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"Expect the Unexpected"?

LDC GATS Commitments as Internationally Credible Policy Indicators?

The Example of Mali

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WTO

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"[t]he real challenge will be to find ways that genuinely respond to the development needs of developing countries. This means avoiding the twin traps of mere lip service and an attitude of tokenism to development issues on one hand, and the misguided assumption on the other that disengagement and minimal commitments are the best recipe for supporting the development process through the WTO."[1]

Abstract: There is a stark contrast between the ambitious investment promotion efforts of many least developed countries (LDCs) and their often minimal commitments under the General Agreement on Trade in Service (GATS). At a time of urgent need to address domestic infrastructure and investment gaps, this situation cannot be a positive signal for investors (either domestic or foreign), and may be a missed opportunity to address services aspects of the Millennium Development Goals (MDGs).

LDCs often lack internationally credible mechanisms for making commitments, which contributes to their evident difficulty in attracting the more employment-generating types of investment that could bring greater opportunities for poverty alleviation. Considering that most LDCs, under domestic laws, have already opened a wide range of services sectors to foreign direct investment (FDI), there may be an opportunity to enhance the international consistency and credibility of LDC investment promotion efforts by making GATS commitments, while preserving substantial "policy space" with regard to the actual status quo.

While reforms to domestic regulations are undoubtedly of greater importance to attracting FDI, GATS commitments, including partial commitments, can be used to publicize LDC investment priorities in services (such as attracting new businesses, encouraging joint ventures and technology transfer, etc.), and make them legally binding internationally. Offers to make new GATS commitments can further be used as "bargaining chips" in the current Doha Development Agenda (DDA) negotiations. Mali has been selected as a case study, due to the fact that trade and investment policies are clearly and consistently documented.

Keywords: LDCs, GATS, FDI, policy credibility, MDGs, "policy space", Mali, Africa, investment promotion, poverty alleviation**.**

JEL Classifications: F13, F14, I38, L80, L90, O14, O19, O24, O55, P45.

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[1] WTO, *World Trade Report 2003 – Trade and Development,* Geneva: WTO, p. 122.

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"Even if a trade reform is appropriately designed, implemented, and supported by other policies, it can become unsustainable because of a lack of credibility."[2]

"Improved economic performance in African LDCs has not contributed to commensurate gains in poverty reduction. This is due to the type of growth occurring in African LDCs, driven by capital intensive extractive sectors, and thus with limited impact on employment creation."[3]

I. Introduction

The main objective of this paper is to explore an often-encountered contradiction in the author's professional work: at a time when nearly all least-developed countries (LDCs) -- and many developing countries in general -- are eagerly promoting foreign direct investment (FDI),[4] why are they reticent to make commitments under the General Agreement on Trade in Services (GATS) in the Doha Development Agenda (DDA) negotiations of the World Trade Organization (WTO)?[5]

Perhaps the most typical response is a perceived need to preserve "policy space." Another is the politics of the current Doha Development Agenda (DDA) negotiations.[6] A third, less-flattering, possibility could be a belief that GATS commitments have little effect in promoting FDI, or are less effective than bilateral investment treaties (BITs) and other alternative measures. None of these responses, however, is fully satisfying to the author.

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[2] Hallaert, J., *Increasing the Impact of Trade Expansion on Growth: Lessons from Trade Reforms for the Design of Aid for Trade*, OECD Trade Policy Working Papers, No. 100, OECD Publishing, 2010, p.16 (available online at http://www.oecd.org/dataoecd/55/55/45620314.pdf).

[3] United Nations Economic Commission for Africa and African Union Commission, *Outcome of the Africa Regional Preparatory Meeting for the Fourth United Nations Conference on the Least Developed Countries*, 8-9th March 2010, Addis Ababa, Ethiopia, p. 3 (available online at http://www.un.org/wcm/webdav/site/ldc/shared/ARR%20Final%20document.pdf).

[4] A listing of LDC investment promotion websites is available via the World Association of Investment Promotion Agencies (WAIPA) website, at (http://www2.waipa.org/cms/Waipa/Membership/MembershipList/index.html).

[5] Another objective of this paper (see Part IV, first paragraph) is to test the recommendations made in the author's 2008 working paper, *LDC Poverty Alleviation and the Doha Development Agenda: Is Tourism being Neglected?*, World Trade Organization, Staff Working Paper ERSD-2008-03, 12 August, 2008.

Together with the urgent need to address the LDC infrastructure and investment gaps (see Annex 1), an important catalyst for the ideas in this paper was the 2009 visit of Paul Collier to the WTO, and his presentation highlighting the difficulties the "Bottom Billion" countries (most of which are LDCs) have in making credible policy commitments.[7] Mali has been selected as a case study, due to the fact that trade and investment policies are clearly and consistently documented.[8]

Part II of this paper discusses the LDCs and FDI. Part III explores the possibility of using GATS commitments as a means of helping to reduce the investment "credibility gap". Part IV is the Mali case study; Part V concludes.

II. LDCs and FDI

"FDI flows to LDCs, although still lower than net ODA disbursements, also grew spectacularly during the 2000s. Between 2000 and 2008 they increased sixfold, exceeding $32 billion in 2008. Over 80 per cent of these flows went to natural-resource-rich African LDCs"[9]

"LDCs had less than 1 per cent of world infrastructure FDI stocks in 2006, and less than 5 per cent of world FDI inflows. UNCTAD found four reasons why LDCs were marginalized: multinationals want high returns; they perceive high risks in LDCs; small local markets are a disincentive; and there is competition from other investment destinations."[10]

FDI low for non-resource-related sectors

As noted in UNCTAD's 2010 *World Investment Report*, FDI inflows to LDCs declined in 2009, for the first time in eight years, by 14 per cent to US$ 28 billion:

> The decrease was mainly due to a lull in the global demand for commodities ... and the cancellation of some cross-border M&A deals. ... FDI inflows to LDCs still account for limited shares in both global FDI inflows (3 per cent in 2009) and inflows to the developing world (6 per cent). FDI flows accounted for 24 per cent of gross fixed capital formation in LDCs in 2009 compared with only 9 per cent during the 1990s.[11]

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[6] The author's 2008 working paper termed this the "poker playing" aspect of the DDA (pp. 19-20).

[7] See the WTO website for a podcast of Paul Collier's presentation on 21 October, 2009 (http://www.wto.org/english/news_e/news09_e/reser_21oct_e.htm).

[8] A more personal reason is the author's interest in Mali's musical traditions, notably with respect to the origins of jazz, and the "Festival in the Desert" (http://www.festival-au-desert.org/).

[9] UNCTAD, *The Least Developed Countries Report 2010: Towards a New International Development Architecture for LDCs*, United Nations, New York and Geneva, 2010 (available online, at http://www.unctad.org/templates/ webflyer.asp?docid=14129&intItemID=5737&lang=1&mode=downloads), p. 7.

[10] Statement by Kalman Kalotay at 2010 WTO Public Forum, Session 37: Achieving the Millennium Development Goals in Africa: Should services linkages be expanded? (available online, at http://www.wto.org/english/forums_e/public_forum10_e/session37_summ_e.doc).

[11] UNCTAD, *World Investment Report 2010: Investing in a Low-Carbon Economy,* United Nations, New York and Geneva, 2010 (available online, at http://www.unctad.org/Templates/webflyer.asp?docid=13423&intItemID=5539&lang=1&mode=downloads), p. 61.

While investment from developing economies such as China, India, Malaysia and South Africa is on the rise in both relative and absolute terms, trans-national corporations (TNCs) from developed countries still remain the main sources of foreign investment inflows to LDCs.[12] In terms of value, FDI is highly concentrated in a few natural resource-rich countries, and this concentration has risen further over the past decade. At the project level, however, FDI in LDCs is more diversified:

> [d]uring 2003–2009, out of over 1,200 greenfield investment projects in LDCs, some 470 (39 per cent of the total) and 530 (44 per cent) were registered in the manufacturing and services sectors, respectively. FDI in telecommunications is on the rise in African LDCs, offering some diversification. FDI to Asian LDCs, on the other hand, is primarily in manufacturing and services such as electricity.[13]

The *World Investment Report* warns that FDI prospects for LDCs may remain limited for the near future:

> Many LDCs suffer from substantial disadvantages, including limited market size, weak business environment, high level of perceived risk, and relatively low competitiveness compared to other, relatively more advanced developing economies. None of the LDCs are ranked among the top 30 priority destinations by investors surveyed... and sub-Saharan Africa – where a large proportion of LDCs is concentrated – was given the lowest priority for future investment projects.[14]

Low employment generation

As highlighted in **Annex I**, much of recent LDC growth has occurred in natural-resources-related sectors, notably mining, characterized by low employment generation. **Annex Table 1**, from UNCTAD, listing the 10 largest greenfield FDI projects in LDCs announced between 2003-2008, confirms this: despite the fact that all the projects listed are valued at US$ 2 billion or more, none are estimated to generate over 4,000 jobs.[15] By contrast, a recent Laos/Vietnam tourism project financed by the Asian Development Bank, costing about US$ 22 million, is expected to have 60,000 direct and 300,000 indirect beneficiaries by 2013.[16]

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[12] The report notes, "In addition, investments from the Gulf Cooperation Council countries in African LDCs have recently increased in sectors such as telecoms, tourism, finance, infrastructure, mining, oil and gas and agriculture." *World Investment Report 2010*, as note 11 above, p. 61.

[13] *World Investment Report 2010*, as note 11 above, p. 61.

[14] Nonetheless, there is a possibility LDCs could benefit from the global recovery in FDI: "The investment momentum generated by TNCs from developing and transition economies is primarily resources and market-seeking, but LDCs have the potential to attract export-oriented FDI, taking advantage of preferential market access to developed country markets." *World Investment Report 2010*, as note 11 above, p. 61.

[15] The concentration of FDI in a limited number of LDCs is also illustrated, as most of the projects are for Angola, with one project each for East Timor, Liberia, Madagascar, Mozambique and Senegal.

[16] Asian Development Bank, Project Administration Memorandum, *LAO/VIE: Greater Mekong Subregion Sustainable Tourism Development Project*, Project Number: 38015, September 2009, pp. iii, v (available online, at http://www.adb.org/Documents/PAMs/LAO/38015-LAO-PAM.pdf).

Failure to attract most desired investments?

According to the 2010 *World Investment Report*, the current pattern of FDI in LDCs is quite understandable:

> Private investment requires a minimum threshold of adequate human capital and sound infrastructure to flourish.... Until countries reach a sufficient level of development, FDI primarily flows to the primary sector (especially mining) – as is the case with LDCs – and far less into manufacturing and infrastructure services that are essential for development.[17]

A more optimistic perspective can be found in the research by Elizabeth Asiedu, as noted in a International Trade Centre presentation at the 2010 UNCTAD conference "United Nations LDC IV: Key Development Challenges Facing the LDCs":

> WIDER research supports the hypothesis that natural resources and large markets promote FDI, but rejects 'defeatism' – policy and institutional variables have a similar weight in cross-country panel regressions for 22 African countries of which 13 are LDCs:
>
> > • "Main result is that natural resources and large markets promote FDI. However, lower inflation, good infrastructure, educated population, openness to FDI, less corruption, political stability and a reliable legal system have a similar effect."
> >
> > • Hence: "countries that have small markets or lack natural resources can attract FDI"[18]

LDC investment promotion: lacking international credibility?

Multiple references are presented in this working paper to the high level of perceived investment risk for most LDCs (e.g. **Box 1**), which is reflected in their typically poor ratings across a range of FDI (and other) indexes.[19] With respect to Africa, Paul Collier has emphasized that governments face numerous disadvantages in attracting investment:

> The reputation of a government depends partly on the conduct of previous governments of the same country and partly on the conduct of other governments regarded as similar. The speed with which reputations are revised to reflect current behaviour of the government concerned depends on the amount that foreign firms are willing to invest in information. African governments are at an acute disadvantage in all three respects. *First*, most African countries have been through a phase of poor

[17] The report further states "In this context, ODA can act as a catalyst for FDI – and private investment generally – through investments in human capital and in infrastructure, and assistance to regulatory reform." *World Investment Report 2010*, as note 11 above, p. 62.

[18] Elizabeth Asiedu, *Foreign Direct Investment in Africa: The role of natural resources, market size, government policy, institutions and political instability*, United Nations University, World Institute for Development Research, Research Paper No. 2005/24, June 2005. Presentation by William van der Geest, 18 February, 2010. All conference presentations are available online, at http://www.unctad.org/Templates/meeting.asp?intItemID=2068&lang=1&m=18891.

[19] See, for example, UNCTAD's online *Country Fact Sheets* regarding FDI (http://www.unctad.org/templates/page.asp?intItemID=3198).

> governance so the legacy is a poor reputation even if currently unwarranted. *Second*, because most African countries are small, more weight is likely to be placed on the reputation of the neighbourhood than, say, if firms are making an assessment of China or India. ... *Third*, because Africa is economically small, less money will be invested in current information, so reputation is likely to react more slowly to improvements in the African environment.[20] *{emphasis added}*

Box 1: "*Attracting increased FDI flows to African LDCs*"

"The Africa Regional Preparatory Meeting underscored the important role that foreign direct investment can play in promoting sustained growth and development through technology diffusion as well as its effect in enhancing efficiency and productivity."

"Efforts should be made to *channel FDI to support productive capacity development and diversification*. Strengthening national, bilateral and multilateral efforts can go a long way in overcoming the constraints limiting African LDCs' attractiveness to foreign investment. Bilateral and multilateral partners can support LDCs in attracting FDI by providing insurance to offset the *high perceived political risk* of African LDCs. Furthermore, FDI incentives by home countries to match measures taken by African LDCs for attracting inflows and targeting them to priority sectors should be encouraged." *{emphasis added}*

"Given the *increasing competition for FDI*, African LDCs should continue to improve their attractiveness to foreign investment through a number of fiscal and non-tax incentives. Fiscal incentives should be used as part of a broader policy package. In attracting FDI, *African LDCs need to introduce targeted and sector specific investment incentives to facilitate FDI into priority sectors*." *{emphasis added}*

Source: *Outcome of the Africa Regional Preparatory Meeting for the Fourth United Nations Conference on the Least Developed Countries*, Meeting of the Committee of Experts of the 3rd Joint Annual Meetings of the AU Conference of Ministers of Economy and Finance and the ECA Conference of African Ministers of Finance, Planning and Economic Development, Lilongwe, Malawi, 25 – 28 March 2010, p.9.

This situation led Paul Collier to conclude that "A reforming African government thus needs instruments which accelerate the improvement in its international reputation."[21] In addition to GATS commitments (as detailed in Part III), other possible mechanisms to improve the international investment reputation of LDCs presumably could include higher rankings in the World Bank's *Doing Business* index -- as recently demonstrated by Rwanda, which received extensive publicity as the leading reformer for 2010.[22] With respect to investment codes, Collier has further stated that:

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[20] Paul Collier, *International Political Economy: Some African Applications*, Journal of African Economies (2008) 17(suppl 1): 110-139 doi:10.1093/jae/ejm032, p. i136 (available online, at http://jae.oxford journals. org/content/17/suppl_1/110.full.pdf+html), p. i136.

[21] Paul Collier, as note 20 above, p. i126.

[22] World Bank, *Doing Business 2010*, The International Bank for Reconstruction and Development / The World Bank, 2009.

> One stage up from an *investment code, which should apply to all investment—not just foreign investment*, is to extend current investor insurance arrangements from foreign to domestic investors. The global public insurance facility for investors, the Multilateral Investment Guarantee Agency (MIGA), is currently restricted to providing insurance only for foreign investors. This produces *the absurd situation that foreign capital is safer than domestic capital, something which may have contributed to African capital flight.*[23] *{emphasis added}*

III. GATS, the Doha Negotiations and the Millennium Development Goals (MDGs)

"[t]here is a common interest across countries at all levels of development in ensuring that their services infrastructure underpins, rather than inhibits, internal economic performance and access to external markets. The quality, availability and price of core producer services are key determinants of competitiveness, and ultimately of growth and development."[24]

"Sound public policies and investments are central for achieving the MDGs and accelerating economic growth, but they are not enough. The private sector is the engine of innovation and growth providing incomes for rural and urban populations. It is also a tremendous repository of organizational and management expertise that can increase the effectiveness of service delivery."[25]

Developmental aspects of the Doha negotiations

Developmental aspects of the Doha Development Agenda (DDA) are highlighted in several WTO documents and publications.[26] With regard to investment, it has been noted that "*[t]he absence of clear and predictable market conditions may prompt potential investors to demand risk premiums that are not politically or socially acceptable*."[27] *{emphasis added}*

Regarding investment promotion, the additional benefits of making GATS commitments are explicitly noted, together with flexibility in regard to national regulatory requirements and policy priorities: "Even though governments can – and indeed do – initiate reforms of services sectors unilaterally, multilateral commitments under the GATS can be an important catalyst for such liberalization and reform efforts. .... Moreover, specific commitments can be shaped to take into

[23] Paul Collier, as note 20 above, p. i136. The risk of capital flight if domestic investors are not given equal treatment with FDI is also emphasized by the *UNCTAD LDC Report 2010*, as note 9 above, p. 167.

[24] WTO, *Developmental Aspects of the Doha Round of Negotiations*, Note by the Secretariat, Revision, WT/COMTD/W/143/Rev.5, 28 October 2010, p. 15.

[25] *Achieving the Millennium Development Goals in Africa*, Recommendations of the MDG Africa Steering Group, June 2008, p. 1 (available online, at http://www.mdgafrica.org/pdf/MDG%20Africa%20Steering%20Group%20Recommendations%20-%20English%20-%20HighRes.pdf).

[26] Detailed information regarding the GATS and the DDA is available on the WTO website (www.wto.org and http://www.wto.org/english/tratop_e/dda_e/dda_e.htm).

[27] *Developmental Aspects ...*, as note 24 above, p. 17.

account eventual adjustment processes and to allow for the development of necessary regulatory frameworks."[28]

The WTO's *World Trade Report 2003,* in the section titled *The case for intensified engagement in the multilateral trading system*, emphasizes the importance of secure market access, stating that "trade is likely to expand and be more profitable under conditions of certainty and security as to the terms of market access and the rules of trade".[29] The *World Trade Report* also notes the challenges of addressing development issues in the context of the DDA negotiations:

> [t]he real challenge will be to find ways that genuinely respond to the development needs of developing countries. This means avoiding the twin traps of mere lip service and an attitude of tokenism to development issues on one hand, and the misguided assumption on the other that disengagement and minimal commitments are the best recipe for supporting the development process through the WTO. Succumbing to either temptation will make the results less meaningful and the WTO less useful to all parties.[30]

Low level of existing GATS commitments

To a considerable degree, the level of GATS commitments taken by WTO Member governments corresponds with their level of development, with an average of 24 sub-sectors (of a possible 160) for LDCs, 52 for developing and transition economies, and 105 for developed economies.[31] In addition to the individual exceptions of Gambia, Sierra Leone and Lesotho,[32] the major category of exceptions is the WTO accession countries, which includes Cambodia, Cape Verde and Nepal, with an average of 102 sub-sectors committed.[33] Of course, the number of sub-sectors committed is only a rough indicator of actual GATS liberalization.[34]

There is an extremely wide variation in the number of GATS commitments among the LDCs [**Chart 1**] -- ranging from over 110 sub-sectors (Gambia and Sierra Leone) to only 1 or 2 sub-sectors (Burkina Faso, Chad, Madagascar, Mali and Tanzania) -- that is not accounted for by the accessions

[28] *Developmental Aspects ...,* as note 24 above, p. 17, para 68.

[29] WTO, *World Trade Report 2003 – Trade and Development,* Geneva: WTO, pp. 120-121.

[30] *World Trade Report 2003,* as note 29 above, p. 122.

[31] A listing of the services sub-sectors can be found on the WTO website, at http:// tsdb.wto.org/Includes/docs/W120_E.doc. Extensive information on the GATS is found on the WTO Services gateway page, at http://www.wto.org/english/tratop_e/serv_e/serv_e.htm.

[32] For details, see their WTO Trade Policy Review reports (http://www.wto.org/english/tratop_e/tpr_e/ tpr_e.htm.).

[33] With regard to requirements of the accession process, see the WTO accessions protocols webpage, with access to services schedules database (http://www.wto.org/english/thewto_e/acc_e/completeacc_e.htm).

[34] Due to the great flexibility of the GATS, the level of liberalization within a given commitment can vary widely; therefore, counting the number of sub-sectors committed cannot in itself indicate comparable levels of liberalization between WTO Member governments.

process. In addition, it is striking that 20 of the current 31 LDC Members of the WTO have made no GATS commitments of any type in Communications Services, 19 have no commitments in Financial Services, and 21 have made no commitments in Transport Services.[35] [**Annex Table 2]** Mali has made GATS commitments in 2 sub-sectors: hotel and restaurant services; and adult education services in the crafts sector.[36]

Difference between GATS commitments and the status quo

For nearly all WTO Members, the gap between existing GATS commitments and currently applied services regimes has been expanding over time and is now very wide.[37] This is clearly indicated by contrasting GATS commitments [**Chart 1 and Annex Table 2]** with the summary of applied investment regimes in the World Bank Group report *Investing Across Borders 2010*.[38] Mali is no exception, as described in Part IV. The situation is similar to the differences between "bound" and "applied" tariffs for goods.[39]

Consequently, the gap between GATS commitments and the actual applied services regime – which is evidently even larger than the gap between bound and applied tariffs – potentially represents a risk factor for both traders and investors, as there is always the possibility that the current level of liberalization and market openness will not be maintained.[40] Of course, the extent to which investment decisions might be affected is directly related to the existing level of investor confidence, together with the expected level of profitability and other factors.

Preserving "policy space"

As illustrated in the *Ezulwini Declaration* **[Box 2]**, there is need for a careful balance -- between maintaining sufficient "policy space" and ensuring a predictable trading environment -- which should be decided on a case-by-case basis by the countries themselves. Unfortunately, policy space appears often to be unclearly defined, subject to potential misuse, and in some cases even

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[35] Cape Verde and the Maldives were LDCs when their lists of GATS commitments were created, and consequently are included in this working paper, but are no longer considered as LDCs by the United Nations.

[36] *Communication from Mali*, WTO document GATS/SC/53, dated 30 August 1995. Details on how to read GATS schedules are available on the WTO website (http://www.wto.org/english/tratop_e/serv_e/guide1_e.htm).

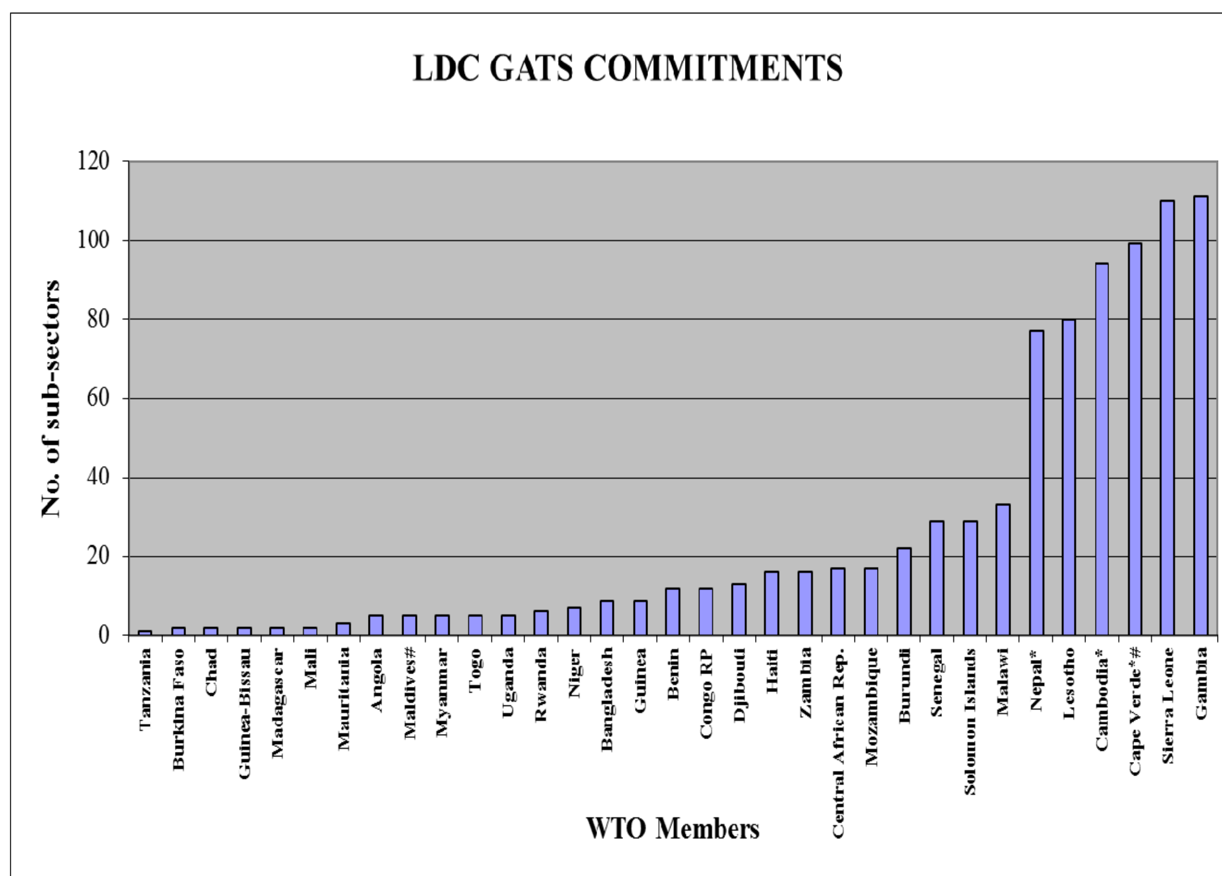
[37] See, for example, Batshur Gootiiz and Aaditya Mattoo, *Services in Doha: What's on the Table?*, Policy Research Working Paper 4903, The World Bank, Development Research Group, Trade Team, April 2009.

[38] Word Bank, *Investing Across Borders 2010*, The World Bank Group, 2010 (available online, at http://iab.worldbank.org/), pp. 18-19.

[39] "Bound" tariffs are legally binding WTO obligations that represent a "ceiling rate" which governments have promised not to exceed, and "applied" tariffs are those actually charged at the border and typically considerably lower, but without any legal guarantee of being continued.

[40] The actual level of risk can be reduced by coverage under BITs and FTAs, which has the consequence of reducing "policy space", as noted below.

Chart 1: LDC GATS Commitments



*WTO accession country
LDC graduation country
Source: WTO 2010 *Trade Profiles*.

illusory. While essential for ensuring the implementation of development policies, especially for LDCs and developing countries overall,[41] it must be acknowledged that abuse of policy space can have severely negative consequences for development, especially if used to impede needed liberalization and improvements in essential infrastructural services.[42]

Delays in the implementation of telecommunications liberalization, for example – such as the maintenance of an inefficient monopoly (whether public or private) – can extract a high price upon the poorest segments of the population. Competition is almost always essential to ensure the greatly

[41] The Preamble of the GATS explicitly recognizes the right of WTO Member governments to regulate, and the particular need of developing countries to exercise this right (WTO, website, *General Agreement on Trade in Services,* http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm).

[42] Another example of abusing policy space is counterproductive domestic regulation, as frequently described in the World Bank's *Doing Business* reports, including high costs and excessive requirements for the establishment of small and medium-sized enterprises.

reduced prices and improved services that liberalization can bring.[43] The lack of necessary regulation (a prerequisite for liberalizing telecommunications, financial services and other sensitive sectors) should not be used as an excuse for endless procrastination.[44]

In a significant number of cases, attempts to preserve policy space by not making GATS commitments are at least partly an illusion, as many governments already have made internationally binding services trade commitments in the context of BITs, FTAs, etc.[45] This is in addition to the unilateral trade liberalization resulting from efforts to attract FDI (or past conditionality requirements), which in many cases would be both economically and politically difficult to reverse.

A 2009 UNDP study, *Policy Space and Investment Rules under GATS: Select Asian experiences*, notes that "In general, it does appear for the selected countries that the GATS framework has succeeded in permitting commitments to retain sufficient space for development policies, as NT {national treatment} is, in many cases, unbound, and some NACs {newly acceding countries} have been able to include horizontal restrictions." The study further observes that:

> Services liberalization in Mode 3 is expected to lead to increased opportunities for foreign investment. Targeted and well directed FDI can potentially upgrade infrastructure, introduce new technologies, generate employment opportunities, reduce the burden on government resources and be useful in playing a vital complementary role to services provision by the public sector, in many instances.[46]

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[43] Of course, opposite extremes in policy, such as excessive conditionality, must also be avoided. See, for example, *UNCTAD LDC Report 2010*, as note 9 above, pp. 90-91.

[44] As noted below, the phase-in of GATS commitments can be a means of addressing prerequisites for adequate regulation. Regulatory technical assistance is also available from development partners and international organizations.

[45] Rudolf Adlung, *Services Liberalization from a WTO/GATS Perspective: in search of volunteers*, WTO Staff Working Paper ERSD-2009-05, February 2009, p.12 notes that many BITs are subject to MFN requirements under the GATS and other trade agreements: "The *perpetuation* of existing levels of access, as far as mode 3 is concerned, is already guaranteed in many countries under investment treaties. ... Since very few Members have listed MFN exemptions for their investment treaties, they are required to extend the benefits involved, including in most cases national treatment on a post-establishment basis, to investors from all WTO Members. GATS commitments thus add an element of credibility to policies that must be implemented on an MFN-basis in any event."

[46] UNDP, *Policy Space and Investment Rules under GATS: Select Asian experiences*, Asia Pacific Trade and Investment Initiative, UNDP Regional Centre for Asia Pacific, Colombo Office, June 2009, p. 57. See also: Chris Milner, *Constraining and Enhancing Policy Space: The WTO and adjusting to globalisation,* The Journal of International Trade and Diplomacy 3 (1), Spring 2009: 127-154; Overseas Development Institute, *Policy Space: Are WTO Rules Preventing Development?*, Overseas Development Institute Briefing Paper, January 2007, London; and UNCTAD, *Economic Development in Africa: Reclaiming Policy Space*, United Nations, New York and Geneva, 2007.

Box 2: Elements of the *Ezulwini Declaration*

(Adopted at the Third Meeting of Trade Ministers of landlocked developing countries (LLDCs), held in Ezulwini, Kingdom of Swaziland, 21-22 October 2009[1])

"Reaffirming our belief in potential benefits of a non-discriminatory, rules-based multilateral trading system and *predictable trading environment*, which takes into account the development dimension of international trade and responds to the needs of developing countries, notably those that are particularly vulnerable, ..." *{emphasis added}*

"Underscore the critical role of international trade and investment for development and growth of landlocked developing countries."

"We, nevertheless, recognize the importance of maintaining policy space for LLDC's, allowing them to use commercial and financial measures for purposes of development."

"To recognize the role of foreign direct investment (FDI), which may help accelerate development and reduce poverty through employment, transfer of managerial and technological know-how and non-debt creating flows of capital, as well as its key role in providing infrastructure for transport, telecommunications, and utilities. *We call on capital exporting countries to support efforts made by LLDCs in attracting FDI and to adopt and implement economic, financial and legal incentives to encourage FDI flows to LLDCs*." *{emphasis added}*

[1]Circulated as WTO document WT/MIN(09)/5, 24 November 2009, pp. 1, 2, 3, and 4.

Value of GATS commitments

Contrary to some misconceptions, making GATS commitments does not require full liberalization, or even guaranteeing the status quo. This flexibility is easily demonstrated by the existing pattern of GATS commitments, as described above. Although the WTO accession process might be regarded as severely limiting GATS flexibility, substantial variations are nonetheless easily observed among the commitments taken, as shown in **Box 3**.[47]

Surprisingly, it can be argued that making GATS commitments, including partial commitments, actually helps protect policy space by publicizing government priorities, and making them legally binding internationally. Considering that many LDCs (including Mali), under domestic laws, have already opened a wide range of services sectors to FDI without limitations, there may be relatively few remaining legal instruments to highlight policy preferences and priorities.

[47] As noted above, detailed information on GATS commitments is available on the Services gateway page of the WTO website (http://www.wto.org/english/tratop_e/serv_e/serv_e.htm). In addition, extensive technical assistance for LDCs, including on how to create GATS commitments that match policy priorities, is available from the WTO Secretariat (http://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm).

Box 3. Examples of (Partial) GATS Commitments

(Taken from GATS accession schedules)

Cape Verde[1]

* Training requirements: "foreign firms may be required to train and upgrade the technical and management skills of local employees."

* Subsidies: "Eligibility for subsidies may be limited to Cape Verdean service suppliers, i.e. to juridical persons established within the territory of Cape Verde."

* Maritime freight forwarding services: "50% of the entire staff must be Cape Verdean citizens, in both professional and non professional."

Cambodia[2]

* Investment incentives: "Investors, seeking incentives under the provisions of the Law on Investment, shall have the obligation to provide adequate and consistent training to Cambodian staff, including for promotion to senior positions."

* Specialized medical services: "Provision of services is permitted through a joint venture with Cambodian juridical persons."

* Travel agencies and tour operators services: "foreign equity participation limited to 51% for travel agencies."

Nepal[3]

* Architectural Services, engineering services: "only through incorporation in Nepal and with maximum foreign equity capital of 66 per cent."

* R&D services on natural science: "only through incorporation in Nepal and with maximum foreign equity capital of 51 per cent."

* General construction work for civil engineering: "only through incorporation in Nepal and with maximum foreign equity capital of 51 per cent. Foreign equity participation will be increased to 80 per cent after 5 years from the date of accession."

Sources: [1] *WTO document WT/ACC/CPV/30/Add.2, 6 December 2007 (available online, at http://docsonline.wto.org/DDFDocuments/t/WT/ACC/CPV30A2.doc). Cape Verde graduated from LDC status in 2007.*

[2] *WTO document WT/ACC/KHM/21/Add.2, 19 August 2003 (available online, at http://docsonline.wto.org/DDFDocuments/t/WT/ACC/KHM21A2.doc).*

[3] *WTO document WT/ACC/NPL/16/Add.2, 28 August 2003 (available online, at http://docsonline.wto.org/DDFDocuments/t/WT/ACC/ NPL16A2.doc).*

By setting an internationally binding minimum level of market access, even partial commitments might help reduce investors' fears of country risks, thereby helping to justify lower profit requirements and improved investment ratings. This could help encourage a wider range of more employment-generating investments, including in infrastructural services. For GATS commitments to be helpful, however, governments presumably will need to publicize them on investment promotion agency websites, and possibly in negotiations with investors.

Depending on the wording, GATS commitments can also offer positive signals to domestic investors, e.g. by specifying a minimum level of total suppliers rather than only of foreign suppliers. In any case, domestic suppliers in sectors with services commitments almost surely benefit from GATS transparency requirements and other "good governance" provisions,[48] thereby helping to improve the business environment and fight against corruption.

As mentioned above, the phasing-in of GATS commitments, e.g. to be applicable 5 or 10 years in the future, can be a means of ensuring sufficient time to create necessary regulations, and has been frequently used in accession negotiations as well as in the extended WTO telecommunications and financial services negotiations.[49] By making GATS commitments that enter into force within a designated timeframe, governments secure the needed time to develop regulations, while adding motivation to ensure the work is completely promptly and protecting against possible attempts by opposing interest groups to reverse socially beneficial liberalization.

Although LDCs are "not expected" to make GATS commitments – even partial GATS commitments -- in the DDA, it arguably may be in their interest to do so. [**Box 4**] In addition to opportunities for helping to attract FDI and protect policy space, as detailed above, there is also the further positive role that offering to make GATS commitments can play in the DDA, by providing LDCs with additional "bargaining chips" for negotiations.

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[48] See, for example, Panagiotis Delimatsis, *Due Process and 'Good' Regulation Embedded in the GATS – Disciplining Regulatory Behaviour in Services Through Article VI of the GATS*, J Int Economic Law (2007) 10(1): 13-50 first published online December 5, 2006 doi:10.1093/jiel/jgl035.

[49] WTO, website, *Post-Uruguay Round negotiations on basic telecommunications,* http://www.wto.org/ english/tratop_e/serv_e/telecom_e/telecom_posturuguay_neg_e.htm, and *Overview of the 1995 and 1997 negotiations on financial services,* http://www.wto.org/english/tratop_e/serv_e/finance_e/ finance_fiback_e.htm.

Box 4: The *LDC "Exclusion"-- A Question of Wording?*[1]

At the December 2005 Hong Kong Ministerial Meeting, WTO Members agreed that LDCs would not be expected to make new GATS commitments (para. I).[2] The intention was to allow LDCs to concentrate on "offensive" trade interests, rather than on protecting their "defensive" interests.[3] In the view of the author, however, LDCs instead have unintentionally been left on the sidelines of the GATS negotiations.

In the context of much of the GATS "Request-Offer" negotiating process, including the plurilateral negotiations, LDCs are no longer actively participating, and have ceased to be the "target" of requests for further liberalization.[4] This might be useful from the perspective of reducing pressure from trading partners, but in practice reduces opportunities for LDCs to request something in return, including from other developing countries.[5] LDCs appear to have shifted their focus to technical assistance and other "one-way" developmental measures, such as the proposed LDC waiver, rather than on negotiating new GATS commitments.

Ideally, LDCs could first negotiate on a "commercial" basis, offering to make GATS commitments and receiving offers from trading partners in exchange, then "top up" their negotiations by adding in developmental aspects, including Aid for Trade and the LDC waiver. "Defensive" interests can be protected if LDCs are simply not required to make commitments (para. II). In the author's view, LDCs should instead be placed at the very centre of the DDA negotiations, with their issues the first item on meeting agendas!

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Is there a Middle Ground?

I. (Hong Kong Ministerial text)[6] "We recognize the particular economic situation of LDCs, including the difficulties they face, and acknowledge that they *are not expected* to undertake new commitments." *{emphasis added}*

II. (WPDR draft)[7] **"LDCs shall *not be required* to apply these disciplines. LDCs are nonetheless encouraged to apply these disciplines, to the extent compatible with their special economic situation and their development, trade and financial needs." *{emphasis added}***

III. (LDC Modalities)[8] "There *shall be flexibility* for LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation. LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of the GATS on regulatory issues which may go beyond their institutional, regulatory, and administrative capacities. In response to requests, LDCs may make commitments compatible with their development, trade and financial needs and which are limited in terms of sectors, modes of supply and scope." *{emphasis added}*

Sources: 1) See Honeck, as note 5 above, pp. 20-21.
2) *Doha Work Programme: Ministerial Declaration*, WTO document WT/MIN(05)/DEC, 22 December 2005, p. 5, para. 26.

3) See *The Mid-Term Review of the Implementation of the Programme of Action for the Least-Developed Countries for the Decade 2001-2010*, Report by the Director-General of the World Trade Organization (WTO), WTO document WT/COMTD/LDC/13, 22 November 2006, p.2.

4) While data on Requests are not reported to the WTO Secretariat, LDC has submitted either an initial or revised Offer to date. One LDC sent a draft Offer to the WTO Secretariat in 2003, but it was withdrawn and never circulated.

5) It is only human nature that negotiators, whether from developed or developing countries, will focus their limited time and resources on negotiations in which they can directly expect something in return.

6) WTO document WT/MIN(05)/DEC, 22 December 2005, pg. 5, para. 26.

7) Draft Chairman's text, Working Party on Domestic Regulation (WPDR).

8) WTO document TN/S/13, 5 September 2003, p. 1, para. 5.

What are the alternatives?

Obviously, GATS commitments are not the only tool that LDC governments have to address infrastructure and investment gaps, even with regard to attracting infrastructural and other services-related FDI. Alternatives that immediately come to mind include domestic measures such as improving rankings under the World Bank's *Doing Business* index, bilateral investment treaties (BITs), and both bilateral and regional free trade agreements (FTAs).

Considering the seriousness of the LDC infrastructure and investment gaps (Annex I), all these alternatives will undoubtedly be required. Nonetheless, GATS commitments appear to have the additional benefit of enabling governments to protect policy space by highlighting trade preferences in a internationally legally binding manner. BITs and FTAs typically follow well-established "templates," rather than emphasize national-level LDC development priorities, and may reflect political compromises among the parties concerned. There is also the issue of power imbalances between LDCs and more developed trading partners, and the effects these might have on the agreements reached.

Perhaps the most difficult issue is determining which combinations of policy options are the most credible, with regard to both domestic and foreign investors. Undoubtedly, the specific balance must be determined on an individual country-by-country basis.

The example of Mali

As shown in Part IV, infrastructure and related services are crucial aspects of Mali's developmental objectives, including achieving the Millennium Development Goals (MDGs). At the same time, both financial and administrative capacity remain limited. Mali is recognized for its social and macroeconomic stability, and has made significant progress in regulatory reform, as highlighted by the World Bank:

> The 10 economies that made the largest strides in making their regulatory environment more favorable to business are Georgia, Rwanda, Belarus, Burkina Faso, Saudi Arabia, Mali, the Kyrgyz Republic, Ghana, Croatia and Kazakhstan. All implemented more than a dozen *Doing Business* reforms over the 5 years.[50]

Mali has also fully liberalized most types of FDI **[Box 6]**, and signed 16 BITs as of June 2010, none of which are covered under a GATS MFN exemption.[51] Nonetheless, the country still ranks near the bottom of most investment and country risk indexes,[52] and has had limited success to date in attracting FDI that is not related to the extraction of natural resources. As noted, Mali's GATS commitments currently cover two services sub-sectors. While the website for Mali's investment promotion agency (API-Mali) does mention improvements in the country's World Bank *Doing Business* ranking, it currently does not discuss Mali's GATS commitments, Trade Policy Review reports, DTIS studies, etc.[53]

IV. Mali: Growth and Poverty Reduction

"In conclusion, it should be noted that the low level of poverty reduction during the PRSP is due to inadequate growth rate of the Malian economy, and to unequal distribution of the fruits of growth, limited access to basic services, and poor control of population growth."[54]

"It is the plan's ambition to make Mali one of the most effective reforming countries in terms of enhancing the competitiveness of local enterprises and attracting private investment (both Malian and foreign)."[55]

As noted in the Introduction (footnote 3), one of the objectives of this working paper is to test the recommendations made in the author's 2008 working paper, which suggests that "Existing national-level investment promotion objectives, as well as the DTIS {Diagnostic Trade Integration Study} and TPR {Trade Policy Review} reports, could be helpful guides for further identifying priorities for both GATS negotiations and Aid for Trade."[56]

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[50] World Bank, *Doing Business 2011*, The International Bank for Reconstruction and Development / The World Bank, 2010, p. 6.

[51] UNCTAD, online, *County-specific Lists of BITs*, http://www.unctad.org/Templates/Page.asp? intItemID=2344&lang=1.

[52] For example, the 2010 *World Investment Report* ranked Mali 123rd in its Inward FDI Potential Index in 2008, and 108th in 2009 in terms of Inward FDI Performance (most recent years available), and shows Mali to be well below both the West African and African average in general in terms of FDI as a percentage of gross fixed capital formation for the years 1995-2009 (UNCTAD, online *Country Fact Sheets* regarding FDI, http://www.unctad.org/templates/page.asp? intItemID=3198). The *Doing Business 2011* index ranked Mali 153rd, up two places from 2010 (p. 4).

[53] The API-Mali website is http://www.apimali.gov.ml/, and Mali's WTO website page is http://www.wto.org/english/thewto_e/countries_e/mali_e.htm.

[54] Republic of Mali, *Growth and Poverty Reduction Strategy Paper (GPRSP)*, December, 2006, p. 19.

[55] *Trade Policy Review Report by Benin, Burkina Faso and Mali*, WTO document WT/TPR/G/236, 30 August 2010, p. 37.

[56] Honeck, as note 5 above, p. 29.

Because Mali's trade policies are clearly and consistently documented, the Growth and Poverty Reduction Strategy Paper (GPRSP), Projet pour le Développement Economique et Social du Mali (PDES)[57], MDG Plan, and Aid for Trade survey can also be consulted. In addition, the Regional Poverty Reduction Strategy Paper for West Africa (RPRSP-WA) has been included to ensure a wider perspective.

A. 2007-2011 Growth and Poverty Reduction Strategy Paper

Mali's development priorities

Mali's development priorities are easy to ascertain: the country's current 2007-2011 *Growth and Poverty Reduction Strategy Paper* (GPRSP) "[h]as given an opportunity to review all sectoral, national and thematic policies in light of the *main goal of growth and poverty reduction*".[58] *{emphasis added}* The GPRSP notes that, while implementation of the previous PRSP helped reduce the overall poverty level from about 68 per cent in 2001 (income basis) to 59 percent in 2005, the intended goal of 47.5 per cent by 2006 was not achieved. Most significantly, in rural areas the poverty level has remained virtually unchanged, at about 73 per cent.[59]

Mixed progress in infrastructure

The GPRSP states that significant results have been achieved in road infrastructure in terms of construction and maintenance, while serious difficulties and shortcomings were noted for airport and railway infrastructure. Positive results have been achieved in implementation of the National Rural Infrastructure Programme, and the Rural Infrastructure and Utilities Works Implementation Agency.[60] Although significant developments were made in micro-finance, financial exclusion remains high, with over 80 per cent of the working population not having access to financial services.[61]

Current Priorities: Growth-oriented sectors and infrastructure

Mali divides its priorities under the GPRSP into growth-oriented sectors and growth-oriented infrastructure, with both having a strong focus on services [**Box 5**]. Growth-oriented services sectors include handicrafts, tourism, and telecommunications, while growth-oriented infrastructure includes industrial zones and airport facilities, water, electricity, transport, and financial and non-financial

[57] Literal English translation is: "Project for the Economic and Social Development of Mali".

[58] In addition, the government states that the Growth and Poverty Reduction Strategy Paper "will henceforth be *the only frame of reference for development policies and strategies* in Mali". *{emphasis added}* (*GPRSP*, as note 54 above, p.12). Similar objectives are found under Mali's PDES development programme (see http://www.pcda-mali.org/?-Programme-de-Developpement-&lang=fr, or http://www.primature.gov.ml/).

[59] *GPRSP*, as note 54 above, p. 18.

[60] *GPRSP*, as note 54 above, p. 23.

[61] *GPRSP*, as note 54 above, p. 24.

services for small and medium size enterprises.[62] With respect to trade, services-related initiatives include improvement of the business climate, and trade-related technical assistance to support retail operators.[63] Unfortunately, the GPRSP does not indicate which are the most important priorities.

Box 5: Mali's Development Priorities in Services

2007-2011 Growth and Poverty Reduction Strategy Paper (GPRSP)[1]

Growth-oriented Infrastructure:

"Growth will be boosted through: (i) the development of viable industrial zones; (ii) the availability of water and electricity at better costs, (iii) the construction of transport infrastructure, and (iv) accessibility to more substantial financing. It is therefore necessary to improve the business climate."

Transport:

"The proposed strategy consists in the promotion of private public transport companies. The role of the Government will be limited to formulating the national transport policy and monitoring its implementation."

Telecommunications/ICT and Posts:

"In light of observation of the telecommunications sector since 1999 and implementation of the laws in force, it would be necessary to improve the legal framework so that private investment and use of private sector skills is encouraged, that the competitiveness of SMEs is improved, and that the objectives of social progress are achieved."

Trade:

"The initiatives taken to promote trade concerned: (i) support for the promotion of exports of some targeted agricultural products, (ii) support for the restructuring of the sector, (iii) improvement of the business climate, ..."

Growth-oriented Sectors:

"In order to ensure better development of the private sector, which is the engine of economic growth, the Government on 12 January 2005 adopted the Private Sector Development Policy Letter (LPDSP) on improving the investment framework and climate, and developing growth-oriented sectors such as mining, handicraft and tourism, and telecommunications. Special emphasis was laid on the development of growth-oriented infrastructures, such as industrial zones and airport facilities, as well as on the development of financial and non-financial services for Small and Medium Size Enterprises."

[62] *GPRSP*, as note 54 above, pp. 25, 62.
[63] *GPRSP*, as note 54 above, p. 24.

Tourism:

"In order to tap its tourism potential, Mali has developed a cultural policy which aims at structuring the cultural heritage, so as to make it the engine of economic and social development."
"The attendant measures to support the sector are: (i) strengthening of the institutional mechanism and building the capacities of all the stakeholders, (ii) diversity of supply and development of touristic sites, restaurants and hotels, (iii) better coordination between investment programmes for road and security infrastructure, ..."

2008-2012 Action Plan[2]

* Granting of the 3rd licence for mobile telephony

* Improvement of access to mobile telephony and introduction of the Internet in schools, enterprises and administration

* Construction of 4,600 km of roads, pursuance of road maintenance

* Construction of industrial zones, including 200 hectares for the industrial zone of Bamako-Sénou airport

* Installation of a cold warehouse in Bamako-Sénou airport

Sources: [1] Republic of Mali, *Growth and Poverty Reduction Strategy Paper*, 20 December, 2006, pp. 24, 25, 60, 62, 64, 65.
[2] Republic of Mali, *Action Plan for the Acceleration of Economic Growth in Mali over the 2008-2012 Period*, April 2008, pp. 5, 10, 11.

B. Summary Note of the Ten Year 2006-2015 Plan for Meeting the Millennium Development Goals (MDGs) in Mali

The 2005 *First MDG Implementation Monitoring Report in Mali* stated that, at the current pace of policy and strategy implementation, the chances of the country to achieve the MDGs by 2015 were low. Consequently, renewed efforts are being made to address implementation, as reported in the government's 2008 *Summary Note of the Ten Year 2006-2015 Plan for Meeting the Millennium Development Goals (MDGs) in Mali.*[64]

Infrastructural services are important elements of achieving the 10-year plan. Among the four intervention pillars to achieve the MDGs in the rural development sector is “Other Income Generating Activities (OIGA)”. An intervention titled "Capacities" is planned to address capacity building needs with regard to human and material resources, and the demand for infrastructure. Other interventions

[64] Republic of Mali, *Summary Note of the Ten Year 2006-2015 Plan for Meeting the Millennium Development Goals (MDGs) in Mali*, April 2008, p.5.

to address the MDGs mentioned in the *Summary Note* concern energy, water and sanitation, and transportation. Regarding transportation, the *Note* states:

> The Transportation Sector Policy Document in the framework of TSP II 2008-2012, adopted by the Government in April 2007, comes with an investment program that takes into account the following aspects: (i) the current and periodical maintenance of the priority network, (ii) the development and modernization of the road system, (iii) the upgrading of rail infrastructures and the modernization of transportation equipments, (iv) the development of the infrastructures and the modernization of the equipments of the Bamako–Senou international airport and of domestic airports, (v) the dredging of navigable channels and the acquisition of adequate fluvial transportation equipments as well as the construction of river platforms and ports, and (vi) the development of urban roads.[65]

With regard to costs, the *Summary Note* states that about US$ 17.7 billion will be required, with energy accounting for 16 per cent, road and transport 9 per cent, and water and sanitation 8 per cent. The *Note* suggests that 23 per cent of the costs be paid by beneficiaries, 32 per cent by the central government, and 45 per cent by development partners, without mentioning any role for either domestic or foreign investment.[66] Concerns, however, are expressed over financing:

> Based on cost estimates for the achievement of MDGs, it appears that the needs require annual fundings equivalent to approximately twice the Government Budget, all fundings included. Henceforth, the most important issues that need to be addressed are raised in the following terms: (i) Can Mali mobilize enough internal resources (both at the level of the Government and that of other actors) and external resource in order to meet the identified needs? (ii) Can the institutional and human capacities help absorb the resources that will be mobilized? And (iii) Will the management of public finances help assure maximum efficiency of the expenses in order to have maximum impact on the beneficiaries and bring the TFPs to get in line with the national budgetary procedures?[67]

C. An Investment Guide to Mali, Opportunities and Conditions

As emphasized in *An Investment Guide to Mali, Opportunities and Conditions*, "Mali is rich in investment opportunities, some of which have yet to be explored." While the *Investment Guide* (2006) states that agriculture, livestock and mining offer the most investment potential, it also mentions investment opportunities in the tertiary sector, including mobile telephones and tourism. Noting that the Djenné Mosque and the city of Timbuktu have been designated as World Heritage

[65] *Summary Note …*, as note 64 above, p. 11.

[66] With regard to capacity building, however, the *Summary Note* states "Thus five (5) strategic objectives are in order to plan those initiatives indispensable for capacity building: (i) strengthening the strategic institutions for the achievement of MDGs and economic revival; (ii) improve (or rehabilitate) the key functions of economic governance; (iii) promote interaction between Government and Civil Society for stronger community participation/involvement ; (iv) *promote public/private partnership*; and (v) assure the prevention and constructive management of conflicts." *{emphasis added}* (*Summary Note …*, as note 64 above, p. 16).

[67] *Summary Note …*, as note 64 above, p. 15.

sites by UNESCO, the *Guide* observes that "International promotion, improved infrastructure and better services could make Mali a tourist destination of choice".[68]

With respect to infrastructure (and public administration), the *Investment Guide* states:

> Inadequate infrastructure is another barrier to Mali's economic development. Road and rail networks are still inadequate, although some progress has been made, notably with the plan to privatize the railroad. The development of communications – both in size and quality – is indispensable for a landlocked country like Mali. The high cost of utilities, particularly electricity, also constitutes a challenge for investors. Finally, public administration is weak, with endless bureaucracy and a lack of transparency.[69]

Mali has almost fully liberalized FDI [**Box 6**]. As highlighted in the *Investment Guide*, "The investment code provides equal treatment to foreign and local investors. Foreign investors can own 100 per cent of any business they create, purchase shares in parastatal privatized companies or start joint-venture operations with Malian enterprises .... Foreign investors also go through the same screening process as domestic investors."[70] According to the World Bank group, however, Mali does impose some ownership restrictions in the mining and media sectors.[71]

In addition to physical infrastructure, another chronic problem inhibiting investment in Mali, and many other LDCs, is the lack of financial services. As noted in the *Investment Guide*, "Despite improvements to the financial system and the increased availability of resources, businesses continue to lament the difficulties of obtaining credit, especially for long-term investment. These difficulties stem from a scarcity of credit, which banks attribute to the predominance of demand deposits over term deposits."[72]

The *Investment Guide* also observes that "At the international level, Mali is also a member of the Organization for the Harmonization of Business Law in Africa (OHADA), created to establish legal security for economic activities in order to restore investor confidence and promote trade among members States".[73]

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[68] United Nations and International Chamber of Commerce, *An Investment Guide To Mali, Opportunities and Conditions, October 2006*, United Nations, New York and Geneva, p. 18.

[69] UN and ICC, as note 68 above, p. 11.

[70] UN and ICC, as note 68 above, p. 49.

[71] *Investing Across Borders 2010*, as note 38 above, p. 129.

[72] UN and ICC, as note 68 above, p. 27.

[73] UN and ICC, as note 68 above, p. 10. *Investing Across Borders 2010* (p. 129) further notes "Mali is a party to the OHADA Treaty (Organisation pour l'Harmonisation en Afrique du Droit des Affaires). Arbitration is therefore governed by the Uniform Act on Arbitration, which is based on the UNCITRAL Model Law. The act was signed on March 11, 1999 and entered into force 90 days later. The Uniform Act supersedes the existing national laws on arbitration. The principal arbitral institution under OHADA is the Common Court for Justice and Arbitration (CCJA) in Abidjan, Cote d'Ivoire."

Box 6: Mali's FDI Policies

Priorities:

The Government of Mali particularly welcomes investment in
- Agriculture and related activities including livestock and agro-processing;
- Infrastructure, in particular roads;
- Mining;
- Tourism and
- Services, including health and training.

The investment code establishes a number of special investment incentives (see Chapter IV, Fiscal incentives).

Prohibitions and restrictions:

There is no area in which foreign investment is forbidden. There is no restriction on equity: foreign investors can own 100% of any company.
{Note: According to the World Bank Group's *Investing Across Borders 2010*, Mali does impose some ownership restrictions in the mining and media sectors.}

Source: United Nations and International Chamber of Commerce, *An Investment Guide To Mali, Opportunities and Conditions, October 2006*, United Nations, New York and Geneva, 2006, p. 49.

D. Trade Policy Review Benin, Burkina Faso and Mali

The third Trade Policy Review of Benin, Burkina Faso and Mali was held in Geneva in October 2010, based on written reports by the three governments and by the WTO Secretariat. The delegation of Mali was headed by H.E. Mr Ahmadou Abdoulaye Diallo, Minister of Industry, Investment and Trade. Speaking on behalf of the three governments, the Minister stated that:

> [a]ware of the major role that domestic and foreign private investors can play in the economic growth of our respective countries, our governments have undertaken to accept and, above all, to protect investment, with strict regard for mutual interests and the rules of international cooperation and good governance. ... Improvements have been made in these investment codes and they now include provisions more attractive to promoters and offer greater security for invested capital. This new approach is aimed at placing investment at the heart of our trade policies and promoting activities with a strong potential for creating jobs and adding value.[74]

In its government report, Mali noted that "Since the previous review of its trade policy in 2004, Mali has pursued a policy of development and openness based on the President of the Republic's economic and social development programme (PDES), together with the Growth and

[74] *Trade Policy Review: Benin, Burkina Faso and Mali, Minutes of Meeting,* WTO document WT/TPR/M/236, 5 November 2010, p. 4.

Poverty Reduction Strategy Paper (GPRSP), launched in 2006."[75] With respect to the WTO's Enhanced Integrated Framework (EIF), Mali's report noted the need for "support for Mali in drawing up a strategy to attract FDI in promising sectors".[76]

With respect to FDI, the report by the WTO Secretariat notes that "According to the WAEMU Commission, boosting investment in member States depends on improving the business climate, which among other things means resolving the recurrent problem of load-shedding as well as eliminating the legal uncertainties, rather than on the various incentives that are granted." The Secretariat report further observes:

> Foreign direct investment (FDI) in Benin, Burkina Faso and Mali essentially shadows developments in privatization and the opening up of sectors to competition, and its fluctuations reflect the shaky implementation of the national programmes for State withdrawal from the economy. FDI goes primarily to the banking and telecommunications sectors and the extractive industries. In all three countries, this fluctuating level of investment and its concentration in a few economic activities highlights the need to further improve the business environment.[77]

E. DTIS: Expanding and Diversifying Trade for Growth and Poverty Reduction

The 2004 Diagnostic Trade Integration Study (DTIS) for Mali states that ""Foreign investment is seen as an essential channel for physical capital accumulation, access to finance, transfer of skills and managerial know-how and access to foreign markets". At the same time, the study also observes that "A major reason for the low level of (non-gold) FDI in Mali relates to one of image and high factor costs".[78]

Mali's DTIS highlights many of the same infrastructural services elements that can be found in the GPRSP:

> Some of the major impediments to industry development in Mali include the high cost and weak reliability of key factors of production (i.e., energy, water, telecommunications), weak infrastructure network, low skilled workforce, significant costs associated with setting up a business, weak access to finance, and unfair competition associated with the informal sector. .... the principal constraints confronting the private sector, which includes a weak and inefficient banking system and financial intermediation, weak judicial and taxation system, insufficient dialogue

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[75] *Trade Policy Review Report by Benin, Burkina Faso and Mali*, WTO document WT/TPR/G/236, 30 August 2010, p. 35.

[76] *TPR Report*, as note 75 above, p. 44.

[77] *Trade Policy Review, Report by the Secretariat: Benin, Burkina Faso and Mali, WTO document WT/TPR/S/236, 30 August 2010*, p. 6.

[78] Diagnostic Trade Integration Study (DTIS) (2004), *Mali: Expanding and Diversifying Trade for Growth and Poverty Reduction*, November 2004, Draft, pp. 40, 45 (available online, at http://www. enhancedif.org/documents/DTIS%20english%20documents/english/Mali_dtis_17nov04.pdf). For back- ground information on the Enhanced Integrated Framework and the DTIS reports, see http:// www.enhancedif.org/.

between the private and public sector, insufficient or poorly equipped industrial zones, inadequate provision of energy, transport and telecommunication services, poor infrastructure and infrequent maintenance of roads, and the low education and skill levels of the workforce.[79]

Mali's DTIS (pp. vii-xvii) includes an Action Matrix, with many references to infrastructure and services, together with the responsible agencies and timelines for completion of the recommended actions. While many of the Action Matrix recommendations have been incorporated into the GPRSP and other policy documents, it is unfortunately difficult to track the implementation progress, as the Action Matrix has evidently not been updated.[80]

F. Aid for Trade at a Glance 2009: Maintaining Momentum

In 2009, the OECD and the WTO published their second joint report on Aid for Trade. With respect to Mali, the report notes it is one of 43 countries (including many LDCs) that fully mainstream trade into national development plans, and one of only 5 countries (together with Cambodia, the Comoros, Senegal and Zambia) that highlighted the Enhanced Integrated Framework (EIF) as good practice in aid for trade. Mali is also listed as being among the top 20 recipients of Aid for Trade in 2007.[81]

In the country pages of the report, Mali is listed as receiving US$ 653.6 million in Aid for Trade commitments in 2007 (with disbursements of US$ 166.2 million), equivalent to about US$ 53 per capita. The commitments include nearly US$ 424 million for building productive capacity, US$ 227 million for economic infrastructure, and US$ 3 million for trade policy and regulations. Mali's top Aid for Trade priorities are listed in the report as: export diversification; competitiveness; and trade policy analysis, negotiation and implementation.[82]

G. Regional Integration for Growth and Poverty Reduction in West Africa: Strategies and plan of action

The Economic Community of West African States (ECOWAS) Executive Secretariat and the West African Economic and Monetary Union (WAEMU) Commission in 2006 published *Regional Integration for Growth and Poverty Reduction in West Africa: Strategies and plan of action*. Observing that "[t]he limitations of national and fragmented approaches are becoming more and more

[79] *DTIS: Mali*, as note 78 above, p. 40.

[80] Presumably, the 2008 Action Plan takes precedence. See Republic of Mali, *Action Plan for the Acceleration of Economic Growth in Mali over the 2008-2012 Period*, April 2008.

[81] *Aid for Trade at a Glance 2009: Maintaining Momentum*, OECD/WTO 2009, p. 61.

[82] *Aid for Trade*, as note 81 above, pp. 220-221.

evident with the increase in externalities inherent in the 'transnational' nature of the challenges", the report is intended to be a Regional Poverty Reduction Strategy Paper for West Africa (RPRSP-WA).[83]

Concerning services, the RPRSP-WA observes that "More than 50% of the people in the region live on less than one dollar a day. At the same time, countries in the subregion also lag far behind in other dimensions of human development, in particular, education, health, access to drinking water and other basic infrastructure services such as transportation, energy and telecommunications."[84]

With respect to infrastructure, the RPRSP-WA also notes that "Studies on competitiveness in the economies of the subregion have shown that half of the production costs stem from infrastructure services. This confirms the major impact that infrastructure development will have on the Union's competitiveness". In this regard, the RPRSP-WA further observes that the role of the State in the region has changed significantly:

> the scope of State intervention has gradually dwindled down to three main activities, namely: (i) the organization of partnerships with the private sector to secure the investments needed for the expansion of some services (often by creating a trust company and a management structure, for water, energy, roads, etc.); (ii) market regulation (port, airport, road, telecommunication, energy and other services) and (iii) the extension of services and facilitation of access in case of "incomplete markets", for example the rural areas (rural telephony, rural electrification, rural feeder roads, etc.).[85]

Part III of the RPRSP is titled "Implementation, Programming, Budgeting, Monitoring and Evaluation", and recommends preparation of a three-year action program (with a corresponding expenditure schedule) and the setting up of monitoring and evaluation mechanisms.[86] A similar strategy is found in the *2007-2010 Strategic Plan of the ECOWAS Commission*.[87]

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[83] ECOWAS Executive Secretariat and WAEMU Commission (2006), *Regional Integration for Growth and Poverty Reduction in West Africa: Strategies and plan of action*, Abuja and Ouagadougou, 2006, p. 2 (available online at http://www.ecowas.int/publications/en/macro/srrp.pdf).

[84] ECOWAS and WAEMU, as note 83 above, p. 2.

[85] ECOWAS and WAEMU, as note 83 above, p. 127.

[86] ECOWAS and WAEMU, as note 83 above, p. 181.

[87] *2007-2010 Strategic Plan of the ECOWAS Commission*, May 2007 (available on-line, at http://www.comm.ecowas.int/dept/b/b3/en/StrategicPlan_1008_en.pdf).

V. Conclusions: Need for Greater International Credibility?

"At the heart of the development problem in LDCs are the low investment levels that prevent these countries from achieving sustained growth, structural transformation and poverty reduction."[88]

"At present, those governments with low investor credibility have no instrument beyond the promulgation of national investment codes which, however generous, suffer from the basic time consistency problem that reflects a lack of commitment mechanism."[89]

The purpose of this paper is to use a specific national-level example, in this case Mali, to illustrate the contrast between the investment promotion efforts of most LDCs and their typically low level of GATS commitments. Of course, there is no intention to direct the policy-making processes of Mali or any other LDC (in any case, responses to the issues raised in this working paper would presumably be on a case-by-case basis, in accordance with national and regional policy objectives). In this regard, some general conclusions can apparently be drawn:

Aid alone is not enough?

Mali's MDG report, and more generally *Africa's Infrastructure* and the UNCTAD 2010 LDC report -- see Part IV and Annex I of this working paper -- highlight the fact that achieving the ambitious infrastructure (and development) objectives of most LDCs will require major increases in investment spending, at a time of extremely strong budgetary pressures on many development partners. Consequently, creative new financing mechanisms will be required, as noted by UNCTAD and others, including more public-private partnerships. Increases in both domestic investment and FDI will presumably be necessary, to help free more government resources for non-commercial, socially important investments.[90]

A related aspect is the issue of reducing aid dependence, which is an important objective for most LDCs. To the extent that commercially viable private-sector infrastructure projects can be encouraged, aid dependence might potentially be reduced in the future. In addition, the availability of sufficient commercial funding on competitive terms appears to be a crucial element in ensuring successful graduation from LDC status.

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[88] *UNCTAD LDC Report 2010*, as note 9 above, p. 87.

[89] Paul Collier, as note 20 above, p. i136.

[90] While governments, multilateral financing institutions and development partners will undoubtedly remain the main source of most LDC infrastructure investment, increased private sector involvement could help in maximizing efficiency and enhancing technical expertise, with opportunities for technology transfer.

Protecting "policy space" versus reducing investment risks

As stated in the Introduction to this paper, the most likely reason for the current low level of GATS commitments by LDCs is a perceived need to preserve "policy space", reflecting a fear that WTO commitments are too "strong" or inflexible. Ironically, the pattern of existing GATS commitments actually shows great flexibility, including with regard to regulatory issues, and is proof that LDCs typically are not forced to liberalize any particular services sector.[91]

Arguably, an important part of protecting policy space is publicizing policy priorities, and making them known internationally. The WTO's Trade Policy Review Mechanism, especially the government report, is an important opportunity to do so.[92] Making GATS commitments – including partial commitments -- as described in Part III of this paper, in contrast to bilateral investment treaties or free trade agreements, might actually help protect policy space, by making national priorities legally binding internationally. To the extent that LDCs can point to increased GATS commitments as a more solid "foundation" for investor protection, there are grounds for requesting reduction of the "risk premium" so often demanded for LDC investments, as well as for encouraging a wider range of FDI, including more infrastructural and socially beneficial investments.[93]

"Expect the unexpected"?

As observed above, no single option is evidently sufficient to address the LDC infrastructure and investment gaps, and more holistic approaches are required. Although GATS commitments are apparently neither a necessary nor a sufficient condition for increasing FDI, it is difficult to see how they could fail to be helpful, especially when used to help improve the overall consistency and credibility of LDC trade policies. In addition, they give LDCs some additional "bargaining chips" in the current DDA negotiations.

As noted in Part III of this paper, LDCs are "not expected" to make GATS commitments in the current DDA negotiations.[94] Of course, any willingness by LDCs to make GATS commitments,

[91] A partial exception, as indicated in Part IV, would be the pattern of commitments taken by accession countries, including Cambodia and Nepal. Nonetheless, as show in **Box 3,** considerable flexibility is possible despite the intense pressures of the accession process.

[92] The EIF Action Plans would also seem highly useful for this purpose (Mali's is available online, at http://www.enhancedif.org/documents/DTIS%20english%20documents/english/Mali_ActionMatrix_en.pdf); unfortunately, they are usually not updated.

[93] As mentioned in Part II, other possible mechanisms to improve the international investment reputation of LDCs would presumably include higher rankings in the World Bank's *Doing Business* index, as recently demonstrated by Rwanda -- which received extensive publicity as the leading reformer for 2010.

[94] Perhaps it's a question of semantics but, as explained in Part III, in the author's view the negotiating position of LDCs would be considerably enhanced if the interpretation was instead that LDCs are "not required" to make GATS commitments, leaving open the possibility that they could be persuaded to make further commitments – including partial commitments – if offered sufficient incentives in return by trading partners.

including partial commitments, will be strongly welcomed, and could have positive effects on attracting FDI. In addition, offers by LDCs to accept commitments beyond their WTO obligations – especially if made as a group – might even bring added impetus to such LDC negotiating priorities as the movement of natural persons (GATS Mode 4), the LDC waiver for services, and reductions in agricultural subsidies.

ANNEX I: LDC Infrastructure and Investment Gaps

A. Blocked structural transition?

The UNCTAD 2010 LDC report, *Towards a New International Development Architecture for LDCs*, emphasizes that growth (and investment) in LDC manufacturing and services has been grossly insufficient. Instead, recent growth has occurred primarily in natural resource-related sectors characterized by low employment creation, a situation termed as a "blocked structural transition":

> The overall and ongoing pattern of structural change in the LDCs can be described as a "blocked structural transition". More and more people are seeking work outside agriculture, but the pattern of structural change in output means that they cannot find productive and decent work. In 2008, own account and contributing family workers, mainly engaged in informal economic activities, represented about 80 per cent of the workforce in the LDCs.... Precisely because the boom reinforced the existing specialization in (mostly non-agricultural) primary commodities, instead of spurring the expansion of labour-intensive manufactures and services, economic growth failed to translate into broad-based employment creation.[95]

The UNCTAD 2010 LDC report further notes the linkages between structural change, employment, and poverty alleviation:

> The employment challenge, which is the key to substantial poverty reduction, is closely related to the pattern of structural change. The LDCs generally have very high population growth rates, and consequently the number of young people entering the labour market is increasing each year. Agriculture typically employs a large share of the labor force in LDCs, but agricultural productivity remains very low and the majority of farms are small, with the result that living standards for most peasants tend to be at or near subsistence levels. The sector is also less able now to absorb labour owing to decreasing farm sizes and lack of investment, including poor soil management.[96]

B. LDC "Infrastructure Gap"

The importance of adequate infrastructure cannot be overestimated. As noted in the *Outcome of the Africa Regional Preparatory Meeting for the Fourth United Nations Conference on the Least Developed Countries*, "African LDCs suffer from a considerable infrastructure deficit even compared to other LDCs. This constitutes a major constraint to their growth and development. Energy, roads, railways, ports and airports are in inadequate supply and in woeful conditions."[97]

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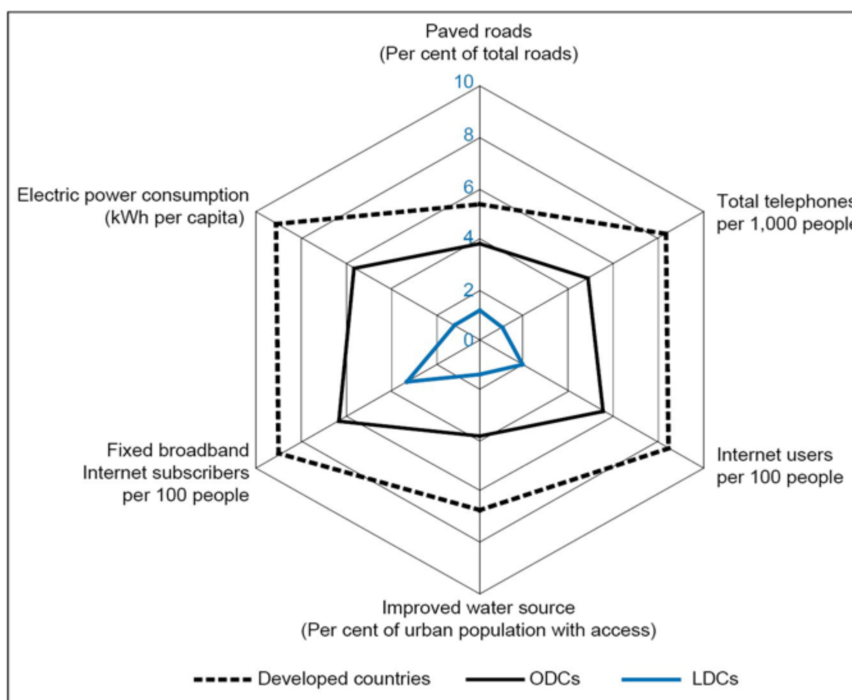
[95] UNCTAD, *The Least Developed Countries Report 2010: Towards a New International Development Architecture for LDCs*, United Nations, New York and Geneva, 2010, (http://www.unctad.org/templates/webflyer.asp?docid=14129&intItemID=5737&lang=1&mode=downloads), p. 13.

[96] *UNCTAD LDC Report 2010*, as note 95 above, pp. 12-13.

[97] United Nations Economic Commission for Africa and African Union Commission, *Outcome of the Africa Regional Preparatory Meeting for the Fourth United Nations Conference on the Least Developed*

The infrastructure gap is further underscored in *Africa's Infrastructure: A Time for Transformation*, which states "For most countries, the negative effect of deficient infrastructure is at least as large as that of crime, red tape, corruption, and financial market constraints."[98] A clear (and sobering) visualization of the LDC infrastructural gap is given in [**Annex Chart 1**], taken from UNCTAD's 2010 LDC report (p. 97); national-level statistics can be found in sources such as the OECD's *African Economic Outlook 2010*.[99]

Annex Chart 1: Selected Physical Infrastructure Indicators in LDCs, Other Developing Countries (ODCs) and Developed Countries



Source: UNCTAD secretariat calculations, based on World Bank, *Knowledge Assessment Methodology* database, 2010.
Note: Indicators are normalized to range from 0 to 10 (best performers).

The relationship between infrastructure availability, economic growth and improved productivity is emphasized in the report by César Calderón, *Infrastructure and Growth in Africa*, which states:

> The findings show that growth is positively affected by the volume of infrastructure stocks and the quality of infrastructure services; simulations show that our empirical findings are significant statistically and economically. Identifying areas of opportunity to generate productivity growth, the authors find that African countries

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Countries, 8-9th March 2010, Addis Ababa, Ethiopia (available online at http://www.un.org/wcm/webdav/site/ldc/shared/ARR%20Final%20document.pdf), p. 5.

[98] *Africa's Infrastructure: A Time for Transformation***,** Vivien Foster and Cecilia Briceño-Garmendia, Editors, a copublication of the Agence Française de Développement and the World Bank, 2010, p.2.

[99] OECD, *African Economic Outlook 2010*, Data & Statistics (available online, at http://www.africaneconomicoutlook.org/en/data-statistics/).

> are likely to gain more from larger stocks of infrastructure than from enhancements in the quality of existing infrastructure. *The payoffs are largest for telephone density, electricity-generating capacity, road network length, and road quality.*[100] *{emphasis added}*

Africa's Infrastructure: A time for transformation illustrates the benefits for economic growth in Africa of improved telecommunications, and the negative consequences of insufficient power infrastructure:

> Across Africa, infrastructure contributed 99 basis points to per capita economic growth from 1990 to 2005, compared with 68 basis points for other structural policies.... That contribution is almost entirely attributable to advances in the penetration of telecommunication services. The deterioration in the quantity and quality of power infrastructure over the same period retarded growth, shaving 11 basis points from per capita growth for Africa as a whole and as much as 20 basis points for southern Africa.[101]

Infrastructure is a key ingredient for achieving all the MDGs[102]

With respect to achieving the Millennium Development Goals (MDGs), the hugely beneficial effects of improved infrastructure cannot be ignored:

> Safe and convenient water supplies save time and arrest the spread of a range of serious diseases—including diarrhea, a leading cause of infant mortality and malnutrition. Electricity powers health and education services and boosts the productivity of small businesses. Road networks provide links to global and local markets. ICTs democratize access to information and reduce transport costs by allowing people to conduct transactions remotely.[103]

Overall, the economic and social costs of poor infrastructure are obviously very high. As noted in *Africa's Infrastructure*, "Not only are Africa's infrastructure networks deficient in coverage, but the price of the services provided is also exceptionally high by global standards. Whether for power, water, road freight, mobile telephones, or Internet services, the tariffs paid in Africa are several multiples of those paid in other parts of the developing world."[104]

An increasingly important mechanism to address the LDC infrastructure gap is public-private partnerships which, in addition to being useful funding sources, can improve efficiency and productivity:

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[100] César Calderón, *Infrastructure and Growth in Africa*, Policy Research Working Paper 4914, The World Bank, Africa Region African Sustainable Development Front Office, April 2009, Abstract.

[101] *Africa's Infrastructure*, as note 98 above, p.2.

[102] *Africa's Infrastructure*, as note 98 above, p. 2.

[103] *Africa's Infrastructure*, as note 98 above, p. 2.

[104] Further examples include the absence of water storage and distribution infrastructure, which results in water resources being grossly underused: "Although the irrigation-equipped area is less than 5 percent of Africa's cultivated area, it produces 20 percent of the value of agricultural production. An additional 12 million hectares could be economically viable for irrigation as long as costs are contained." *Africa's Infrastructure*, as note 98 above, p. 4.

> Even for infrastructure where the proven appetite for private finance is very limited, the potential contribution of the private sector to tackling costly management inefficiencies (undercollected utility revenues, low labor productivity, or neglected road maintenance) remains valuable. Indeed, the efficiency gains from such performance improvements are themselves a significant source of sector finance. Moreover, the concept of private participation has undergone significant expansion. More emphasis has fallen on the local (not international) private sector and on hybrid models that experiment with different ways of allocating responsibilities between public and private partners. [105]

C. LDC "Investment Gap"

There is a massive infrastructure financing gap in LDCs[106]

As noted by UNCTAD, the recent period of strong LDC growth did little to improve their investment situation: "The unprecedented period of economic growth brought only limited improvements in LDCs' chronic shortfall of investment. Investment in the LDCs as a group grew from 20 per cent of GDP in 2000 to 23 per cent in 2008. Gross fixed capital formation actually fell in 19 LDCs during the boom years of 2002-2007." Domestic savings in the LDCs, excluding oil exporters, have remained constant at only 10 per cent of GDP. [107]

For Sub-Saharan Africa, *Africa's Infrastructure* estimates annual infrastructure spending needs at about US$ 93 billion, in order to overcome the current infrastructure gap within a 10-year period.[108] Existing total spending is calculated at about US$ 45 billion, and possible efficiency gains at US$ 17 billion,[109] leaving an annual funding shortfall of nearly US$ 31 billion.[110] The funding gap for low-income African countries is by far the largest portion, estimated at nearly US$ 19 billion, with the biggest shortfalls for water supply/sanitation (about $9 bil.) and electricity ($7.5 bil.). As a share of GDP, the infrastructure spending gap accounts for 9 per cent of GDP for "non-fragile" low-income African countries, and a massive 25 per cent of GDP for "fragile" low-income African countries.[111]

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[105] *Africa's Infrastructure*, as note 98 above, p. 17. As highlighted in Chapter 2 (p. 67), "Africa is losing about $17 billion per year to various inefficiencies in infrastructural operations or spending."

[106] *UNCTAD LDC Report 2010*, as note 95 above, p.167.

[107] UNCTAD further states that " If savings are adjusted for depletion of stocks of fossil fuels, minerals and other forms of environmental capital, they are seen to have declined over the economic boom period, so that adjusted net savings were close to zero in 2008." *UNCTAD LDC Report 2010*, as note 95 above, p. IV.

[108] The largest requirements are for energy ($41 bil.), water supply/sanitation ($22 bil.), and transport ($18 bil.).

[109] The potential efficiency gains come from raising capital execution (about $2 bil.), eliminating operational inefficiencies (($8 bil.), tariff cost recovery ($4 bil.), and spending reallocation ($3 bil.).

[110] The largest annual gaps are for energy ($23 bil.) and water supply/sanitation ($11 bil.), while transport and ICT show surpluses.

[111] *Africa's Infrastructure*, as note 98 above, p. 75. The 14 "fragile" low-income countries in the report include Côte de Ivoire, the Democratic Republic of Congo, and Sudan, etc. A map and typology of country types is given on p. 51.

Addressing the gap

As stated in the *Outcome of the Africa Regional Preparatory Meeting for the Fourth United Nations Conference on the Least Developed Countries*, "External financial resources, including official development assistance, foreign direct investment and debt relief are urgently needed in order to augment domestic savings."[112] Not surprising, there is a call for increased official development aid (ODA) to infrastructure:

> Increased ODA flows will also be required to finance infrastructure development in African LDCs. To meet the huge financing gap for infrastructure financing, OECD DAC countries should at least double ODA to infrastructure by 2011. There is also a need to further harness the positive contribution of new donors for African LDCs development.[113]

UNCTAD has commented that South-South ODA involving China, India and South Africa is particularly high in infrastructural content:

> A major characteristic of South-South development cooperation is the sectoral focus: typically, South-South development cooperation is more geared towards infrastructure and productive sectors than developed-country ODA.... China, in particular, is heavily involved in infrastructure projects in Africa, including roads, airports, ports, power plants, water conservation, telecommunications, mining, agriculture and industry. India has been active in infrastructure projects in Asian LDCs and, more recently, also in Africa. South Africa's *Spatial Development Initiatives* focus on fostering infrastructure and sustainable industrial activity in areas with the highest rates of poverty and unemployment.[114]

Africa's Infrastructure observes, however, "Only a limited number of financing sources are available, and the current global financial crisis is likely to affect them all adversely."[115] Consequently, a wide range of options will undoubtedly be required, including public-private partnerships as noted above. A major constraint, however, is the limited domestic administrative capacity of many LDCs, with respect to both government projects and overseeing private investment.[116] In addition, not giving equal treatment to domestic and foreign investors can lead to capital flight and "round-tripping":

> At present, discussions on the catalytic use of aid for developing productive capacities in LDCs have focused mainly on how to use ODA to increase FDI flows to LDCs. This fosters a situation in which FDI and foreign affiliates have a privileged status over domestic investors. ...This present Report views the excessive focus on promoting FDI and neglect of domestic investment as a biased and counterproductive approach. Mistry and Olesen ... note: "Emerging evidence suggests that an imbalance in emphasis on risk coverage (and incentives) for foreign investors may be

[112] *Outcome ...*, as note 97 above, p. 4.
[113] *Outcome ...*, as note 97 above, p. 8.
[114] *UNCTAD LDC Report 2010*, as note 95 above, pp. 138-139.
[115] *Africa's Infrastructure*, as note 98 above, p. 75.
[116] See, for example, *Africa's Infrastructure*, as note 98 above, p. 69.

encouraging domestic capital flight (especially from LDCs), some of which is round-tripped back as privileged foreign investment (direct or portfolio)".[117]

[117] *UNCTAD LDC Report 2010*, as note 95 above, p. 7. "Round-tripping" must presumably increase investment costs, and negatively affect development of the domestic banking sector in LDCs.

ANNEX TABLES

Annex Table 1: The 10 Largest Greenfield FDI Projects in LDCs, Announced During 2003-2008.

Rank	Name of Company	Estimated Amount (US$ million)	Estimated Number of Jobs Created	Year	Home Country	Host Country	Sector	Key Business Function
1	Chevron Texaco	8,300	1,967	2004	United States	Angola	Coal, oil and natural gas	Extraction
2	Ayr Logistics	5,500	1,267	2008	United States	Mozambique	Coal, oil and natural gas	Manufacturing
3	Woodside Petroleum	4,000	921	2003	Australia	Timor-Leste	Coal, oil and natural gas	Manufacturing
4	CITIC Group	3,535	3,000	2008	China	Angola	Real estate	Construction
5	Total	3,400	806	2003	France	Angola	Coal, oil and Natural gas	Extraction
	ExxonMobile			2004	United States			
6	Sumitomo Group	3,300	3,000	2007	Japan	Madagascar	Metals	Extraction
7	ExxonMobile	3,000	711	2003	United States	Angola	Coal, oil and natural gas	Extraction
8	China Union	2,600	3,000	2008	China	Liberia	Metals	Extraction
9	Roc Oil	2,338	215	2003	Australia	Angola	Coal, oil and natural gas	Extraction
	ExxonMobile			2006	United States			
	BP			2003	United Kingdom			

	BP			**2008**	**United Kingdom**			
	Petrobras			**2003**	**Brazil**			
	BP			**2007**	**United Kingdom**			
	China Petroleum and Chemical (Sinopec)			**2007**	**China**			
	ENI			**2007**	**Italy**			
	Chevron Corporation			**2008**	**United States**			
10	**ArcelorMittal**	**2,200**	**3,583**	**2007**	**Netherlands**	**Senegal**	**Metals**	**Extraction**

Source: **UNCTAD, based on information from the Financial Times Ltd, fDiMarkets (www.fDimarkets.com). As presented by Masataka Fujita, 18 February, 2010 (available online, at http://www.unctad.org/Templates/meeting.asp?intItemID=2068&lang =1&m=18891).**

Annex Table 2: LDC GATS Commitments – Main sectors

Summary of Specific Commitments

Countries	1	2	3	4	5	6	7	8	9	10	11	12	Total
Angola							X		X	X			3
Bangladesh		X							X				2
Benin	X						X		X		X		4
Burkina Faso									X				1
Burundi	X		X	X				X	X				5
Cambodia	X	X	X	X	X	X	X	X	X	X	X		11
Cape Verde*	X	X	X	X	X	X	X		X	X	X		10
Central African Rep.	X	X				X			X	X			5
Chad									X				1
Congo RP	X	X	X		X				X	X			6
Djibouti	X	X							X	X			4
Gambia	X	X	X	X	X	X	X	X	X	X	X	X	12
Guinea	X					X		X	X		X		5
Guinea-Bissau									X	X			2
Haiti	X		X		X		X		X				5
Lesotho	X	X	X	X	X	X	X		X		X	X	10
Madagascar	X												1
Malawi	X		X				X	X	X				5
Maldives*	X												1
Mali					X				X				2
Mauritania									X				1
Mozambique							X						1
Myanmar									X		X		2
Nepal	X	X	X	X	X	X	X	X	X	X	X		11
Niger									X		X		2
Rwanda	X				X	X			X	X			5
Senegal	X	X		X			X		X	X	X		7
Sierra Leone	X	X	X		X	X	X	X	X	X	X		10
Solomon Islands	X		X				X		X				4
Tanzania									X				1
Togo			X						X	X			3
Uganda		X							X				2
Zambia	X		X					X	X				4
Total	20	12	13	7	10	9	13	8	30	13	11	2	148

*** Cape Verde and the Maldives are no longer considered by the United Nations as LDCs.**
Note: "X" indicates at least a partial commitment in the sector concerned.

Legend:
01. Business Services
02. Communication Services
03. Construction and Related Engineering Services
04. Distribution Services
05. Educational Services
06. Environmental Services
07. Financial Services
08. Health Related and Social Services
09. Tourism and Travel Related Services
10. Recreational, Cultural and Sporting Services
11. Transport Services
12. Other Services not Included Elsewhere

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