2005),page 2,available at https://www.bea.gov/scb/pdf/2014/.../1014_international_services.pdf (accessed on April 2016)*

⁶¹ Alexis N. Grimm, et al,*supra note 57,page 3*

⁶² WTO Agreement, Article XI (2)

⁶³ United Nations Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, "The Criteria for the identification of the LDCs," available at <http://www.un.org/special-rep/ohrlls/l dc/l dc%20criteria.htm>. accessed on April 2016)

⁶⁴ List Of Least Developed Countries as of 11 December 2015, available at www.un.org/en/development/desa/policy/cdp/l dc/l dc_list.pdf ,(accessed on December 2016). As of May 2016 also nothing changed on this data.(United nations committee on development policy,(UNCDP), *List of Least Developed Countries (as of May 2016)*, In 2015, the population of LDCs was 954 million which cover 13% of the world's total population(UN-OHRLLS Supra note 13).

represent just about more than 13% of the globe's population in 2015⁶⁵, their participation in global commercial trade remain insignificant with only 0.8% share of service export in the same year.⁶⁶ The share of LDCs in world service exports increased from 0.5 per cent of total trade in 1995 to 1.1 per cent in 2014⁶⁷ and decreased back to 0.8 percent in 2015.⁶⁸ Accordingly, LDCs' Export of commercial service valued US\$37.1 billion in 2014 and in 2015 became US\$36.⁶⁹ Related with this, ratio of exports of commercial service to GDP of LDCs in 2014 is 4.0 and in 2015 even decreased to 3.9.⁷⁰ This fact clearly shows the stumpy participation of LDCs in international trade in service.

LDCs have many important constraints, to have an adequate share of international service export.⁷¹ Poor infrastructure, limited knowledge and skills and lack of financial resources are some of the main challenges, LDCs are facing today.⁷² Very serious Trade restrictive national qualification requirements set by non LDCs and their unwillingness to recognize service and service suppliers of LDCs is also the other main challenges.⁷³ In fact, the limited capacity of LDCs even to fulfill global standards in some service sector should not be forgotten.

The fact that the participation of LDCs in international trade in commercial service is very insignificant could be seen from to two angles. One, even though LDCs are many in number (48) with a huge number of population, their share as a group in international trade in commercial service is very insignificant. For example, the share of LDCs as group in world service export is only 1.1 percent in 2014 and even became 0.8 percent in 2015. Second, LDCs as a group suffer from service trade deficits. Today, they as a group are net importers of

⁶⁵ UN-OHRLLS Supra note 13

⁶⁶ World trade statistical review 2016,page 61

⁶⁷ International statistical report 2015, Page 28

⁶⁸ Id ,page 28

⁶⁹ WTO, statistical report 2015,page Page 62 and World trade statistical review 2016,page 103

⁷⁰ International trade statistics 2015, page 59 and World trade statistical review 2016 page 101.

⁷¹ Claudia Manrique Carpio & Jaume Comas Mir, *The Least-Developed Countries Services Waiver: Any Alternative Under the GATS?*, Gottingen Journal of International Law 6 (2014) 1, 115-143,(2014),page 116, available at www.gojil.eu/issues/61/61_article_carpio_mir.pdf (accessed on October 2016)

⁷² World trade statistical review 2016,page 60

⁷³ *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 dated 21 July 2014,paragraph 2(2).

commercial services.⁷⁴ For instance in 2015 as group LDCs' services trade deficit is valued US\$ 39 billion.⁷⁵ To see LDCs trade in service balance at sector level, transport and other commercial service sector have experienced continual trade deficits, while only tourism sector experiencing trade surplus.⁷⁶ In 2015, the LDCs trade in service surplus in tourism sector reached US\$ 11.4 billion.⁷⁷

2.2.2. Ethiopia in international trade in service

Ethiopia is among LDCs and currently it is not member of WTO. In Ethiopia the service sector, scored best in terms of growth and start to accounted for the highest share in the GDP with 46.2 percent overcoming agriculture which accounted 40.2 percent share in the period 2011-2014.⁷⁸ But Service sector accounts only for 22% of Employment opportunity in 2013 Compared with 73% in agriculture.⁷⁹ This illustrate that the productivity of the much fewer service sector workers far prevail over labor productivity of the large number of people engaged in the agriculture sector. It also means that the quality of jobs and profits in the service sector is higher than those in the agriculture sector.

However, this importance of services in the Ethiopian economy is not reflected in its share of world trade in service. As any LDCs, the participation of Ethiopia in international trade in service is very insignificant. For example, the overall value of exported commercial service by Ethiopia is valued US\$2740 million in 2014 and US\$ 2851 million in 2015.⁸⁰ Accordingly the contribution of export of commercial service to the GDP is also insignificant with only 5 percent in 2014 and 4.6 percent in 2015.⁸¹ A trade deficit is also another feature of country's

⁷⁴ World trade statistical review 2016,page 62

⁷⁵ ibid

⁷⁶ ibid

⁷⁷ ibid

⁷⁸ The federal democratic republic of Ethiopia, *The Second Growth and Transformation Plan (GTP II) (2015/16-2019/20)*,page 4 available at <https://www.africaintelligence.com/c/dc/LOI/1415/GTP-II.pdf> (accessed on November 2016)

⁷⁹ International trade center ,*service snapshot; Ethiopia (2013)*,page 1,available at www.intracen.org/uploadedFiles/.../Content/...Services.../Ethiopia.pdf (accessed on October 2016)

⁸⁰ International trade statistics 2015, page 62 and world trade statistical review 2016 page 101.

⁸¹ International trade statistics 2015, page 59 and 62 and, World trade statistical review 2016 page 101.

trade in service. In 2014 the Ethiopian service trade deficits valued US\$1496 million and in 2015 valued US\$1761million.⁸²

When we see Ethiopian service export by category; transport service sector accounts for a lion share of Ethiopian services export. Accordingly in 2014 the share of transport, travel (tourism) and other commercial service in Ethiopian service export calculated at 80.0 percent, 12.8 percent and 7.2 percent respectively.⁸³ Likewise in 2015 the share of transport, travel (tourism) and other commercial service sector in Ethiopian service export is 77.2 percent, 14.4 percent and 8.4 percent respectively.⁸⁴ Ethiopia is the largest transport exporter of the LDCs with a 29.4 per cent share in 2015.⁸⁵

In short, today LDCs' share in international trade in service is very insignificant and also very limited to some archaic service sectors. Trade deficit is also a common feature of LDCs trade in service as a group. To change this history LDC members starting from the very moment of bringing trade in service on international trade agenda, have been struggling for special preferential treatments of their service and service suppliers under international trade in service. Accordingly, GATS incorporated some general provisions with aim of according special preferential treatments for LDCs. These are the foundation stone for today's LDC service waiver preferential treatment. Therefore, under the next topic these provisions will be discussed in lights of LDCs service waiver negotiation history.

2.3.Special and differential treatments (SDT) under GATS

Special and differential treatment (SDT) for LDCs is one of the core pillars of WTO system.⁸⁶ Special handling of LDCs under GATS starts from the preamble. The preamble of the same states that; -

⁸² World trade statistical review 2016,page 103 and page 148,

⁸³ International statistical report 2015,page Page 62

⁸⁴ World trade statistical review 2016,page 103

⁸⁵ Id ,page 61

⁸⁶ Ghebregergs, M. G, 2013(1) '*Integration of the Ethiopian Financial Service Sector through Regional Financial Arrangements: A Step before WTO Accession?*', Law Social Justice & Global Development Journal (LGD),page 22,available at <https://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2013.../ghebregergs/>(accessed on February 2016)

*“Particular account shall be taken of the serious difficulty of LDCs in undertaking negotiated specific commitments in view of their special economic situation and their development, trade and financial needs”.*⁸⁷

Article IV of GATS takes further the declaration under the preamble by requiring other WTO members to increase the participation of LDCs, through the negotiation of specific commitments. These specific commitments among others should include the liberalization of market access in sectors and modes of supply of export interest to LDCs⁸⁸, according appropriate flexibility for individual LDCs in their trade in service liberalizing commitments⁸⁹ and providing technical assistances for LDCs.⁹⁰ However, no mechanism was put in place to operationalize this article. GATS Article XIX (3) prescribes the preparation of negotiation guidelines and procedures on how they will provide these preferential treatments for LDCs.

As a result, in 2001 the council for trade in service adopted *“Guidelines and Procedures for the Negotiation on Trade in Services (guideline)”*.⁹¹ Again in 2003 the council of trade in service adopted the *“Modalities for the Special Treatment for LDC Members (LDC Modalities)”*.⁹² The main objective of the Modalities and guideline is to ensure maximum flexibility for LDCs and then by form the basis for the negotiations.⁹³ The modalities contain useful provisions and practical examples of activities aimed at increasing the participation of LDCs in trade in services.⁹⁴ So, Article IV of GATS should be read together with the Modalities and the Guidelines and Procedures for the Negotiations on Trade in Services.

Accordingly, the preferential treatment for LDCs under GATS, generally have three main forms. The first one is a favor providing LDCs with preferential market access in developed

⁸⁷ Preamble to GATS paragraph 6

⁸⁸ GATS article IV(1c) and article IV(3)

⁸⁹ GATS article IV (3) and article XIX (2).

⁹⁰ GATS article IV(1a) , article IV(2a) and XXV(1)

⁹¹ Special Session of the Council for Trade in Services, *‘Guidelines and Procedures for the Negotiations on Trade in Services’*, S/L/93, March 28, 2001, available at https://www.wto.org/english/tratop_e/serv_e/sl93.doc (accessed on February 2016)

⁹² WTO, special session of council for trade in services, *modalities for the special treatment for least-developed country members in the negotiations on trade in services’*, TN/S/13, September 3, 2003

⁹³ Guideline(S/L/93), paragraph 2 and Modality (TN/S/13), paragraph 2

⁹⁴ *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs*, page 2

and developing countries (may also include the today's LDCs service waiver)⁹⁵. This is favor allowing developed and developing countries to take commitment to liberalize service sector and mode of delivery which is a potential benefit of LDCs.⁹⁶ For example, the modality by recognizing that the Mode 4 provides potential benefits to LDCs, required Members to consider undertaking commitments to provide access in this mode.⁹⁷

The second favor allows flexibility for LDCs on their commitments under GATS system.⁹⁸ For example the modality under paragraph 5 state that, their shall be flexibility for LDCs to open “fewer sectors” than those opened by developed countries, liberalize fewer types of transactions, not to offer full national treatment, no additional commitment on regulatory issues, Extend market access in line with their development situation; including attaching access conditions aimed at achieving the objectives referred to in Article IV.

The third type of preferential treatment for LDCs is a favor of technical assistance and other support given by none LDCs.⁹⁹ Technical assistance given for LDCs may include any measures; intended to strengthen their domestic services capacity, build institutional and human capacity and promote the development of their infrastructure and services exports through training, technology transfer and etc.¹⁰⁰

Though it is already prescribed as such, the real movements for the implementation of those preferential treatments started very late. Because these provisions under modalities are still very general and did not specify a mechanism for bringing this about and lacks clarity on the specific preferential treatment LDC should be given. Specially, market access preferential treatment as stated under GATS, guideline and modality is very general which needs further negotiations. That is why the modalities further stipulate that members should develop “appropriate mechanisms” to facilitate the effective market access of LDC services and

⁹⁵ GATS article IV(1c) and Modalities(TN/S/13) paragraph 6

⁹⁶ WTO Conference Ministers Decision, *Preferential Treatment To Services And Service Suppliers Of Least-Developed Countries Waiver decision*, ‘WT/L/847’ 19 December 2011, paragraph 1 available at https://docs.wto.org/dol2fe/Pages/FE_Search/.../Q/WT/L/847.pdf (accessed on April 2016)

⁹⁷ Modalities(TN/S/13), paragraph 9

⁹⁸ GATS article XIX(2)and article 4(3),Guideline(S/L/93),paragraph 2 and 12 ;and modality(TN/S/13) paragraph 4 and 5

⁹⁹ GATS article XXV and article 4(3), modality(TN/S/13) paragraph 12 and Guideline(S/L/93) paragraph 14

¹⁰⁰ Modality(TN/S/13), paragraph 8

service suppliers to foreign markets.¹⁰¹ But the agenda was forgotten. Thus, the Hong Kong Ministerial declaration, once again calls for full and effective implementation of the LDC Modalities and accordingly requires members to develop appropriate mechanisms for facilitating market access in sectors and modes of supply of interest to LDCs.¹⁰²

Accordingly, One month before the Geneva Ministerial Conference in 2011, the council of trade in service (CTS) submitted a proposal as the appropriate mechanism to assure effective access of LDCs' services and service suppliers to foreign markets could be achieved through "Service waiver."¹⁰³ On 17 December 2011 at Geneva Ministerial Conference, state members accepted this proposal and then by agreed for the first time to a mechanism in the form of a waiver of the GATS MFN principle.¹⁰⁴ The decision is a waiver that, when granting trade preferences to LDCs, exempts WTO Members from their legal obligation to provide non-discriminatory treatment through the MFN principle to all trading state partners.¹⁰⁵

2.3.1. The Concept of LDCs Service Waiver

LDC service waiver is a specific preferential treatment mechanisms adopted by WTO members to facilitate the effective market access of LDCs' services and service suppliers to foreign markets. It effectively operates as a new LDC specific Enabling Clause for services.¹⁰⁶ This mechanism aimed at providing member states with the possibility to depart from the MFN principle and be able to give preferential treatment for LDCs without the obligation to provide this treatment for non-LDCs as MFN principle dictate.¹⁰⁷ The waiver decision stated that, Members may provide preferential treatment to services and service suppliers of LDCs with respect to market access measures and any other non-market access measures, than to like services and service suppliers of other Members.¹⁰⁸ This mean that, the MFN obligations

¹⁰¹ Id, paragraph 6 and 7

¹⁰² Hong Kong Ministerial Declaration, *Doha Work Programme* adopted on 18 December 2005, WT/MIN(05)/DEC dated 22 December 2005, Annex C; service, paragraph 3

¹⁰³ UNCTAD, *The Least Developed Countries Report 2011* at page iii, available at http://unctad.org/en/docs/ldc2011_en.pdf (accessed on April 2016)

¹⁰⁴ Service waiver decision(WT/L/847), paragraph 1

¹⁰⁵ ibid

¹⁰⁶ Mohammad Abu Yusuf and Md. Shoaib Akhtar, *LDC services waiver: Challenges and way forward*, The Financial Express(2013),page 1

¹⁰⁷ Service waiver decision paragraph 1

¹⁰⁸ Ibid

of the GATS are waived to the extent necessary to permit members to provide preferential treatment to services and services suppliers of LDCs without according the same treatment to like services and service suppliers of all other members. Accordingly, if any state went to give special preferences for LDCs regarding trade in service, what matter is “only their commitment” and the MFN principle under GATS no more is a justification not to do so.

This preferential treatment will terminate upon the expiration of a period of 15 years from the date of its adoption¹⁰⁹, i.e. in 2026. But as no member had made use of the opportunity by the end of the first two years¹¹⁰, at the 2013 WTO Ministerial Conference in Bali, ministers adopted a decision to take various steps to operationalize the waiver.¹¹¹ The Bali decision added a requirement that, first LDCs should prepare and submits a collective request for waivers identifying sectors or subsector and modes of supply particular export interest to them.¹¹² Second, the CTS should organize a high-level meeting six months after the submission of the collective request.¹¹³ Taking in account the sluggish implementation process of service waiver, the Nairobi Ministerial Conference in 2015 made decision to extend the waiver until 31 December 2030.¹¹⁴ In fact state may individually extend the favor at any time.¹¹⁵

Accordingly, the LDC Group submitted its collective request on 21 July 2014 and also WTO members held the High-Level Meeting on 5 February 2015.¹¹⁶ At the meeting 25 members were declared their intentions to provide preferential treatment to LDC services and service

¹⁰⁹ Id ,paragraph 7

¹¹⁰ Drake-Brockman, J., Greenidge, A., Lan, J., and Zhao, Q. (2015). *Making the Most of the LDC Services Waiver*, Geneva: ITC.,page 2 available at

<http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/makingmost.pdf> (accessed on February 2016)

¹¹¹ WTO, ministerial decision, *Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries* adopted on 7 December of 2013, WT/L/918 dated 11 December 2011,paragraph 1(3).available at www.mofa.go.jp/files/000023738.pdf (accessed on June 2016)

¹¹² Service waiver operationalisation decision (WT/MIN(13)/43WT/L/918),paragraph 1(2)

¹¹³ibid

¹¹⁴ WTO Ministerial declaration, *Implementation Of Preferential Treatment In Favor Of Services And Service Suppliers Of Least Developed Countries And Increasing LDC Participation In Services Trade*, WT/MIN(15)/48 WT/L/982,adopted on 21 December 2015, paragraph 1

¹¹⁵ Service waiver operationalisation decision(WT/MIN(13)/43WT/L/918), paragraph 1(3)

¹¹⁶ Supra Note 1,page 19

suppliers.¹¹⁷ But, as of 16 November 2016, 23 members had submitted their official notifications to the CTS. So, today, LDCs became beneficiary of preferential treatments scheme regarding trade in service as waiver from MFN principles for non LDCs giving the preferences.

2.3.2. Main Conditions and Procedural Requirements

Under LDCs service waiver there are some conditions and procedural requirements to be fulfilled by LDCs to be a beneficiary of a waiver or for non-LDCs to extend the favor for LDCs.

1) Beneficiaries

Service waiver preferential treatment is devised for service and service suppliers of LDCs designated as such by the UN.¹¹⁸ Membership to WTO is not a parameter for LDCs to be a beneficiary of this preferential treatment scheme.¹¹⁹ Thus, Ethiopia which is among LDCs, but not a member of WTO is also among the beneficiaries of LDCs service waiver. Why WTO will extend this preferential treatment for non member LDCs? This writer has the stand that the reason Why WTO extends this preferential treatment for non member LDCs such as Ethiopia is to built their capacity and then to encourage their accession. Because LDCs have no capacity to compete with other members state in service trade then by not confident to accede to WTO.

Therefore, the first main condition under LDCs service waiver is that, the beneficiaries should be a service supplier of LDCs. Accordingly, for the purpose of service waiver preferential treatment, service supplier of LDCs includes and limited to natural person of a LDCs or a juridical person of LDCs.¹²⁰ This is to control free riders, and this could also be done through rule of origin.

Though, the waiver decision defined the term judicial person of LDCs, but not the term natural person of LDCs. Under waiver decision it is simply stated that, natural person is

¹¹⁷ Drake-Brockman (ed),et al,supra note 111,page 1

¹¹⁸ Service Waiver decision(WT/L/847), paragraph 8

¹¹⁹ Ibid

¹²⁰ Service waiver decision, (WT/L/847), paragraph 5

considered a supplier eligible for a preference, if he or she is “a natural person of a LDCs.”¹²¹ However, GATS provides some guidance within its definitions of “natural person of another member” under article XXVIII (K). Accordingly, if the country called another Member under this provision is assumed LDC and accordingly the term “another member” is substituted with the term LDC, the provision read as follow:-

*“Natural person of LDC means a natural person who resides in the territory of that LDC or any other Member, and who under the law of that LDC: is a national of that LDC; or has the right of permanent residence in that LDC (emphasis added).”*¹²²

From the cumulative reading of article XXVIII (k) GATS and paragraph 5(a) of the service waiver decision, it seems that under the services waiver both nationals and permanent residents in LDCs are beneficiaries of LDCs service waiver preferential scheme.

The second beneficiary of LDCs service waiver preferential treatments are the judicial persons of LDCs.¹²³ For the purpose of LDCs service waiver;

*The judicial person should be, I. “constituted or otherwise organized under the law of LDCs, II. If it is owned or controlled by non LDC natural persons or is a judicial person organized under law of non LDC, it must be engaged in substantive business operation in the LDC territory.”*¹²⁴

Related with this, a state ought to be certain that its preferential treatments for LDCs should not be discriminatory. Thus, any favor given for any LDCs as per the waiver decision shall be granted immediately and unconditionally to like services and service suppliers of all LDCs Members.¹²⁵

2) Prior Notice

Once a state member which decided to provide service waiver preferential treatments rightly differentiated the specific LDC beneficiaries as per the waiver decision; it should give a prior

¹²¹ Ibid

¹²² GATS article XXVIII(K)

¹²³ Service Waiver decision, (WT/L/847)paragraph 5

¹²⁴ Service waiver decision, (WT/L/847) ,paragraph 5(b)

¹²⁵ Service waiver decision, (WT/L/847), paragraph 1

notification of its plan, for CTS.¹²⁶ The notification should be detail enough and at least indicate the preferential treatment made available, the sectors or sub-sectors concerned and for how long the preferences are maintained.¹²⁷ Any modification to the preferences provided, should also be subsequently reported.¹²⁸ This condition is devised to make sure that, measures taken in the name of the LDCs service waiver should not unnecessarily reduce the benefits of non-LDC members under GATS. Because, the main objectives of LDCs service scheme is to promote service trade of LDCs and is not to constitute an impediment to the reduction or elimination of market access barriers on a MFN basis.¹²⁹ To this end, the benefactor state should be ready for consultation with any state members claiming that the benefits accruing to it under the GATS schedule of commitments may be or is being impaired unduly as a result of such preferential treatments of LDCs.¹³⁰ thus, in case the interest of state members is unnecessarily affected by these measures, the benefactor states have an obligation to make improvements on these preferential measures.

3) Approval

Under LDC service waiver decision, any state members could extent preferential treatment regarding market access measures and any non-market access measures of GATS.¹³¹ But as discussed above to provide any preferential treatments on these measures, Prior notice to CTS is a common precondition in both cases.¹³² Ones the council of trade is notified, the waiver automatically cover Market Access preferences. But, preferential treatment with respect to the application of measures other than market access is subject to additional requirement of approval by CTS.¹³³

At this point any one may come with one reasonable question, why this additional precondition in case of providing preferential treatments on non market access measures of GATS? With regard to this point, this writer has the stand that, this requirement appears to be related to the profound multifaceted effects of favors given on non-market access measures

¹²⁶ Service waiver decision, (WT/L/847), paragraph 2

¹²⁷ *ibid*

¹²⁸ *ibid*

¹²⁹ Service waiver decision, (WT/L/847) paragraph 4

¹³⁰ Service Waiver decision, (WT/L/847)paragraph 3

¹³¹ Service Waiver decision, (WT/L/847)paragraph 1

¹³² Service waiver decision, (WT/L/847), paragraph 2

¹³³ Service Waiver decision, (WT/L/847)paragraph 1

have on non LDCs. In the case of market access measures which mostly deal with well-defined set of quantitative restriction under article XVI (2) of GATS, the effects is clear and direct. From the beginning, the current problem of LDCS in international service trade is not the issue of quantitative restriction.¹³⁴ Because, today as LDCs are tied with many supply sides challenges of their own, any quantitative favor done for this group can not in any means be a threat for service export share of non- LDCs. But, this is the case only as far as the standard requirements (e.g. regulatory measures and recognition measures) for service and service supplier is common for all states.

On the other hand, preferential treatment on non-markets access measures which include national treatment, regulatory measures and recognition measures have indirect, profound and multifaceted effects. For example, Recognition measures are an advanced instrument of trade liberalization which typically requires a greater degree of economic and political integration than market access.¹³⁵ GATS also mandated CTS to negotiate and develop any necessary disciplines on domestic regulatory measures.¹³⁶ The additional requirement for approval, in the case of non-market access favors partially emanate from this mandate of CTS under GATS. In short, this additional requirement will give a chance for non LDC members to critically analyze case by case this type of preferences as it could substantially affect their interests in different ways.

2.3.3. Scope of LDC Services Waiver

The scope of LDCs service waiver could be seen from two angles. The first one is in lights of the beneficiaries covered by this preferential treatment scheme. From this angle, as discussed above, the waiver covers all service and service suppliers of LDCs whether a member of WTO or not. The Second approach to examine the scope of LDC service waiver is to investigate the coverage of preferential treatments that could be provided for LDCs. Accordingly, LDC services waiver incorporate three types of preferences. First, state could give special preferences on market access measures of the type referred to in GATs Article XVI.¹³⁷ Second, members could also provide preferential treatment on any other non market

¹³⁴ Claudia Manrique Carpio, et al, *supra* note 69, page 132

¹³⁵ Rüdiger Wolfrum (ed), et al, *supra* note 22, page 189

¹³⁶ GATS article VI (4)

¹³⁷ Service waiver decision, (WT/L/847) paragraph 1

access measures.¹³⁸ Thirdly, state members could extend technical assistance and capacity building support for LDCs.¹³⁹

2.3.3.1. Market Access Preferences

GATS, does not defined the term market access. Article XVI (2) of GATS simply provides an exhaustive list of six types of restrictions that a Member is not allowed to operate in a scheduled sector unless specified. These limitations deals with ownership rules for foreign companies, the type of legal entity that a foreign company is allowed to operate, the number of suppliers allowed in a specific market, and the value of transactions or assets.¹⁴⁰ Thus, market access measures essentially cover quantitative restrictions to service and services suppliers and other limitations related with the type of legal entity or economic needs tests. In fact the liberalization commitment on market access measures under article XVI (2) of GATS is not mandatory. But once any commitment is undertaken on market access measures and included under one's own schedule of commitment, it become mandatory to accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favorable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.¹⁴¹

According to the waiver decision, among the area of GATS measures against which the MFN principle could be waived in favor of LDCs, market access measures are the main one. Accordingly, any Members could provide more preferential treatment to services and service suppliers of LDCs with respect to the market access measures as described under Article XVI (2) of GATS, than to like services and service suppliers of other Members. For example, the member could grant additional quotas for LDCs regarding; number of service provider, total value of service transactions, total number of service operations, and entry of natural person. State could also totally avoid or limits the restriction with the type of legal entity through which a service supplier may supply a service, in favor of LDCs.

¹³⁸ *ibid*

¹³⁹ Service waiver Operationalisation decision(WT/MIN(13)/43WT/L/918), paragraph 1(4)

¹⁴⁰ Olivier Cattaneo, Michael Engman, Sebastian Saez and Robert M.stern(ed), *International trade in service: new trend and opportunities for developing countries*, page 13.

¹⁴¹ GATS ,article XVI(1)

2.3.3.2. Non-Market Access Measure

In addition to market access measures, state members could also provide more preferential treatments for service and service providers of LDCs on any non-market access measures under GATS.¹⁴² Under GATS provisions non market access measures includes, national treatment measures under article XVII, regulatory measures under article VI, measures on recognition of services suppliers under article VII, and other measures including tax measures via additional commitments under article XVIII.¹⁴³

So, in the current wording of the waiver decision under paragraph one, other preferences that any state could provide for LDCs include; regulatory preferences, preferential discrimination under article XVII of GATS and also include tax exemption. Thus, a state could make easy of its standards or criteria for the authorization, licensing or certification of services suppliers of LDCs, than for other states. For example state could recognize qualifications based on practical Experience for LDC professionals while requiring formal degree for others.¹⁴⁴ Furthermore, state members could administrate regulations with very shorter periods to determine applications for licenses by LDCs, and no or lower application fees for LDCs, than other state.¹⁴⁵

2.3.3.3. Technical Assistance and Capacity Building

Besides, the above two type of preferential treatments, the service waiver decision incorporated technical assistance and capacity building scheme.¹⁴⁶ Technical assistance and capacity building support given for LDCs may include any measures; intended to strengthen their domestic services capacity, build institutional and human capacity and promote the development of their infrastructure and services exports through training, technology transfer and etc.¹⁴⁷ Taking in account the limited supply side capacities of LDCs, this kind of support have big meaning for them. Because, these type of assistance could build the service

¹⁴² Service Waiver decision(WT/L/847), paragraph 1

¹⁴³ Sauv  Pierre and Ward Natasha, thinking aloud about how best to make the LDC service waiver operational, 11 November 2013, page 7, available at http://unctad.org/meetings/es/Presentation/aldc2013_WTOBali_Sauve_Ward_en.pdf (accessed on June 2016)

¹⁴⁴ Claudia Manrique Carpio, et al, supra note 69, page 28

¹⁴⁵ Ibid

¹⁴⁶ Service waiver Operationalisation decision(WT/MIN(13)/43WT/L/918), paragraph 1(4)

¹⁴⁷ Service waiver Operationalisation decision(WT/MIN(13)/43WT/L/918), paragraph 1(4)

exporting capacity of LDCs and even enable them to fully utilize the market access facilitated through service waiver preferential treatments. It is in 2013 that WTO state members agreed to incorporate technical assistance and capacity building type of assistance to LDCs service waiver preferential treatments. This decision is among many measures taken at the time by state members to make the service waiver operational.

Chapter three

3. Potential prospects under LDC Service Waiver

3.1.Introduction

The importance of trade in services is not limited to pure economic importance or creation of new commercial opportunities only in the services sector.¹⁴⁸ Services sector could support almost economy wide activities including in agriculture and manufacturing sectors.¹⁴⁹ Because service serves as main inputs in many production processes in these sectors, by providing connectivity or increasing efficiency of production factors, such as human and capital resources.¹⁵⁰ Thus, trade in service could play a major role for achieving social and development policies of LDCs in reducing poverty and upgrading welfare.¹⁵¹ Trades in Services play a vital role in this case not only as a source of export diversification but also as a source of competitiveness for the economy as a whole.¹⁵² Thus, today it is the option with no choice for LDCs to structurally transform their economies and integrate into the world trade in service system.

Ethiopia has also set a plan to achieve a middle income state status by 2025.¹⁵³ Promoting international trade is among the policy direction the country established to achieve this objective.¹⁵⁴ The service waiver scheme is devised to help LDCs, through providing effective market access in sectors and modes of supply of export interest to them.¹⁵⁵ Thus if used properly by both side; by non LDCs in offering meaningful preferences and by LDCs in exploiting the preferences offered to all the extent possible, service waiver could help LDCs

¹⁴⁸ Juan A Marchetti and martin Roy(ed),Opening Market Or Trade In Service ;Countries And Sectors In Bilateral And WTO Negotiations ,page XIX

¹⁴⁹ UN, *International investment Agreements in services* ,UNCTAD series On international investment policies for Development,(2005),page 3

¹⁵⁰ Juan A Marchetti (ed),et al,supra note 119 ,page 24

¹⁵¹ Modalities (TN/S/13), paragraph 2.

¹⁵² Miguel Rodriguez Mendoza, Hannes Schloemann, Christophe Bellmann, Hadil Hijazi, *The LDC Services Waiver – Operationalized? A first look at preferences granted, constraints persisting, and early conclusions to be drawn*,(2016),page 22. Available at <http://unctad.org/meetings/en/SessionalDocuments/ditc-05072016-LDCWaiver-AssessmentPaper.pdf> (accessed on November 2016)

¹⁵³ GTP II page 16

¹⁵⁴ GTPII page 16

¹⁵⁵ Service Waiver decision (WT/L/847),paragraph 1

in multifaceted ways. The Ethiopian growth and transformation plan could also be effectively realized at least by appropriately exploiting the service waiver preferences treatments.

This chapter mainly discusses the potential prospects that LDC service waiver came with for LDCs in general and for Ethiopia in particular. In doing so, first we try to analyze the export interest of LDCs and specifically Ethiopia, in term of service sectors and mode of supply as discussed under collective request and other literatures in light with notified preferences of 23 members. Then, bearing in mind the importance of service trade for Ethiopia as discussed above and the serious trade barriers Ethiopia is facing today; we will see potential prospects that Ethiopia could exploit under LDC service waiver preferential treatment.

3.2. Collective Request vs. Preferences Notified

To prepare the collective request, the LDC Group conducted surveys and questionnaires of suppliers in selected countries, used reports and case studies from institutions and exchanged information in LDC Group meetings.¹⁵⁶ The content of the collective request is made to represent the diversified interest of LDCs service export in service sector and modes of supply, with the respective trade hurdle need to be dealt with by non LDC members went to grant service waiver preferential treatments.

The collective request starts by briefly enumerating trade barriers LDC suppliers are confronted with today. Accordingly, the main challenges pointed out by LDC group includes; “complications in recognizing LDC educational institutions, diplomas, and professional skills; imposition of transit taxes and other fees on tourists traveling to LDCs; and denial of visas or onerous unreasonable application fees for visas, licenses, and residence and work permits”.¹⁵⁷ The LDC group further stated with great emphasis that, “burdensome or prohibitive documentation, application, and registration requirements and associated delays in response to visa applications”, are also the main challenges for their service supplier.¹⁵⁸

In lights of modes of supply across sectors and GATS commitments, though all modes are not free enough, under their collective request the LDC group made clear that, mode 4 is the most

¹⁵⁶ Collective request (WT/L/847) paragraph 2(2)

¹⁵⁷ Collective request(WT/L/847) paragraph 2(3)

¹⁵⁸ *ibid*

problematic backed with many barriers.¹⁵⁹ It is also stated that, “Some LDC companies willing to enter markets and establish under Mode 3 are facing barriers similar to those they face under as natural persons under Mode 4.”¹⁶⁰ In addition, the LDC group affirmed that they are also tied with many supply sides constraints.¹⁶¹ Accordingly, LDC group specifically puts key sectors and mode of supply of their interests for service waiver preferential treatment.

Taking into account these challenges LDCs made a comprehensive list of horizontal and sector-specific request for preferential treatments. As of 16 November 2016, 23 members are official notified their preferential treatments. For the purposes of comparing preferences granted so far with the Collective Request, we broke it down into three parts; service sector, mode of supply and type of preferences.

3.2.1. Service Sectors

To begin with, LDCs as a group is a labor abundant with unskilled and semi-skilled man power. Thus, LDCs will take a comparative advantage of supplying service on sectors and subsectors which are labor intensive on one hand and not as such requires high qualifications, infrastructure and capital, on the other hand. Hence, LDCs service export interests mainly vested on mode 4 supply and on sectors and sub sectors more suitable for this mode.

Accordingly, business sector which comprise many categories of works which could be done by skilled and semi-skilled persons of LDCs; such as Professional Services (accounting, legal, engineering and nursing professions); computer and related service and many other business services (building clearing, consulting, maintenances and repair of equipment, photographic, packaging services and etc.); is the first main sector on which LDCs have export interest. Again, as one research done by WTO legal experts in 2013 on 20 LDCs including Ethiopia shows also, business service is the first to be selected by majority LDCs as their prior export interests.¹⁶² But under GATS commitments, the main mode of business service supply (mode 4) is the most under-represented and highly restricted.¹⁶³ Because of this fact, LDCs could not

¹⁵⁹ Collective request (WT/L/847), paragraph 2(4)

¹⁶⁰ Collective request paragraph 2(4)

¹⁶¹ Collective request paragraph 3(2)

¹⁶² Christophe Bellmann & Anne-Katrin Pfister, (2013), *The LDC Service Waiver*, International Centre For Trade And Sustainable Development (ICTSD), (2013), page 11

¹⁶³ Rupa Chanda, *GATS and its implications for developing countries: Key issues and concerns* (2002), Page 4 available at <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.198.900&rep=rep1&type=pdf>

fully benefits from business service sector on which LDCs as a group have a comparative advantage especially in mode 4. This on the other hand, forced LDCs to concentrate their collective request for service preferential treatments on business sector. Compared with the other service sector, business service sector is first to be called for preferential treatments under the collective request.¹⁶⁴

Accordingly, preferential treatment with regard to business sector will largely benefit Ethiopia, which is among few populous countries on the world. Under notified preferences in which almost 80% of the sectors in the collective request are treated, though not sufficient, business sector got better attention.¹⁶⁵ This is mainly the result of horizontal commitment preferences of many states on mode 4.¹⁶⁶ Many of the preferences given in the business sector are also in professional services sub sector.

Beside business sector, tourism services account for the largest share of LDCs service export then by playing considerable role in contributing to GDP growth, employment opportunity and foreign exchange earnings.¹⁶⁷ For example in 2014 and 2015 tourism service takes the lion share of total service export of LDCs with 47.7% and 52.6% respectively.¹⁶⁸ In the research stated above also tourism sector is second next to business sector being named as prior export interest.¹⁶⁹ Ethiopia is among few countries on the world in contributing 11 tangible and intangible cultural heritages for the world heritages huddle. These and others tourist attracting sites can potentially benefit Ethiopia allot in this sector. Under the collective request also this sector got high attentions and non LDCs are also called to make their preference on this sector.¹⁷⁰ But in lights of its potential importance for LDCs, there is insignificant preferences offered in tourism.¹⁷¹ In fact the main mode of tourism export i.e. mode 2 could encounters relatively few trade barriers.

(accessed on march 2016).see also Raj Bhala, *International Trade Law Interdisciplinary Theory And Practice*,3rd edition,(2008) ,page 1547

¹⁶⁴ Miguel Rodriguez Mendoza , et al, supra note 131,page 11

¹⁶⁵ Drake-Brockman, ,et al, supra note 102, paragraph 5

¹⁶⁶ Miguel Rodriguez Mendoza, et al, supra note 131,page 45

¹⁶⁷ Christophe Bellmann, et al supra Note 142, page 6-9.

¹⁶⁸ Wto,statistical report 2015,page Page 62 and World trade statistical review 2016,page 103

¹⁶⁹ Christophe Bellmann, et al, supra Note 142, page 6-9.

¹⁷⁰ Miguel Rodriguez Mendoza , et al, supra note 131,page 33

¹⁷¹ ibid

Thirdly, as Transport is a labor intensive service it can potentially benefits large share of the population; creating good employment opportunities in LDCs.¹⁷² in fact even today transport service accounts for significant share of LDCs export. Especially in Ethiopia transport service sector accounts for almost 80% of services export in 2014 and 2015.¹⁷³ Ethiopia is also the champion of LDCs With 29.4% share of LDCs transport service export in 2015.¹⁷⁴ The collective request also properly demonstrates desire of LDCs to be given preferences on this sector. In notified preferences so far, transport service sector by far neglected. Many of preferences offered are only limited to freight and maritime transport as well as maintenance of transport equipments including aircraft. Ethiopia, which is the owner of sole aircraft maintenance and repair service center among African LDCs, could benefits allot from such preferential treatments.

In addition, under their collective request LDCs also described many other service sectors, including education and related service, banking and insurance, communication service, and healthy related service as export priority; and ask for preferences. But export of these services is either very restricted with mode 4 hurdles, or LDCs theme selves have limited supply capacity. Most of the time, countries are not willing to extend preference toward these sectors. In the notified preferences also the preferences on these sectors are almost absent.¹⁷⁵

Many LDCs have a giant potential of exporting entertainment, recreational and sporting services. Accordingly, many LDCs including Ethiopia emphasized for preferential treatments on the area.¹⁷⁶ Because, Many LDC musicians and their bands though have a large potential markets abroad, simply couldn't access the market, as a result of visa and work permit requirements and restraining procedures.¹⁷⁷ Many state also included this sectors in their notified preferences, though not sufficient. This is mostly related with serious immigration policy of non LDCs.

¹⁷² World trade statistical review 2016,page 62

¹⁷³ International statistical report 2015, Page 62 and World trade statistical review 2016,page 103

¹⁷⁴ World trade statistical review 2016,page 61

¹⁷⁵ Miguel Rodriguez Mendoza , et al, supra note 131, *page 11*

¹⁷⁶ Drake-Brockman, et al, supra note 102,*page13*

¹⁷⁷ Miguel Rodriguez Mendoza , et al, supra note 131, *page 12*

3.2.2. Modes of supply

In term of mode of supply, export interests of LDCs are largely confined to modes 1 and 4.¹⁷⁸ LDCs are mostly known by their abundant semi-skilled and skilled human resources. Accordingly, through these two modes, LDCs have interests either to send their semi-skilled workers to non LDCs market or outsource semi-skilled work from non LDCs to workers in LDCs.¹⁷⁹ Specially, LDCs have an enormous potential of exporting services in sectors as diverse as professional services, cultural services, transport, and computer service; via mode 4. As population abundant state, services trade in mode 4 is generally regarded as a possible area of comparative advantage for Ethiopia.

But today mode 4 is the least opened modes of service delivery and accounts for only very small fraction of total trade in service.¹⁸⁰ This is mainly because, non LDCs follows immigration shunning policy.¹⁸¹ Rather as a group LDCs service export took place mainly through mode 2 and mode 1¹⁸². Though, GATS commitments for commercial presence are better, LDCs are confronted with very limited capital exporting capacity. For example, under GATS schedule commitments of state members, commitments through Mode 3 are 50 times more prevalent than commitments on Mode 4.¹⁸³

Under collective request much attention is given toward mode 4. But to the contrary under notified preferences commitments toward Mode 4 remain largely unbound or are very limited in scope.¹⁸⁴ Rather, most preferential treatment given to LDCs is across Modes 1, 2, and 3. A significant number of full commitments are made in Modes 2. But such commitments have limited relevance for LDCs, as mode 2 in many sectors rarely attracts any restrictions from

¹⁷⁸ Sauv  Pierre and Ward Natasha, *supra note 121*, page 8-10

¹⁷⁹ Matthew Stern and Natasha Ward, *Identifying the offensive interests of African Least Developed Countries (LDCs) in WTO Services Negotiations*, DNA Economics (Pty) Ltd ,(2013), page 4

¹⁸⁰ Development research center on migration, globalization and poverty, *GATS Mode 4 How Trade in Services Can Help Developing Countries, NO.4* ,(2005),page 2,available at www.migrationdrc.org/publications/briefing_papers/BP4.pdf (accessed on June 2016)

¹⁸¹ Raj Bhala, *International Trade Law Interdisciplinary Theory And Practice*,3rd edition,(2008), page 1547

¹⁸² Christophe Bellmann, et al, *supra Note 142*, page 6

¹⁸³ Sauv  Pierre and Ward Natasha, *supra note 121*,page 3

¹⁸⁴ Debapriya Bhattachaya (ed) *et al*, page 88

the very beginning.¹⁸⁵ The notified Preferences equally treated mode 1 and mode 3. But still mode 3 is not sufficiently made free from restrictive regulatory measures.

3.2.3. Type of preferences

To see the collective request and preferences notified so far in lights of type of preferences; under collective request LDCs mainly requests for preferences on non-market access measures. Because, today the main challenges of LDCs in trade in service are not the problem of numerical limitation or quota of export.¹⁸⁶ The LDCs group is also clearly puts under its request that, today their main burning challenges are those related with domestic regulation measures and limitation in recognizing LDCs academic reward and professional experiences.¹⁸⁷ Thus, collective request mostly beg for preferential treatment on these non-market access measures. But surprisingly 85% preferences offered are on market access measures under Article XVI of GATS.¹⁸⁸ Even this very little share of beyond market access preferences mostly deals with National Treatment promises, with very few preferences on regulatory measures and others.¹⁸⁹

3.3.Potential prospects under LDC service waiver.

As precisely discussed under introductory part of the chapter, trade in services is of significant importance for economic growth or overall development of Ethiopia, not only as a source of direct economic gain, but also as inputs in other economic sector. In today's world, GDP growth of one country is also more correlated with growth in trade in service than with trade in goods.¹⁹⁰ Thus trade in services could play an important role in achieving economic growth and development objectives of LDCs. But the problem here is that, non LDCs dominated trade in service and despite the fact that LDCs constitute a big share of world population, they account for silly percentage of the world trade in services. LDCs have many

¹⁸⁵ Bernard hoekmaan and dirk willem te velde(ed), *trade in services and economic transformation / a new development policy priority*, february 2017,page 39

¹⁸⁶ Claudia Manrique Carpio, et al, supra note 69, page 140

¹⁸⁷ Collective request, paragraph 2(2)

¹⁸⁸ Miguel Rodriguez Mendoza , et al, supra note 131 „page 13

¹⁸⁹ Miguel Rodriguez Mendoza , et al, supra note 131„page 12

¹⁹⁰ Noelan Arbis and Adam Heal, *Waiting for Service? Progress in Preferential Market Access for Asia-Pacific Least Developed Countries' Services Exports*, Trade Insight,(2015) ,page 5, available at <http://www.unescap.org/sites/default/files/Trade%20Insights%20-%20Issue%20No.%2013.pdf> accessed on may 2016)

important disadvantages to have an adequate share of global trade in services. In Ethiopia, though service sector start to account for significant share of GDP, export is mostly dominated with goods and service export is at its infant stage.

In light with the importance of trade in service for LDCs to achieve their development and poverty eradication objectives on one hand, and serious difficulties of LDCs to secure adequate share in global trade in services on the other hand, service waiver scheme has a big meaning for LDCs. Ethiopia is not member of WTO and in normal course of things could not directly benefits from GATS fruits. However the service waiver is made to benefits all LDCs whether member or not. Thus, the inclusion of Ethiopia to the benefiting group from the beginning is a big opportunity. Taken in to account the above facts, here below we will see the potential prospects LDC service waiver brings for LDCs in general and for Ethiopia in particular.

3.3.1. Stimulate service export

The main objective of LDC service waiver is to enhance the integration of LDCs in global trade in service.¹⁹¹ The increased participation of LDCs in global trade in service on its part could be achieved through facilitating effective access of LDCs' services and service suppliers to foreign markets.¹⁹² To this effect, LDCs' service and service suppliers are provided with preferential treatments regarding both market access and non-market access measures of GATS.¹⁹³ In addition, to strengthen the domestic and export services capacity of LDCs, the service waiver scheme incorporated technical assistance and capacity building type of supports.¹⁹⁴ Thus, if these favors are properly coordinated and at the same time buttressed with serious commitments of LDCs to fully implement these preferences, LDCs' service export will surely increase in volume and in kind.

Accordingly, those preferences that could be given on market access measures, by avoiding numerical limitation type trade barriers to service and service suppliers of LDCs such as numerical quotas ,economic need test, minimum capital requirement and limitation on type of legal entities, enable service and service suppliers of LDCs to fully access foreign markets.

¹⁹¹ Service Waiver decision(WT/L/847), preamble

¹⁹² Modality(TN/S/13), paragraph 6

¹⁹³ Service waiver decision (WT/L/847),paragraph 1

¹⁹⁴ Bali Ministerial conference paragraph 4

Many LDCs, especially Ethiopia is a labor abundant including skilled and semi-skilled man power, but with rare domestic job opportunities. Thus, the market access references will enable Ethiopia and others to have a comparative advantage of supplying services in labor intensive service sectors and subsectors, especially through mode 4 and mode1.

When we come to the second type of preferences that could be given on non-market access measures, it could enormously enrich LDCs in their plan to increase service export. Because, more than quantitative limitation, today the main problem is the incapability of LDCs' service suppliers to meet the serious qualification and burdensome procedural requirements set by non LDCs. in lights with this, the service waiver incorporated two types of assistances for LDCs. The technical assistance and capacity building system, could enable LDCs to meet the above qualitative type limitation by themselves. If this is not possible, preferential treatments that could be given on these measures could enable LDCs still to access foreign markets. In general service waiver preferential treatment could promote trade in service of LDCs mainly through facilitating effective access of LDCs' services and service suppliers to foreign markets.

LDCs could benefit greatly from further developing and expanding their service export. Because, increase in service export, in addition to its increased direct economic gain, could be a source of economic diversification in general and export diversification of LDCs. For example in Ethiopia Agricultural products such as coffee, oilseeds, kchat, leather and leather products, pulses, cut flower, fruits and vegetables and live animals constitute 70 % of Ethiopia's exports.¹⁹⁵ This indicates that export diversification in Ethiopia is still low and the earnings from the sector have not been growing as planned as it is vulnerable to price fluctuations.¹⁹⁶ Hence, Export diversification could limit the devastating effects of global price crises on these goods then by on the economy of Ethiopia. In lights with this, compared to trade in goods, trade in service demonstrates relative flexibility in terms of its lower magnitude of decline and earlier recovery time.¹⁹⁷ Thus, Ethiopia could benefits allot from

¹⁹⁵ United nation development programme ,*Ethiopia: Country Economic Brief* , Analysis Issue No. 1/Feb.2014, page 2

¹⁹⁶ United nation development programme ,*Ethiopia: Country Economic Brief* , Analysis Issue No. 1/Feb.2014, page 2

¹⁹⁷ Noelan Arbis and Adam Heal, *supra note 156*, page 5

service waiver scheme, in increasing her service export and then by diversifying not only her export but also her economy in general.

3.3.2. Attract foreign direct investment (FDI)

In today's world the flow of FDI has shifted towards services.¹⁹⁸ Accordingly, compared to the other economic sectors almost two third of all FDI flows are into the services sectors.¹⁹⁹ In many countries, especially in LDCs, increasing the flow of FDI to their economy is at forefront of their developmental strategies. Accordingly, among many implementation strategies Ethiopia has been employing to achieve middle income state status in 2025, attracting FDI to the country is the main one.²⁰⁰

When we come back to our main issue, the service waiver scheme could enhance the development of LDCs including Ethiopia, through attracting foreign direct investment (FDI). Because, the rule of origin under service waiver decision is very liberal, that could encourage foreign investors to invest in LDCs.²⁰¹ For example, those judicial person service suppliers owned or controlled by natural or judicial person of non-LDCs; and carry out their substantive business operation in LDCs, are made beneficiaries of service waiver preferential treatments.²⁰² Again in the case of natural person service suppliers, the rule of origin under service waiver could be interpreted liberally then by enable individual foreign suppliers that have no nationality or residence from LDCs, to make use of service waiver preferential treatments.²⁰³ Thus, under service waiver there is a potential prospect of attracting FDI to LDCs. In this case Ethiopia also as any LDC could benefits allot.

FDI in service sector could enrich the development of Ethiopia in multiple ways. First, FDI could be used as additional source of revenue for government. Furthermore, foreign investment can result in the transfer of knowhow through training and job creation, the availability of more advanced technology for the domestic market.²⁰⁴ The local population

¹⁹⁸ *International investment Agreements in services* ,UNCTAD series On international investment policies for Development, page 3

¹⁹⁹ Noelan Arbis and Adam Heal, *supra note 156, page 1*

²⁰⁰ GTP II Page 30

²⁰¹ Claudia Manrique Carpio ,et al, *supra note 69,page 137*

²⁰² Service waiver decision (WT/L/847),paragraph 5(b)

²⁰³ *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs, supra note 13,page 136*

²⁰⁴ *International investment Agreements in services, supra note 165, page 3*

could also benefit from the employment opportunities created by new businesses. Specially, under service trade, one of Ethiopia's main problems is its own supply side capacity which could be improved with FDI. Thus, FDI could also improve the capacity of Ethiopia to fully exploit the service waiver preferential treatments toward her interests. But here the main challenge is that, the Ethiopian service sector is very restricted toward FDI. Thus, the country should open her door for foreign investor in service sector so as the potential opportunities under the waiver decision is fully exploited.

3.3.3. Promote Knowledge and Technology transfer

Under service waiver, knowledge and technology transfer from non LDCs to LDCs could take place through different circumstance. One, the technical assistance and capacity building mechanisms incorporated under service waiver could equip service suppliers of LDCs with relevant knowledge and technology used to enhance service export. Second, as discussed above, FDI attracted as a result of liberal rule of origin under service waiver, could enrich LDCs in knowledge and technology transfer. Thirdly, mode 4 service suppliers of LDCs will come back to their homeland with new knowledge and experiences that they acquired throughout their stay in non LDCs.²⁰⁵ Furthermore, they can also strengthen the productivity of those works that remain in LDCs, through the transfer of ideas, technology and facilitating entry to service trade markets networks.²⁰⁶ One of the main problems of Ethiopia regarding service export or even to fully utilize the preferential treatments could be shortage of technology and human knowhow on the area. Thus, service waiver is potentially prosperous of mechanisms which able to enhance supply side capacity of Ethiopia and then by enable the country to integrate in international trade in service.

3.3.4. Lesson for Ethiopia

Currently Ethiopia is on the process of accession to WTO. Thus, any participation Ethiopia has been made within service waiver scheme; for instance in the preparation of LDCs' collective request and any negotiations the country need to made with non LDCs to fully put into practice the service waiver scheme, will be a good experience for Ethiopian negotiation experts in accession process. It is also expected that the accession process will be successfully

²⁰⁵ Supra note 161, page 2

²⁰⁶ Ibid

completed in near future and the country will be soon be a member of WTO. Accordingly, the increased participation Ethiopian service suppliers are made in global service export as a result of service waiver preferential treatments could be used as a preparation field for trade competition to which Ethiopia is on the process of accession.

However, the effective realization of these potential prospects under service waiver is mainly depends on each LDCs' efforts. Accordingly, Ethiopia as any service waiver beneficiary should take the following measures. First, the country should clearly 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 service. Second, the country should have to engage in negotiations including at multilateral, Regional and bilateral levels specifically with those benefactor state which could be a potential service export market for Ethiopia. Thirdly, it is important to address supply side limitations through longer-term human resource and technology development program and quality related issues in most services so that the country can meet the qualification requirements in international market.

Chapter four

4. Potential Challenges in exploiting LDC service waiver

4.1.Introduction

Unlike trade in goods, trade in services includes many sensitive sectors and subsectors that could be traded in multifaceted ways, and then by regulated with complex laws. Accordingly, any negotiations and commitments on service sector require either enacting new laws or amending existing laws regulating each service sector or subsectors and mode of supply. For that reason, reaching an agreement on trade in service negotiation is very difficult and complex.²⁰⁷ Specifically, when we come to service waiver negotiation and decision, in addition to the above complexities there was no prior experience of preferential treatments under trade in service.²⁰⁸ That is why, a decision for LDC service waiver preferential treatment and its realization required extensive discussions for almost 20 years among WTO member states.²⁰⁹ Even today the negotiation on the subject matter and related issues is ongoing.

From this perspective, the service waiver decision by itself as it is today is undoubtedly a significant step forward for LDCs in taking advantage of the international trade in services. As discussed under previous chapter also if used properly, there are many potential prospects under service waiver for LDCs' suppliers. But this does not mean that the service waiver scheme as it is at the moment is free from any defects. Rather, on one hand, because of the above complex nature of trade in service negotiation, the service waiver decision incorporated many legal gaps. On the other hand, the waiver itself does not confer any direct economic benefit; rather its prospects also mainly depend on domestic efforts of LDCs. At this point, LDCs may confront with many supply sides challenges. In lights of this, as any LDC, the Ethiopian service export is at infant stage tied with many internal external constraints.

This chapter is devoted to discuss potential challenges that could hold back Ethiopia from fully exploiting the service waiver preferential treatment and which require further effort from

²⁰⁷ Sebastián Sáez(ed), *Trade in Services Negotiations; A Guide for Developing Countries*, world bank (2010), Page 3

²⁰⁸ Debapriya Bhattachaya (ed) *et al*, page 37

²⁰⁹ This is because the initial movements for LDCs service waiver preferential treatments go back to GATS negotiation periods.

all stakeholders and if successfully improved, could enable Ethiopia to receive meaningful preferential treatments. As a contribution to this discussion, the writer categorized these challenges into three groups. Accordingly, the first groups of challenges are those created as a result of intentionally or negligently created legal gaps within the service waiver decision are discussed. Then, Ethiopia's supply side potential constraints are highlighted. Lastly, but by no means least, other constraints are discussed.

4.2.Lack of mandatory provisions

The service waiver decision neither obliges non LDC members to offer preferential treatments, nor any right to perceive these treatments is assured to LDCs. Rather, the service waiver decision as is today is a voluntary and non-binding provision by its nature. This means on the other hand, LDCs will have to rely on other WTO members' willingness to be offered with any preferential treatments through this instrument.

However, throughout service waiver negotiation, the expectation of LDCs toward service waiver preferential treatment was very high. Thus, their desire was rather to establish binding and permanent service waiver preferential treatments.²¹⁰ But their proposal failed to win the majority support and finally the today's voluntary and temporary preferential treatment commitments is adopted. In other words, the service waiver decision is very weak on which LDCs have almost no say, other than to use what they have given. So as any LDC beneficiary one thing Ethiopia could rise against the service waiver decision is its non enforceability.

Since the service waiver decision is not mandatory and permanent as first required by LDC group, today Ethiopia's service suppliers could confronted with the following two potential challenges in their efforts to meaningfully utilize this preferential treatment scheme.

4.2.1. Inefficiency

One of the main problems of service waiver is its inefficiency which is due to the fact that it is not binding or enforceable as initially proposed by the LDCs.²¹¹ After a long period of negotiation; the service waiver decision is adopted in 2011. But after five years, still the operationalization of the decision is at its infant stage. Accordingly, as of 16 November 2016,

²¹⁰ Claudia Manrique Carpio ,et al, supra note 69,page 122

²¹¹ Claudia Manrique Carpio ,et al, id, page 123

among WTO members, only 23 are submitted official notifications of their preferential treatments. For example, countries such as Germany, Italy, France, England and Russian federation, in which LDCs' service suppliers have a huge costumers (especially in mode 4), haven't yet submitted notification of their preferential treatments. In fact the notified preferences of some countries, e.g. republic of Singapore, are also simply symbolic.²¹² This is because, the notified preferences of Singapore is not only limited to market access measures but also concerns only five service subsectors and only through mode 2 and 3.²¹³

To improve this situation, LDCs including Ethiopia need to make bilateral or multilateral negotiation with these countries. This on the other hand, could open a door for these developed counties to serve their own interests in the name of preferential treatment negotiation. Again, even though state members can provide preferential treatments for any LDCs whether member or not, the non-discrimination provisions under service waiver decision is made available only to be raised by LDC members.²¹⁴ This means the service waiver decision is even very fragile toward non-member LDCs, such as Ethiopia. But one good thing regarding the so far officially notified preferences, there is no discrimination and all LDCs are equally made beneficiaries.

4.2.2. Uncertainty

As the services waiver is entirely made its basis on voluntary commitments of countries, LDCs' services suppliers may not find enough legal certainty regarding a preferential treatment, as it might be withdrawn at any time. Again, since the service waiver decision is not mandatory and lack clear binding direction for non LDCs; the so far notified preferences are very fragmented and lack uniformity among benefactor countries. Furthermore, offered preferential treatment of each state is very fragmented across service sectors and mode of supply. However, by its nature Services are often provided in several modes as part of the same contractual relationship. Thus, market accesses that are fragmented across sector and

²¹² *Notification of Singapore's Preferential Treatment to Services and Service Suppliers of Least-Developed-Countries*, S/C/N/812 27 July 2015.

²¹³ *Notification of Singapore's Preferential Treatment to Services and Service Suppliers of Least-Developed-Countries*, S/C/N/812 27 July 2015.

²¹⁴ Service Waiver decision(WT/L/847), paragraph 1

mode of supply could not be ambitious enough for one investor to spend its capital in service export.

Because on one hand, for example native Ethiopia's service exporters have less flexibility capacity in allocating human and other resources. Thus, they could not be courageous enough to invest their little capital on service export, targeting a market the viability of which they are not sure with. Again, as they have enormous opportunities in other countries, this could also extremely affect the decision of foreign investors to spend their money and time in the development of LDC services exports.²¹⁵ So, if the service waiver decision is made really to serve the interests of LDCs, either it should be mandatory or at least incorporate compulsory direction so as the provided preferences have consistency and be reliable. To this end, Ethiopia should reinforce her alliance with potential benefactor countries.

4.3.Limited scope of Service Waiver

Though, under service waiver, state members could provide preferential treatments on both market access and non market access measures. But the latter is subject to additional requirement of approval by the CTS.²¹⁶ Accordingly, preference grating country can still keep regulatory measures and requirements for recognition of service and service suppliers even without any lessening in sectors and mode of supply where they might have granted preferential access to LDC services and services suppliers.²¹⁷ For this reason, it can be argued that the services waiver is primarily focused on market access preferences.²¹⁸

However, for time being the main trade barriers for LDCs' service and service suppliers are not numerical limitation imposed by non LDCs.²¹⁹ Rather, as LDC group clearly put under its collective request, non-market access measures such as; hesitation in recognizing their educational institutions and their certificate, denial of visas or onerous unreasonable application fees for visas, licenses, and residence and work permits, and burdensome or prohibitive documentation, application, and registration requirements are their main

²¹⁵ Claudia Manrique Carpio ,et al, supra note 69,page 125

²¹⁶Service Waiver decision (WT/L/847),paragraph 1

²¹⁷ *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs, supra note 13, page 5*

²¹⁸ Claudia Manrique Carpio, et al, supra note 69, page 132.

²¹⁹ Claudia Manrique Carpio, et al, ibid

challenges.²²⁰ Ethiopia is not an exception. The collective Requests of LDCs are also mainly concerns preferential treatment on the above procedural and qualitative limitations. But to my surprise, under the so far notified preferences, non-market access measures accounts for only 15% of offered preferential treatments.²²¹ This inclination of many benefactor states toward preferences on market access measures is a big challenge for many LDCs, such as Ethiopia, as they have limited supply side capacity in service export. Thus, in view of the fact that preferential treatments on market access alone nothing to do for LDCs, the types of preferences covered by the service waiver preferential treatment needs to go further than market access measures.

4.4.Challenges Posed By Parallel Negotiations

Parallel with negotiations on LDC service waiver, under GATS, trade in service liberalization negotiations could be made between parties including based on trade in service progressive liberalization commitments,²²² and through economic integration preferential agreements.²²³ Because of progressive liberalization principle adopted under GATS, successive rounds of negotiations; with the aim to achieve higher level of liberalization, should be periodically made between parties.²²⁴ Thus in each round of negotiations a new further liberalization commitments are expected. On the other hand, under service waiver scheme in providing meaningful preferential treatments for LDCs, members use their schedule of commitments as a point of references. Accordingly, currently almost 50% of the preferences promised to LDCs go beyond what was offered a decade ago to all WTO Members under GATS schedule of commitments.²²⁵ That means, if the liberalization commitments under GATS further enhanced, there will be no actual preferences for LDC services and service suppliers. Thus, the waiver decisions need to incorporate a procedure for benefactor countries to periodically improve their preferences commitments in lights with their latest GATS schedule of commitments.

²²⁰ Service Collective request(WT/L/847) paragraph 2(2) and 2(3)

²²¹ Miguel Rodriguez Mendoza ,et al, supra note 131, *page 13*

²²² GATS article XIX(1)

²²³ GATS article V(1)

²²⁴ GATS article XIX(1)

²²⁵ Miguel Rodriguez Mendoza, et al, supra note 131 page 9

Furthermore, under GATS preferential trade agreements (PTAs) between or among the parties are explicitly recognized.²²⁶ Under these agreements there is a possibility for better preferential treatments of non LDCs or only some LDCs than under LDC service waiver preferential treatment scheme and then by could erode the service waiver preferential treatment. Because, unlike service waiver decision, those agreements mostly made their basis on reciprocal commitments.²²⁷ Currently the most significant preferential treatment agreements run parallel to service waiver decision are the EU's PTA and the reciprocal Economic Partnership Agreements concluded between the African, Caribbean and Pacific group of countries.²²⁸ Thus, developments in other negotiating forum, which run parallel to the service waiver negotiation, can erode the potential gains of LDCs within waiver decision. Especially the interests of non-member LDCs, such as Ethiopia, will be critically affected. Because, these agreements mostly benefiting WTO member states.

4.5.Rule of Origin

The other main challenge under service waiver decision is the problem of legal ambiguity and vagueness related with rule of origin. The service waiver decision is devised to be used by service suppliers of LDCs.²²⁹ The waiver decision also defined service suppliers of LDCs, as includes natural person of LDCs and judicial person of LDCs.²³⁰ But, the waiver decision has no answer for the question, "who is natural person of LDCs?" Again, though the waiver decision incorporated definition for the term judicial person, under this definition the phrases '*substantive business operations*' and '*owned or controlled*' are not entirely defined. And hence, this would add legal uncertainty to the scope of the waiver, as these clauses are difficult to interpret.²³¹ Thus, the waiver decision needs to overcome the difficulty of interpreting its rule of origin and then by avoid legal uncertainty to the scope of service waiver.

²²⁶ GATS article V(1)

²²⁷ *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs, supra note 13,page 8*

²²⁸ Analysis page 14

²²⁹ Service Waiver decision(WT/L/847), paragraph 1

²³⁰ Service Waiver decision (WT/L/847),paragraph 5

²³¹ Claudia Manrique Carpio ,et al , supra note 69,page 136

4.6.Stumpy Political Commitments

As the service waiver decision is not binding, strong political commitments is expected from non LDC parties as the only means to assure its implementation.²³² However, currently it is very difficult to say, these countries are playing their role in achieving the objective of LDC service waiver to increase the participation of LDCs in global trade in services. The stumpy political commitments of these parties is currently reflected through different challenges that LDCs could face in their effort to fully utilize the service waiver scheme.

Accordingly, though the main objective of service waiver is to help LDCs, through providing effective market access in sectors and modes of supply of export interest to them, the so far offered preferences do not show this. The type of preferences, service sectors and mode of supply highly emphasized under collective request as export interests of LDCs, are not adequately treated under offered preferences. For example, in light of type of preferences, the requests of LDCs are mostly concerns, for preferences on non-market access measures.

But, under offered preference only 15% of preferences are offered on non-market access measures. Again, in light of mode of supply, despite the importance attached to the liberalization of mode 4, no real preferences are offered on this mode. Offered preferences of many states on this mode are mostly characterized by limited number of commitments for categories not linked from mode 3, bias in favor of highly skilled persons and lack of recognition of certain qualifications. In term of service sector also the offered preferences mostly demonstrated the interests of benefactor states, than the interest of LDCs. This is against the objectives of LDC service waiver. This signifies that the interest benefactor state to lend a hand for LDCs falls short of their willingness to sacrifice their own economic interests.

4.7.Brain Drain Problems

As could be understood from the so far officially notified service waiver preferential treatments of 23 member states, favors provided on mode 4 is by and large restricted to highly skilled personal of LDCs. The bias in favor of highly skilled personal on its part could result in brain drain challenges to LDCs. In fact, the temporary nature of the movement of natural

²³² Claudia Manrique Carpio et al, Id, page 139

persons under this mode of service could lessen the risk of brain drain for LDCs.²³³ But still, LDCs need to try all their best to so as the service waiver decision is not used against their interest. Thus, Ethiopia need to devise appropriate mechanism to exploit the preferential in such a way that it does not contribute to a brain drain of high skilled Ethiopian's Professionals.

4.8. Supply Side Constraints

Besides the above legal and related gaps, the other potential challenges that could face Ethiopia in taking advantage of the service waiver preferential treatments are supply side constraints. Since the waiver itself does not confer any direct economic benefit, realizing the benefits of the services waiver preferences are largely depend on the domestic performance of Ethiopia. But unfortunately, today many LDCs including Ethiopia have weak service export capacity as a result of poor infrastructure, lack of financial resources; shortage of capital, inefficient regulatory framework, undiversified and vulnerable economy and shortage of technology and human knowhow.²³⁴

Related with this the major problem is not the mere existence of these challenges, rather is the fact that these problems are neglected under GATS in general and under service waiver scheme in particular. For example, the commitment of developed countries under GATS to facilitate technological transfer is conditional on payments by receiving parties.²³⁵ Under service waiver decision also nothing said about the need to provide technical assistance and capacity building support for LDCs. Rather, it is later on that the Bali ministerial conference decided for the first time to incorporate technical assistance and capacity building scheme together with market access preferential treatments for LDCs.²³⁶

High quality and affordable internet and telephone connections are important for cross-border exports in, for example, financial services, logistics services or IT services. But lack of these services in Ethiopia could be significant challenges for the country to fully exploit the service waiver preferential treatments. Likewise, inadequate transport infrastructure that results in costly or unsafe travel can be a severe impediment for the tourism sector in Ethiopia. Above

²³³ GATS, annex on movement of natural persons supplying services under the agreement, article 2

²³⁴ World trade statistical review 2016, page 60

²³⁵ GATS article IV(1a)

²³⁶ Service waiver Operationalisation decision(WT/MIN(13)/43WT/L/918), paragraph 1(4)

all the main challenge in Ethiopia regarding exploiting LDC service waiver is lack of awareness even among our officials about the existence of this opportunity. For example some officials from Ethiopian ministry of trade whom this issue directly concern have no awareness about the existence of this trade opportunity.²³⁷

Thus, in addition to the preferential treatments for their exports, LDCs require capacity building to address supply side constraints and then by able to fully utilize the market access facilitated by service waiver. This on its part require significant efforts from both LDCs themselves in identifying specific sector and mode of supply export interest with their exact domestic trade constraints, and non LDC parties in offering meaningful preferences.

²³⁷ Interview with Mr. Muse Mindaye, Ethiopia ministry of trade, multilateral trade relation and negotiation directorate, October 13, 2016

Chapter five

5. Conclusion and recommendation

5.1. Conclusion

This study assessed the potential challenges and prospects in exploiting LDC service waiver preferential treatments by Ethiopia and it revealed that the preferential treatment scheme incorporated many potential prospects that Ethiopia ought to effectively exploit, although there are some internal and external potential challenges that the country has to properly handle.

LDC service waiver is a specific preferential treatments scheme adopted by WTO members to facilitate the effective market access of LDCs' services and service suppliers to foreign markets. This preferential scheme normally operates as LDC specific Enabling Clause for services. This mechanism enable WTO member states with the possibility to go away from the MFN principle and so as to provide preferential treatments for LDCs without the duty to provide this treatments for others as MFN principle normally dictate. Under the waiver decision membership to WTO is not criteria and all LDCs; including Ethiopia, are beneficiaries of this preferential treatment scheme.

Taking in account the importance of international trade in service for Ethiopia to achieve her developmental goals and in light of many internal and external challenges the country is facing today in exporting services, the service waiver preferential treatment scheme has enormous prospects for Ethiopia. Accordingly, among the three type of preferential treatments incorporated under the service waiver, technical assistance and capacity building scheme; and preferential treatments provided on non market access measures could help Ethiopia to improve its supply side capacity among others through facilitating transfer of technology and knowhow, attracting FDI or through lessening qualification requirement, regulatory measures and procedural requirements set by non LDCs for service import.

On the other hand, the preferential treatment that could be provided on market access measures could help Ethiopia to expand her service export in service sector and mode of supply she have a comparative advantage. This on the other hand helps the country to diversify her export which is currently limited to few agricultural products and some mining

goods. In general, by increasing investment, production and service export, LDCs service waiver could help Ethiopia to reduce poverty and able to achieve her development goal.

Although the service waiver even as it is today represents a major achievement for all LDCs including Ethiopia, there are some potential challenges that could hinder Ethiopia from fully exploit the waiver decision and which require further effort from all stakeholders and if successfully improved, could enable the country to receive a meaningful preferential treatments. For example among others service waiver decision is non-binding, is temporary, incorporated vague and ambiguous terminologies and which also biased toward preferential treatments given on market access measures. Again, not only the range of preference granting states itself is insignificant, but also the breadth, depth and real-life relevance of the preferences offered is less imperative, particularly with regards to Mode 4. This is mainly the result of the stumpy political commitments of non LDCs toward the service waiver.

Besides this, since the waiver itself does not confer any direct economic benefit, realizing the benefits of the services waiver preferences are largely depend on the domestic performance of LDCs. But unfortunately, today Ethiopia has weak service export capacity as a result of poor infrastructure, lack of financial resources; shortage of capital, inefficient regulatory framework, undiversified and vulnerable economy and shortage of technology and human knowhow. Thus, the country need to work seriously to improve its supply side capacity and then by able to fully exploit the service waiver preferential treatment scheme.

5.2.Recommendation

Based on the key findings of this study and the attached potential challenges identified that could hinder Ethiopia from properly exploiting the opportunity being offered through LDC service waiver, the following recommendations are suggested.

- ❖ The first priority for Ethiopia would be to identify market opportunities by potential modes and service sectors where it is currently competitive or could be competitive in future with its respective the domestic and external constraints; and then to formulate strategy and implement the same to fully exploit the benefit under the waiver decision.
- ❖ As one part of this strategy, the country should facilitate effective bilateral, regional and multilateral negotiations with those member states which are/could be potential markets for Ethiopia's services.
- ❖ The county should give due emphasis to improve both production and market penetration capacity of Ethiopian service suppliers. To this end, the country should seriously make use of its ability to improve the quality of her service and service suppliers.
- ❖ The country should devise its own system to equip its human resource with required knowledge and skill for service export in respective service sector and mode of supply.
- ❖ It is also highly advisable to initiate engagement with relevant institutions and accreditation bodies in selected potential market countries so as her degrees/diplomas recognized in such countries.
- ❖ It is of paramount importance to address the major identified supply side constraints of the country in exporting services. Accordingly, it is essential to build adequate physical and institutional infrastructure that includes dependable electricity, telecommunication and transportation services.
- ❖ It is imperative that Ethiopia needs to intensify and diversify her service export in sector and mode of supply beyond labor intensive sectors and mode 4.
- ❖ Emphasis has to be also made in creating enabling environment with improved policies for better interaction and facilitation between responsible government institutions and Ethiopian service suppliers (exporters).
- ❖ Responsible bodies should increase the awareness among Ethiopian service suppliers on the existence of the LDC service waiver opportunities along with its preconditions and requirements.

- ❖ The country should also widen her door for FDI in service sector.

In addition, in order to better achieve the set objectives of LDC service waiver towards LDCs' economic growth and their integration to international trade in service market, for non LDC members, addressing the demand side constraints that include the following is vital:

- ◆ The service waiver decision either it should be mandatory or at least incorporate compulsory direction so as the provided preferences could have consistency and be reliable.
- ◆ Regarding the scope, it is important for the waiver to go beyond market access and include preferences on non market access measures and also technical assistance and capacity building type supports. Because mere market access can be effectively nullified through regulatory barriers.
- ◆ This preferential treatment shall be provided on a permanent basis and in a manner that ensures security, stability and predictability.
- ◆ This preferential treatment should be structured in such a way that it does not contribute to a brain drain of needed or high skilled LDC Professionals and ought to be supported by mechanisms which encourage brain circulation.
- ◆ The difficulty of interpreting 'rules of origin' and the consequences of its ambiguous definition need to be overcome.

Bibliography

Books

1. Adlung, R. and Mattoo, A. *'The GATS'*, Oxford University Press. (2008)
2. Aaditya Mattoo, Robert M. Stern and Gianni Zanini *'A Handbook of Trade in Services'* Oxford University Press. (2008)
3. Adam Smith, *The wealthy of nations*, Mark Biernat Kraków, Poland 2010
4. Andreas F Lowenfield, *international economic law*, 2nd edition, Oxford University Press, 2008.
5. Christopher Findlay and Tony Warren(ed), *Impediments To Trade In Service; Measurement and Policy Implication*, Routledge studies in the growth economies of Asia,(2005)
6. Juan A Marchetti and Martin Roy(ed), *Opening Market Or Trade In Service ;Countries And Sectors In Bilateral And WTO Negotiations*, Cambridge university press, (2008).
7. Olivier Cattaneo, Michael Engman, Sebastian Saez and Robert M.stern(ed), *International trade in service: new trend and opportunities for developing countries*, International Bank for Reconstruction and Development, (2010).
8. Peter Van Den Bossche, *The law and policy of WTO: Text, Cases and Materials*, Cambridge university press, (2005).
9. Rüdiger Wolfrum, Peter-Tobias Stoll and Clemens Feinaugle (ed), *WTO-Trade in Services*, volume 6, Max Planck Commentaries on World Trade Law, (2008).
10. Raj Bhala, *International Trade Law Interdisciplinary Theory And Practice*, 3rd edition,(2008)
11. Sebastián Sáez(ed), *Trade in Services Negotiations; A Guide for Developing Countries*, The International Bank for Reconstruction and Development, (2010)
12. *International investment Agreements in services*, UNCTAD series on international investment policies for Development, New York (2005).

Articles

1. Akiko Yanai, *Rethinking Special and Different Treatment in the WTO*, Institute of Developing Economies, Interdisciplinary Studies Center (2013).

2. Alexis N. Grimm and Charu S. Krishnan, *U.S. International Services; Trade in Services in 2014 and Services Supplied Through Affiliates in 2013*,(2005).
3. Carlo Perroni, *Special And differential Treatment Of Developing Countries In The WTO*, University of Warwick,(2014)
4. Claudia Manrique Carpio & Jaume Comas Mir, *The Least-Developed Countries Services Waiver:Any Alternative Under the GATS?*, Gottingen Journal of International Law (2014),page 115-143.
5. Debapriya Bhattachaya and Mia Mitic (ed), *Least Developed Counties And Trade:Challenges Of Implementing The Bali Package* , Studies In Trade And Investment 83,(2015)
6. Dietrich Barth, *The Prospects of International Trade in Services*,(1999)
7. Drake-Brockman, J., Greenidge, A., Lan, J., and Zhao, Q. *Making the Most of the LDC Services Waiver*. International Trade Centre (ITC), Geneva (2015).
8. Ghebregergs, M. G, '*Integration of the Ethiopian Financial Service Sector through Regional Financial Arrangements: A Step before WTO Accession?*', Law Social Justice & Global Development Journal (LGD) (2013)
9. Mohammad Abu Yusuf and Md. Shoaib Akhtar, *LDC services waiver: Challenges and way forward*, The Financial Express(2013)
10. Markus Krajewski, *Services Trade Liberalization and Regulation: New Developments and Old Problems*, page 153-178
11. Matthew Stern and Natasha Ward, *Identifying the offensive interests of African Least Developed Countries (LDCs) in WTO Services Negotiations*, DNA Economics (Pty) Ltd(2013)
12. Miguel Rodriguez Mendoza, Hannes Schloemann, Christophe Bellmann, Hadil Hijazi, *The LDC Services Waiver – Operationalized? A first look at preferences granted, constraints persisting, and early conclusions to be drawn*,(2016)
13. Noelan Arbis and Adam Heal, *Waiting for Service? Progress in Preferential Market Access for Asia-Pacific Least Developed Countries' Services Exports*, Trade Insight,(2015).
14. Peter Pariag, *Concept Paper On Classification Of Service* (2009)

15. Reem Heakal, Available at <http://www.investopedia.com/articles/03/112503.asp> accessed on march 2016)
16. Rupa Chanda, *GATS and its implications for developing countries: Key issues and concerns*, Oxford University Press (2002).
17. Sauv  Pierre and Ward Natasha, *thinking aloud about how best to make the LDC service waiver operational*, (2013)
18. Trade For Development Programme (TDP) Of The South Centre, *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs*, (2011)
19. WTO, *measuring trade in service*, A training module produced by WTO / OMC, (2010)
20. Trade For Development Programme (TDP) Of The South Centre, *Analysis Of Draft Waiver Decision On Services And Services Suppliers Of LDCs*, (2011)

WTO Documents

1. General agreement on trade in service(GATS)
2. Marrakesh agreement establishing the WTO(WTO agreement) adopted at Marrakesh on 15 April 1994(entry in to force January 1, 1995),
3. WTO, *International Trade Statistics 2015*, (2015)
4. WTO, *world trade statistical review 2016*, (2016),
5. WTO Ministerial declaration, *Implementation Of Preferential Treatment In Favor Of Services And Service Suppliers Of Least Developed Countries And Increasing LDC Participation In Services Trade*, WT/MIN(15)/48 WT/L/982, adopted on 21 December 2015
6. *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 dated 21 July 2014
7. *Decision on Preferential Treatment to Services and Service Suppliers of Least-Developed Countries* adopted on 17 December 2011, WT/L/847 dated 19 December 2011
8. *Decision on Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries* adopted on 7 December of 2013, WT/L/918 dated 11 December 2011

9. *Decision on Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade* adopted on 19 December 2015, WT/L/982 dated 22 December 2015
10. Hong Kong Ministerial Declaration, *Doha Work Programme* adopted on 18 December 2005, WT/MIN(05)/DEC dated 22 December 2005
11. *Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services*, TN/S/13 dated 5 September 2003
12. *Notification of Singapore's Preferential Treatment to Services and Service Suppliers of Least-Developed-Countries*, S/C/N/812 27 July 2015.
13. Uruguay round multilateral trade negotiations ,*GATT secretariat services sectoral classification list of 10 July 1991*(MTN.GNS/W/120),
14. UN economic and social affair, *Manual on statics of international trade in service 2010 (MSITS 2010)*, (2011)

Others

1. List Of Least Developed Countries as of 11 December 2015, available at www.un.org/en/development/desa/policy/cdp/Ldc/Ldc_list.pdf ,(accessed on December 2016)
2. UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS) (2015), *LDCs in Facts and figures*, page 1, available at <http://unohrlls.org/about-ldcs/facts-and-figures-2/>, (accessed on October 2016)
3. The federal democratic republic of Ethiopia, *The Second Growth and Transformation Plan (GTP II)(2015/16-2019/20)*
4. UNCTAD Doc., *The Least Developed Countries Report 2011*
5. UN, *International investment Agreements in services* ,UNCTAD series On international investment policies for Development
6. Christophe Bellmann & Anne-Katrin Pfister,(2013),*The LDC Service Waiver*, International Centre For Trade And Sustainable Development (ICTSD),(2013),
7. Development research center on migration, globalization and poverty,*GATS Mode 4How Trade in Services Can Help Developing Countries, NO.4* ,(2005)

8. United nations committee on development policy,(UNCDP), *List of Least Developed Countries as of May 2016*,
9. Interview with Mr. Muse Mindaye, Ethiopia ministry of trade, multilateral trade relation and negotiation directorate, October 13, 2016.