

Services Negotiations and South Asia: Priorities and Concerns

Regional Consultation on
“Road to Bali: South Asian priorities for the
9th WTO Ministerial”

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Outline

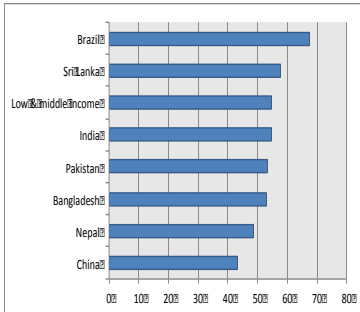
- Services in South Asia
- Services in WTO negotiations
- Implications of the LDC Services Waiver
- South Asian position on other issues
- Concluding thoughts

Services in South Asia

Higher growth in services than in other sectors

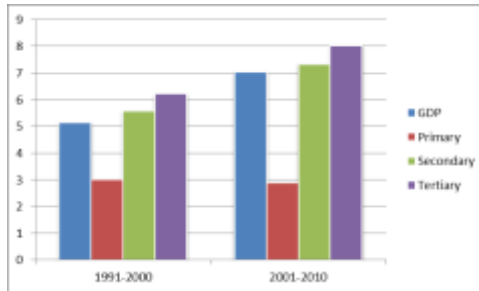
Significant share of services in GDP

Service value added (% of GDP), 2010

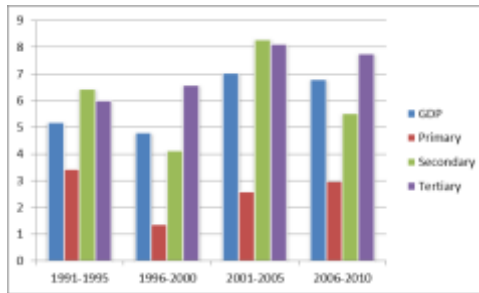


Source: World Bank, World Development Indicators, 2012

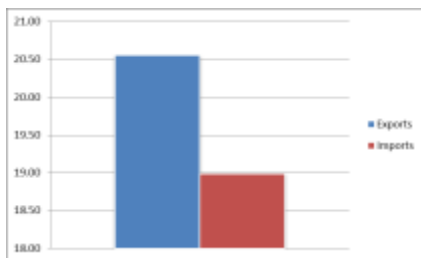
CAGR in GDP by sectors for South Asia, 1990s and 2000s (%)



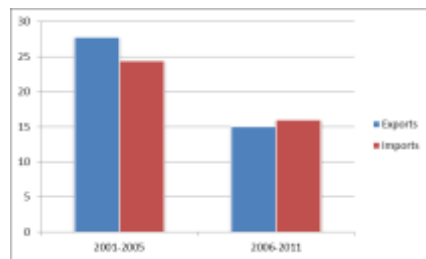
Average annual growth rate of GDP by sectors for South Asia, (%)



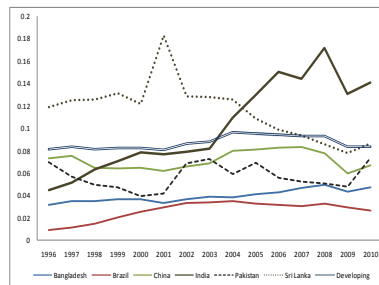
CAGR for services exports and imports for South Asia, 2001-2011 (%)



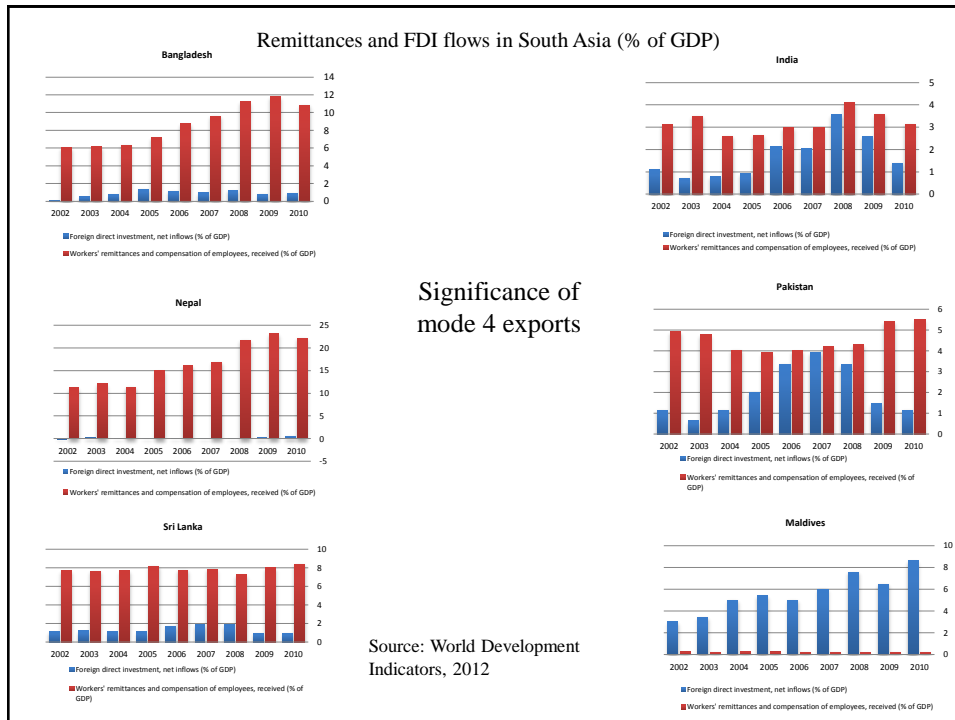
Average annual growth rates of services exports and imports for South Asia, 2001-05 and 2006-11 (%)



Service export as a share of service value added (%)



- Share of trade in services in South Asia's GDP steadily increasing
- But asymmetries among countries
- All but India are net importers of services



Services in WTO Negotiations

- Little progress in the Doha Round
- Requests and offers of poor quality
- Discussions on cross cutting issues (domestic regulation, disciplines) ongoing, but limited progress
- Plurilateral negotiations suggested to expedite negotiations among core group of countries involved in services trade
- South Asian countries have a common interest in securing greater market access in specific modes (4, 1), in addressing discriminatory and cumbersome regulatory barriers, S&D provisions
- Some South Asian countries (India, Pakistan) have participated in joint proposals and communications on modal, sectoral and cross cutting issues

- Key developments in WTO services negotiations in the Doha Round
 - Plurilateral negotiations among core group of countries
 - Since early 2012 group of WTO members with strong interest in services discussing new approaches to advance the liberalization of trade in services
 - Agreed to pursue an ambitious agreement on trade in services amongst themselves, as permitted under the GATS rules
 - 21 WTO members currently involved in this initiative but agreed to include other members who wish to join and who share the objectives of the group
 - Brazil, South Africa, India, China opposed to the Plurilateral Services Agreement
 - LDC services waiver proposed at 8th Ministerial in Geneva in Dec 2011 to provide preferential treatment to services and service suppliers of 31 LDC WTO members in sectors and modes of particular interest to these economies
- Regional negotiations on services under SATIS, though quality of commitments poor due to difficulties in liberalizing key modes and political economy realities

Some questions to consider

- What are the implications of the services waiver for South Asian LDCs and developing countries?
 - Could it enhance services exports of South Asian LDCs?
 - How effective is it likely to be and what are the shortcomings in this waiver which may need to be addressed in the next Ministerial?
 - Can this waiver be potentially leveraged to facilitate regional services integration in South Asia? What would this involve for the larger countries in the region?
- At a broader level, what are some sectors/modes/cross cutting issues South Asian countries should focus on in upcoming services discussions to address their national and regional interests?
- What position should the larger South Asian countries take on the PSA?

Implications of the LDC Services Waiver

- WTO members have adopted a waiver to allow developing and developed member countries to provide preferential treatment to:
 - services and service suppliers of LDC member countries in sectors and modes of supply (especially mode 4) of interest to LDCs
 - Improve access of LDC service suppliers to global distribution channels and information networks
- Expected to benefit 31 LDC members
- Waiver would operate as a new “Enabling Clause” for services trade with benefits limited to LDCs
- Members have also agreed on rules of origin to prevent free riding by non LDC providers

- Positives of the waiver
 - Legal positive discrimination now permitted for LDC members, including in key modes such as mode 4
 - Unconditional and cannot be linked to non trade issues or other issues as a precondition for getting the preference
 - Based on non discrimination among LDCS- must be extended to similar services and service suppliers of all LDC members

- Shortcomings of the waiver
 - Not a substantive right of the LDCs, not an obligation on developed and developing country WTO members and to be given on voluntary basis
 - Unilateral decision of developed and developing countries to grant or withdraw market access, can create uncertainty about what preferential access would be offered to LDC service suppliers
 - Waiver does not specify any mechanisms to identify potential sectors of export interest to LDCs
 - Difficult task of identifying sectors with export potential, current and likely destinations for export, modes of interest and target markets and barriers, which would also improve domestic capacity
 - Detailed service sector information in LDCs needed to operationalize the waiver
 - If fail to identify sectors, modes, barriers, prospective segments and opportunities, may be unable to capitalize on the waiver and only economic interests of the granting countries may be served

- Waiver has narrow scope (Small Window versus Large Window coverage)
- Only applies to the GATS' MFN obligation, limited to market access measures specified under GATS Article XVI
- Preferential treatment concerning national treatment measures or measures not specifically given in Article XVI (recognition, facilitated licensing procedures, helpdesk for LDCs, facilitated vehicle registration for LDC providers, concessional application fees) have to be approved by the CTS
- Can this two tiered approach address the regulatory, procedural and discriminatory challenges facing LDCs?
- Although mode 4 covered, no specific obligation on market access in this mode
- Preferential treatment to LDCs should not impede reduction of market access barriers on an MFN basis- but LDCs would not want preference erosion via MFN liberalization
- Efficacy will depend on coverage and to what extent LDCs can make use of the sectors and modes covered by the preferences

- To operationalize the services waiver some steps have been proposed:
- Identify preferences that would benefit LDCs' services exports, examine existing commitments and offers to assess gaps and translate this analysis into concrete demands to developed and developing country WTO members
 - LDC group is collecting information about services exported by LDCs and issue to be discussed at Bali MC
 - Individual countries have commenced process of obtaining service sector information
- Granting countries to consider possibilities for giving preferences and through bilateral and plurilateral discussions arrive at offers for LDCs
- Consider negotiating a set of LDC preferences and inclusion of measures which would serve their interests and development needs under the ongoing discussions for a plurilateral agreement
- Hold a signalling conference to muster political will and commitment if legally binding commitments are immediately difficult to realize

Position of South Asian LDCs

- Bangladesh and Nepal have an interest in the LDC waiver
- Bangladesh was actively involved in getting the waiver and is expected to benefit significantly from it, especially in the area of mode 4
 - “The waiver will be an opportunity to increase the flow of Bangladeshi workers, in particular semi-skilled people in the telecommunication services, the construction sector, or the care industry”.
 - Bangladesh could earn additional income from exporting low skilled service providers, \$381 million from exporting skilled service suppliers
 - Seen as facilitating the long term development and LDCs' integration with the world market
 - Bangladesh commerce ministry is seeking information from stakeholders to identify sectors and modes of interest, potential markets, barriers
- Additional benefits foreseen due to creation of employment opportunities, improved skills, transfer of technology, win-win given demographic challenges in developed countries and need for manpower

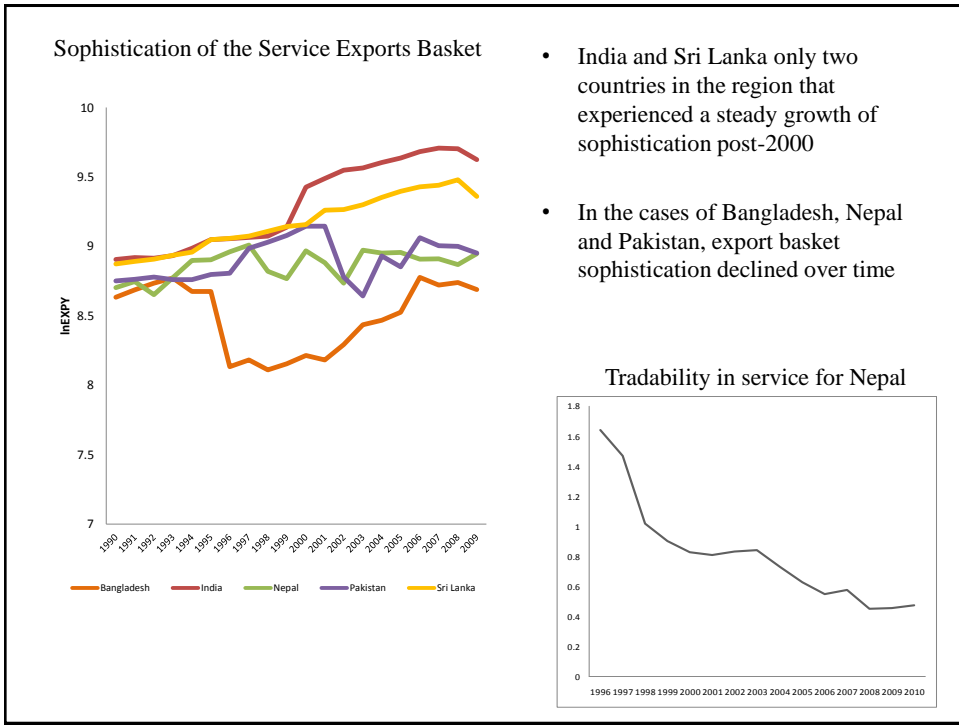
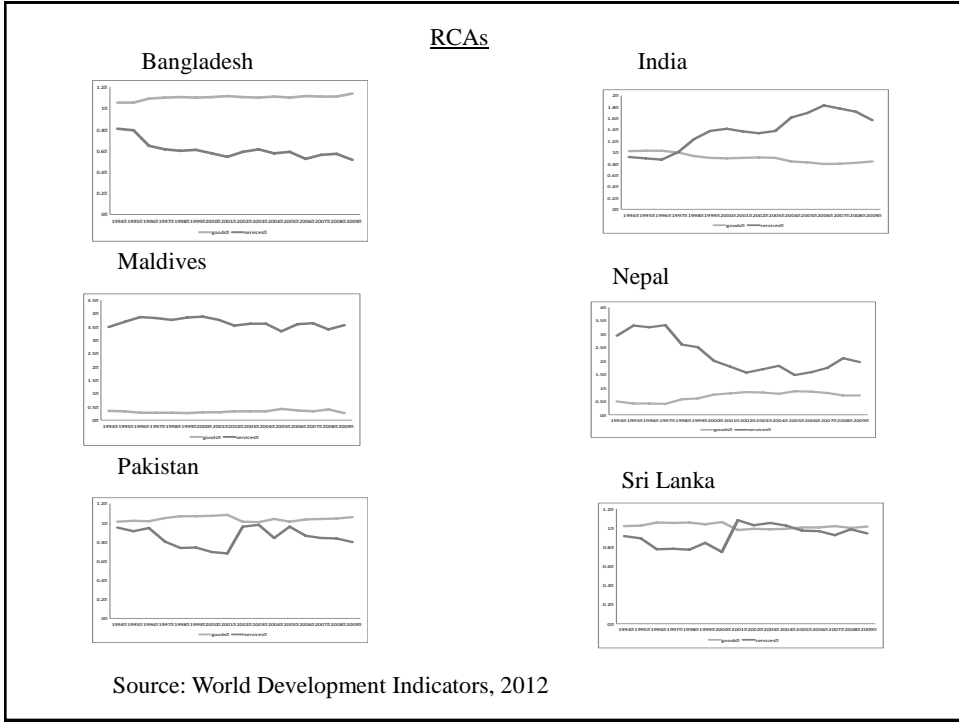
- Will the waiver confer benefits to an LDC like Bangladesh?
 - Must clearly identify opportunity segments, target markets, and market access barriers
 - Must assess whether it can carve out a preferential access niche that cannot be undermined by the applicability of this waiver to other LDCs and possible MFN extension to all members
 - Must assess whether any domestic challenges prevent taking advantage of waivers granted

- Recent 2013 study on Bangladesh based on secondary and primary evidence suggests
 - Lack of awareness about the waiver and doubts over its significance
 - Greater significance attached to addressing domestic capacity and quality-related issues in most services

- *Case of labour exports*
 - Bangladesh's ability to effectively leverage the potential for labor exports will depend on many factors
 - State of the economy of the receiving countries, their immigration policies, diversification to new markets, occupations, and skill sets, own migration policies
 - Ability to remain competitive with other exporting countries
 - Stakeholders recommended a planned labor migration policy, embedded in a longer-term human resource development strategy, so that it can meet the skill requirements in both international and domestic markets

- *Case of nursing exports*
 - Problems of training, skill sets, curricula, quality issues, recognition of qualifications, language barriers, prohibitive licensing requirements.
 - Need a strategic and planned approach, where there is focus on capacity creation in the domestic economy with spinoffs in terms of exports
- *Case of ICT exports*
 - Many regulatory, infrastructural, and human resource constraints affecting this sector
 - Need to facilitate setting up of business and joint ventures by small and medium enterprises (SMEs), liberalization of telecom, focus more on marketing activities such as commercial representation, networking, and advertising to promote the country's brand

- Study found several steps needed by the Bangladesh government to promote services exports
 - (i) investment in infrastructure to remove physical capacity limitations and supply side bottlenecks
 - (ii) investment in human capital to provide required skill sets and competencies to leverage potential in labor-intensive services exports
 - (iii) develop an integrated and strategic approach to build capacity and promote exports in selected services
 - (iv) negotiations at the multilateral, regional, and bilateral levels and initiation of dialogue with relevant institutions and stakeholders in selected countries to address market access interests and to help domestic efforts to alleviate various internal constraints
- Ability to utilize services waiver remains uncertain and onus is on the LDC governments to undertake supply side and domestic reform measures to benefit from it
- Data suggest capacity and institutional constraints and domestic regulatory barriers which would impede realization of benefits for South Asian LDCs



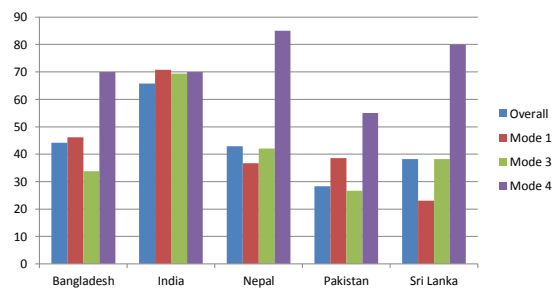
The State of Institutions in South Asia

Variable	Bangladesh	India	Nepal	Pakistan	Sri Lanka	South Asia	East Asia and the Pacific	Lower Middle Income	World
Cost to Register a Business as % of GNI Per Capita, 2011	30.6	46.8	37.4	11.2	4.7	26.14	14.55	32.6	25.93
Days to Start a Business, 2011	19	29	29	21	35	26.6	28.35	27.55	23.54
Cost to Enforce a Contract (% of Debt), 2011	63.3	39.6	26.8	23.8	22.8	35.26	34.35	32.47	31.77
Regulatory Quality, 2009	-0.79	-0.28	-0.78	-0.5	-0.28	-0.52	0.27	-0.36	0.14
Rule of Law, 2009	-0.72	0.05	-0.96	-0.93	-0.07	-0.53	0.22	-0.57	0.03
Government Effectiveness, 2009	-0.99	-0.01	-0.95	-0.93	-0.17	-0.61	0.35	-0.49	0.12
Voice and Accountability, 2009	-0.37	0.47	-0.58	-1	-0.5	-0.4	-0.23	-0.5	-0.03
Political Stability, 2009	-1.55	-1.19	-1.81	-2.76	-1.33	-1.73	0	-0.49	-0.09
Control of Corruption, 2009	-0.96	-0.33	-0.75	-1.1	-0.36	-0.7	0.15	-0.55	0.05

Source: World Bank, Knowledge Assessment Indicators, 2012

	Overall	Mode 1	Mode 3	Mode 4
Bangladesh	44.2	46.19	33.83	70
India	65.7	70.75	69.34	70
Nepal	42.9	36.66	42.06	85
Pakistan	28.3	38.54	26.68	55
Sri Lanka	38.2	23	38.25	80

<http://iresearch.worldbank.org/servicetrade/>
Services Trade Restrictions Database
accessed on June 28, 2013



- How should South Asian countries approach the services waiver in the upcoming discussions?

Regional level

- Engage in regional discussions to identify:
 - relevant services, markets, and issues of interest to the LDCs in the region
 - possibilities for diversification of markets and sectors
 - niche areas and competencies where preferences received will not be undermined by preferences granted to other LDCs or extension on MFN basis to the wider membership
 - Improve awareness and understanding of the waiver among relevant domestic stakeholders
 - Go beyond asking chambers and industry associations and do more in depth research to identify priority sectors and modes, barriers, target countries

Multilateral level

- Stress earlier proposals in the communications on mode 4, mode 1, domestic regulation
 - More transparent and streamlined regulatory set up for mode 4
 - Reduce scope for applying measures such as economic needs tests and burdensome licensing procedures
 - Build on earlier proposals to provide direction and clarity for further discussions on the services waiver
 - Stress the need to focus on strengthening institutional and regulatory capacity of LDCs to make the waiver effective
- Ensure that the regional and multilateral approaches to this waiver are complementary and consistent, that each informs the other

- Propose that preferences under the waiver go beyond market access measures
- Currently NT measures (nationality, residency conditions) even in sectors where preferential market access may be granted to LDCs are possible
 - bring some of these measures like ENTs, links to commercial presence/other modes, nationality and residency conditions which may not be readily justifiable on public policy grounds under the ambit of the services waiver
- As voluntary nature of the waiver can undermine the need to address the priorities of the LDCs, South Asian countries could discuss scope for making some part of the waiver less open ended

- Some issues to consider
 - Can services waiver be closely tied to Article IV provisions of the GATS (S&D) including:
 - strengthening domestic capacity, efficiency and competitiveness
 - improving access to distribution channels, information networks and technology
 - liberalizing sectors and modes of supply of interest to developing countries
 - special priority to be given to LDCs
 - Can focus on specific elements of the S&D provisions under the services waiver which relate to technical assistance and capacity building related measures and the particular challenges faced by LDCs as priority areas

- Propose that the Council for Trade in Services review commitments and offers to assess their quality and help LDCs identify areas which could be prioritized under the waiver
- Clarify the meaning of rules of origin in the waiver
 - Should coverage of rules of origin be restricted to national suppliers of LDCs or extendable to third party service suppliers who have substantial operations/are incorporated in the LDCs?
 - A broader approach would be better for most modes as would enable LDCs to benefit from investment (JVs, partnerships) from third parties as on their own they may not be that competitive
 - But rules of origin could be applied more narrowly for mode 4 where individual LDC capacity likely to be greater

- Stress need for intergovernmental cooperation to exchange information and regulate mode 4 (entry, return, tracking mechanisms)
- As many of these issues are also of interest to the larger developing countries in South Asia, even if latter are not eligible for the services waiver, can still have a common position to address mode 4 related domestic regulatory and discriminatory barriers
- All countries in the region will benefit from exchange of information, increased transparency and possible streamlining of regulations as such changes would be difficult to make for a single exporting country and benefits would tend to extend to all developing and LDC members

South Asian Position on Other Issues

- Issues to consider with respect to the proposed plurilateral services agreement (PSA)
 - Should the developing countries in South Asia join these negotiations (only Pakistan currently involved in the initiative)?
 - Would they stand to be benefit from it? Are they prepared and do they have the bargaining power to secure their interests as PSA members?
 - What kind of institutional preparedness and knowledge of sectors is required to participate in these discussions?
 - Must ensure that transparency and S&D provisions of the GATS are not undermined by the PSA and non-members not adversely affected
 - Ensure approach under the PSA compatible with the GATS (listing, dispute settlement, sectoral and modal coverage)
- Actively participate in talks on Domestic Regulation as tied to South Asian interests in mode 4

Other issues to focus on in services negotiations

- Mode 4 access and categories of interest (CSS, IP, BVs)
- Regulatory barriers in selected services (qualification, licensing, taxes, ENTs)
- Mode 1 liberalization and related issues of data privacy, government procurement, other regulatory conditions
- De-linking of mode 4 and 1 from commercial presence requirements
- Possibilities for expanding South-South trade in services
- Mode 3 liberalization in their economies and implications for services exports

Concluding thoughts

- SAARC members do not have competing interests in GATS negotiations and so should adopt a collective approach
- Support the offensive stance on market access especially on mode 4, on domestic regulations and the LDC waiver modalities
- Are the larger developing members in South Asia in a position to grant preferential market access in services to their LDC partners in the region and how could this be synergized with interests under SATIS?
- Can they use the waiver and other developments in the GATS negotiations to push forward the regional discussions
- How can services liberalization under WTO help unilateral services liberalization in these countries and facilitate their regional trade in goods (given links between goods and services)

Thank you