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Shishir Priyadarshi, *Promoting Increased Participation of LDCs in Global Trade – A Critical Account of the Measures Taken at the WTO*
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PROMOTING INCREASED PARTICIPATION OF LDCS IN GLOBAL TRADE – A CRITICAL ACCOUNT OF THE MEASURES TAKEN AT THE WTO

Shishir Priyadarshi*

Least-Developed Countries (LDCs) are a special group of countries defined by the United Nations (UN) as countries with low levels of per capita income and low levels of human development along with structural handicaps. As a result, they benefit from specific international support measures to integrate them into the global economy.

Trade is one of the key areas where LDCs are accorded special treatment. The World Trade Organization (WTO) recognises the LDCs in its Agreements and provides favourable treatment to them over and above other developing countries. At present, there are forty-six LDCs out of which thirty-five are WTO Members and another eight are negotiating their accession to the WTO.

The multilateral trading system has contributed to the economic growth and development of many developing countries. It has taken several important steps to enhance LDCs' beneficial and meaningful integration in global trade. Decisions have been taken to ameliorate their export opportunities as well as to provide them sufficient policy space to integrate WTO rules and disciplines. At the same time, greater efforts have been made to build trade capacity in these countries so that they can harness the gains from trade. Yet, LDCs remain marginal participants in world trade. The COVID-19 pandemic has further accentuated the vulnerabilities of this group of countries and their share has not seen any discernible improvement over the last two decades.

This article provides a critical account of the measures taken in favour of LDCs in the multilateral trading system. It first looks at the participation of LDCs in world trade. Thereafter, it provides an account of the decisions taken in WTO both on market access as well as on policy flexibilities and the extent to which they have benefitted the LDCs. Capacity building as well as institutional efforts to increase the participation of LDCs in both negotiations and in building supply-

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side capacity has also been addressed. It concludes that targeted and concerted efforts are required from WTO Members as well as from the broader international community to foster growth through trade and to put them on the path of sustainable development.

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I. LDC Trade Profiles

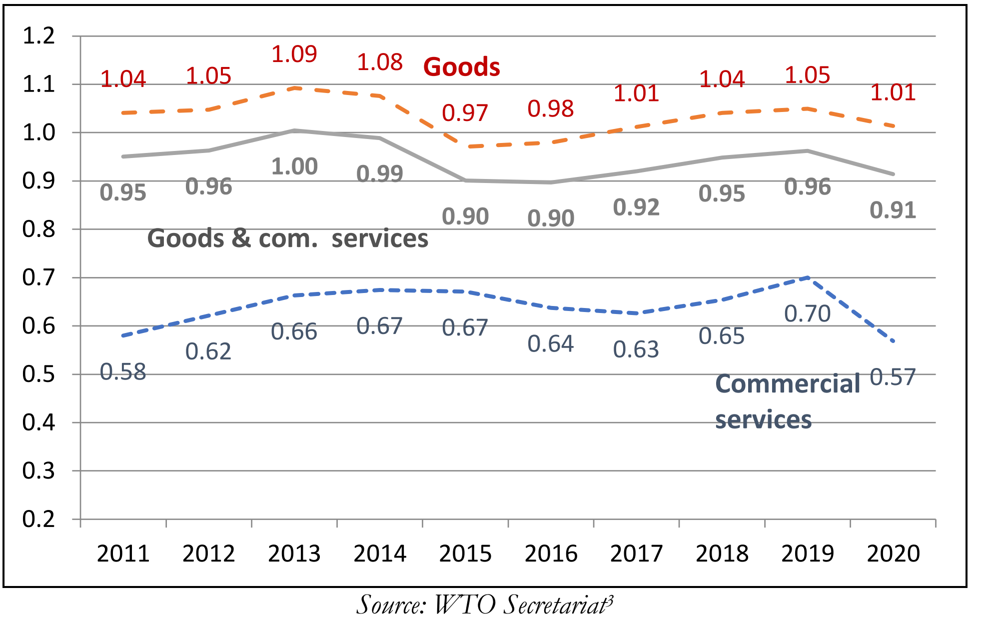
This section briefly highlights the characteristics of LDCs in global trade. The LDCs accounted for an insignificant share of 0.91% of global goods and services exports in 2020 (Figure 1). They face the challenges of a narrow export base, vulnerability to price fluctuations in primary commodities, dependence on a few destination markets and an ever-widening trade deficit. These stylised facts have remained the same for the last decade or so, which were accentuated due to the outbreak of the COVID-19 pandemic.[1] LDC's exports of goods dropped by 10.3%, a steeper fall than the rest of the world, which further marginalised LDCs as participants in international trade.

Starting from a low base, the LDCs made progress in increasing their participation in services trade prior to the pandemic. Driven by strong export growth in transport as well as travel services, the LDCs were expected to increase their share in global services exports from 0.58% in 2011 to 0.7% in 2019. However, commercial services exports in LDCs were particularly hard hit by the pandemic as travel restrictions almost fully halted tourism and business travel. In 2020, LDC's exports in services

[1] The annual WTO Secretariat Note on Market Access for Products and Services of Export Interest to LDCs provides detailed statistics on these characteristics of LDC trade. *See*, Sub-committee on Least Developed Countries, *Note by the Secretariat: Market Access for Products and Services of Export Interest to Least Developed Countries,* WTO Doc. WT/COMTD/LDC/W/68 (Oct. 23, 2020) [hereinafter Sub-committee Report on LDCs].

plummeted by around 35%, lowering their share in world commercial services exports to a mere 0.57%.[2]

Figure 1. Share of LDCs in world exports of goods and commercial services (%)



Source: WTO Secretariat[3]

LDCs are dependent on a few destination markets, with the top ten markets accounting for close to 85% of LDC merchandise exports (Table 1). The top markets comprise of China (28%), followed by the European Union (22%), the United States (10%) and India (7%). China and India are of particular importance to LDCs as they are the markets for primary commodities, i.e., agricultural produce as well as fuels and mining products. The European Union and the United States are the biggest destination markets for LDC-manufactured exports.

[2] *Id.*
[3] *Id.*

Table 1. Top ten destination markets for LDCs by main sector, 2019 (USD million and shares)

Total trade			Agricultural products			Fuels and mining products			Manufactures		
Market	USD	%	Market	USD	%	Market	USD	%	Market	USD	%
China	53.6	27.9%	China	5.5	21.0%	China	43.1	56.6%	EU (27)	28.3	36.7%
EU (27)	42.3	22.0%	EU (27)	4.9	18.7%	EU (27)	8.8	11.6%	USA	15.8	20.5%
USA	18.7	9.7%	India	3.4	13.0%	India	6.6	8.7%	United Kingdom	4.8	6.2%
India	13.6	7.1%	Vietnam	1.5	5.7%	Thailand	5.6	7.4%	Japan	4.7	6.1%
Thailand	9.5	4.9%	USA	1.2	4.6%	South Africa	1.5	2.0%	China	3.2	4.2%
Japan	6.3	3.3%	Saudi Arabia	1.1	4.2%	USA	1.4	1.8%	Canada	3.1	4.0%
Switzerland	6.3	3.3%	Thailand	1.1	4.2%	Namibia	1.3	1.7%	India	2.2	2.9%
United Kingdom	5.3	2.8%	Japan	0.8	3.1%	Korea, Rep.	1.1	1.4%	Russian Federation	1.4	1.8%
Canada	3.5	1.8%	Kenya	0.6	2.3%	Japan	0.8	1.1%	Korea, Rep.	1.3	1.7%
Singapore	3.2	1.7%	Pakistan	0.5	1.9%	Saudi Arabia	0.5	0.7%	Thailand	1.2	1.6%
Top 10	162.3	84.5%	Top 10	20.7	79.0%	Top 10	70.6	92.8%	Top 10	66	85.6%
All markets*	192	100.0%	All markets*	26.2	100.0%	All markets*	76.1	100.0%	All markets*	77.1	100.0%

Source: Data Monitor (importer data)[4]

**Aggregated export values for all markets may not coincide with total trade figures reported by LDCs.*

Moreover, the narrow export base of LDCs is dominated by low value-added activities. In 2019, primary products accounted for more than half (53%) of LDC merchandise exports, while manufactures represented only 40%. Given the concentration of exports in primary products, the LDCs are vulnerable to price fluctuations in these products. Manufacturing exports are dominated by apparel products, with LDCs in Asia (particularly Bangladesh and Cambodia) being the largest exporters.

In services, most LDCs are primarily dependent on travel exports, i.e., expenditures of foreign tourists and business travellers in the LDC territory, which represent around half or more of the value of commercial services exports.[5] Myanmar would be an exception with a relatively more diversified services sector.[6] In comparison to

[4] *Id.*
[5] WORLD TRADE ORGANIZATION, TRADE IMPACTS OF LDC GRADUATION 51-53 (2020).
[6] *Id.*

other countries, LDCs display much lower levels of export of other commercial services such as construction, finance and insurance, telecommunications, computer services, professional services, research and development or audio-visual services, which is reflective of their low services supply capacity.

II. Special flexibilities for LDCs in the WTO

This section provides an account of progress made in the multilateral trading system to facilitate greater participation of LDCs in global trade. In the evolution of the multilateral trading system, the least-developed countries have always received special attention in view of their specific vulnerabilities. Ever since the LDC category was created in 1971,[7] the system has sought to provide specific flexibilities to this group of countries.

The first significant decision came in 1979 when the then General Agreement on Tariffs and Trade (GATT) contracting parties agreed to a decision which allowed developed members to grant preferential market access to LDCs over and above the developing countries.[8] This decision paved the way for special treatment of LDCs under the Generalized System of Preferences (GSP) scheme of developed countries. Officially known as the "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries",[9] the Enabling Clause adopted under GATT in 1979 enables the developed Members to offer differential and more preferential treatment to the developing countries as well as the LDCs. This was the first time in the history of international trade that the needs of the LDCs were recognised and favourable treatment was given over and above that of the developing countries.

With the help of the multiple rounds of negotiations that led to the creation of the WTO in 1995, special treatment for the LDCs has been embedded across different disciplines. The first preferential treatments to LDCs were offered at the onset of the WTO and GATT regulations in 1995 with the Agreement on Agriculture,[10] the Agreement on Subsidies and Countervailing Measures (SCM),[11] and the Agreement

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[7] G.A. Res. 2768 (XXVI), at 52 (Nov. 18, 1971).

[8] Decision of November 28, 1979 on Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries, GATT BISD (26th Supp.), at 203 (1979) [hereinafter Decision of Nov. 28, 1979].

[9] *Id.*

[10] Article 15 of the Agreement on Agriculture exempts LDCs from reduction commitments on domestic support, export subsidies and market access. *See* Agreement on Agriculture, art. XV, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 410 [hereinafter Agreement on Agriculture].

[11] Article 27 of the Agreement on Subsidies and Countervailing Measures exempts LDCs from prohibition on export subsidies. *See* Agreement on Subsidies and Countervailing Measures, art.

on Trade-related Aspects of Intellectual Property Rights (TRIPS).[12] Moreover, the chapeau of the Agreement Establishing the World Trade Organisation recognises sustainable development as one of the key objectives of the WTO and that international trade should contribute towards economic growth of Members at various levels of economic development including the LDCs.[13]

In all these areas, LDCs were accorded more favourable treatment than developing countries to implement the provisions through generous transition periods as well as through exemptions from certain disciplines. However, evidence suggests that most of the LDCs have not been able to take maximum benefits from these flexible provisions. For example, the Agreement on Agriculture exempted LDCs from undertaking any reduction commitments in 1995.[14] Almost all LDCs had bound their tariffs at a very high rate, though applied tariffs remained far below, leading to a tariff overhang. While this has allowed policy space, in practice, most LDCs did not require raising agricultural tariffs substantially.[15] Similarly, LDCs, unlike the developing countries, have the flexibility to provide export subsidies for their non-agricultural products.[16] Yet only a handful of LDCs make use of it since they have limited resources to begin with to provide incentives to their exporters.

Another example of flexibility not being used to the fullest is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). WTO Members have shown maximum flexibility to allow sufficient time to LDCs to comply with the TRIPS Agreement. LDCs enjoy two types of transition periods under the TRIPS Agreement. First is the general transition whereby LDCs are not required to apply minimum standards of intellectual property (IP) in areas such as copyright or industrial design or patents until July 1, 2034. Moreover, LDCs are also not required to provide patent protection for pharmaceutical products until January 1, 2033.[17] Despite these provisions, many LDCs have embraced a stronger IP regime due to their accession commitments or autonomously to encourage innovation and

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XXVII, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, 1869 U.N.T.S. 14. [hereinafter Agreement on Subsidies and Countervailing Measures].

[12] Article 66 of the Agreement on TRIPS provides special and differential treatment specifically to LDCs in areas of implementation of TRIPS obligations and technology transfers. *See* Agreement on Trade-Related Aspects of Intellectual Property Rights, art. LXVI, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299 [hereinafter TRIPS].

[13] Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154 [hereinafter Marrakesh Agreement].

[14] Agreement on Agriculture, *supra* note 10, art. XV.2.

[15] WTO Secretariat, *Note by the Secretariat: WTO and Least Developed Countries: Twenty Years of Supporting the Integration of Least Developed Countries into the Multilateral Trading System*, WTO Doc. WT/COMTD/W/61 (2015).

[16] Agreement on Subsidies and Countervailing Measures, *supra* note 11, art. XXVII.

[17] World Trade Organization, General Council Decision of November 30, 2015, WT/L/971.

investment in their country. The lack of utilisation of special and differential treatment provisions has been a defining feature of challenges faced by LDCs in the multilateral trading system.

It is also noteworthy to mention that since the establishment of the WTO in 1995, WTO Members have continued to take important decisions in favour of LDCs,[18] with a view to enhancing their trading opportunities as well as providing them with enhanced policy space to pursue their development goals. An account of the Ministerial decisions as well as other key decisions taken by Members at the WTO will attest to their efforts in helping LDCs improve their participation in world trade. The Hong Kong Ministerial Conference of WTO in 2005 adopted a set of decisions for LDCs, notably the decision on Duty-Free and Quota-Free (DFQF) market access for LDC products whereby developed countries have been asked to provide duty-free and quota-free market access to 97% of products originating from LDCs. [19] The decision DFQF is one of the key decisions of the package in WTO. The developing countries were also encouraged to extend DFQF treatment to the LDCs.

Progressive steps have been taken to consolidate the market access opportunities for LDCs. A decision was taken in 2013 to better implement DFQF market access for LDCs.[20] Efforts in removing tariff preferences on LDC products have also been accompanied by liberal measures in Rules of Origin (RoO) conditions allied with various preferential schemes. The LDC package at the Bali Ministerial Conference in 2013 included the first-ever multilateral guidelines on preferential RoO applicable to imports from LDCs. Furthermore, building on these guidelines, some elaborate recommendations were agreed upon at the Nairobi Ministerial Conference in 2015.

Important breakthroughs have also come in services trade. In 2011, at the Geneva Ministerial Conference, members adopted a decision to provide preferential treatment to services and the service suppliers from the LDC Members.[21] This waiver, commonly known as the LDC services waiver, is valid until 2030.[22] To facilitate the use of the waiver, the Ministers at the Bali Ministerial Conference in 2013 as well as at the Nairobi Ministerial Conference in 2015, adopted decisions to operationalise the waiver, bringing renewed momentum to help LDCs in services trade.

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[18] *See*, Decision of Nov. 28, 1979, *supra* note 8.
[19] World Trade Organization, Ministerial Declaration of 18 December 2005, WTO Doc. WT/MIN(05)/DEC (2005) [hereinafter Ministerial Declaration of 18 December 2005].
[20] World Trade Organization, Ministerial Declaration of 7 December 2013, WTO Doc. WT/MIN(13)/DEC (2013) [hereinafter Ministerial Declaration of 7 December 2013].
[21] World Trade Organization, Ministerial Declaration of 19 December 2011, WTO Doc. WT/L/847 (2011).
[22] World Trade Organization, Ministerial Declaration of 19 December 2015, WTO Doc. WT/MIN(15)/48 (2015). [hereinafter Ministerial Declaration of 19 December 2015].

III. Preferential Market Access for Goods

This section makes an evaluation of the progress in providing market access for goods, mainly through the decisions relating to Duty-free and Quota-free and Preferential Rules of Origin.

Duty-Free Quota-Free (DFQF)

While some significant decisions have been taken, like DFQF market access as well as concrete guidelines on preferential rules of origin that accompany DFQF schemes, the desired impact has not come specially to raise the share of LDC trade in total world trade. LDCs, as a group, have also struggled to maintain the share they achieved a decade ago.

The expected results from the DFQF decisions have not been realised due to several reasons. First, there is still scope for improvement in the coverage of such schemes. For instance, the US excludes textile and clothing items from its GSP scheme which are key export items of LDCs, especially for the Asian LDCs.[23] Second, many LDCs, like the ones in Africa, do not have a strong manufacturing base and hence are unable to take advantage of preferences in clothing products in markets such as Canada or the EU.[24] Third, except for a few LDCs, products exported by majority of them are primary commodities including fuels and minerals which do not attract much tariff in destination markets. As a result, preference margin is either small or often, such items are duty-free on an MFN basis. In addition, the efficacy of LDC preference gets weakened as MFN tariffs are reduced and regional agreements offer a better-than-MFN tariffs treatment. Thus, the value of preferential treatment, also known as the margin of preference, given to the LDCs, declines substantially.

It is still important to acknowledge the efforts of developing countries in providing DFQF access to LDC products. Since 2008, India, under its Duty-Free Tariff Preference (DFTP) Scheme, extended DFQF preferential market access to 49 LDCs. India expanded its scheme and currently covers 98.2% of its tariff lines. India has 97 lines under the exclusion list, which only accounts for 1.8% of the tariff lines.[25] 114 lines are under the Margin of Preference (MOP) list, which is the list of products allowing preferential market access to beneficiaries. While by 2012, only 85% of

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[23] Sub-committee Report on LDCs, *supra* note 1.

[24] Out of 33 African LDCs, only Lesotho and Madagascar are qualified as *manufacture exporters.* The remaining African LDCs' exports have been limited to primary commodities and non-fuel minerals over the years.
Id., Annex Table 1.

[25] *Preferential Market Access: India's Duty Free Tariff Preference Scheme for LDCs*, UNITED NATIONS LDC PORTAL, https://www.un.org/ldcportal/preferential-market-access-indias-duty-free-tariff-preference-scheme-for-ldcs/.

India's total tariff lines were made duty-free, 6% of total tariff lines retaining in the Exclusion List, and 9% tariff lines enjoyed a preference margin.[26] Other countries, like China 2010 onwards, extends a DFQF preference covering 96.6% of the tariff lines.[27] Chile extends DFQF to 99.5% of tariff lines. Turkey has a GSP scheme for LDCs which is harmonised with the EU.[28]

Annex 1 provides a summary of the major non-reciprocal LDC preference schemes of selected preference-granting members as of 2020 or the latest year available.

Preferential Rules of Origin

Rules of Origin are used to determine the national source of a good. As often, tariffs and other barriers are conditioned upon the origin of the imported goods, RoO becomes a critical tool in international trade. Its application often differs as per the discretion of national governments. In most cases, RoO criteria require substantial transformation of goods for them to be considered of a particular source. However, change in tariff classification, ad valorem percentage requirements and other manufacturing and processing conditions are also being increasingly used.[29]

RoO is thus extremely important for the LDCs as it helps them take advantage of the various preferential schemes once they establish that the goods originated in their respective LDC. To facilitate this, the Bali Ministerial Conference in 2013 recognised that the RoO should consider the technical capacities and the levels of development of the LDCs; and based on this, it released a set of multilaterally agreed guidelines for Members to offer preferential rules of origin to the LDCs.[30] It emphasised on RoO being simple and transparent with low costs of compliance to aid the LDCs in availing preferential market access opportunities.[31]

In 2015, at the Nairobi Ministerial Conference, WTO Members provided more precise guidelines on preferential RoO with directives on issues like methods to be used to determine when a good qualifies as "made in an LDC," when imports from other sources are to be considered while determining the origin, etc. It also provides criteria to assess "substantial transformation" that would make it easier for LDC producers to comply with RoO requirements. For example, the decision explicitly

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[26] U.N. Conference on Trade and Development, *Handbook on India's Duty-Free Tariff Preference Scheme for least developed countries*, U.N. Doc. UNCTAD/ITCD/TSB/Misc.77 ¶ 4 (Jan. 2018).

[27] *Preferential Market Access for Goods*, UNITED NATIONS LDC PORTAL, https://www.un.org/ldcportal/preferential-market-access-for-goods/.

[28] *Id.*

[29] *Technical Information on Rules of Origin*, WORLD TRADE ORGANIZATION,https://www.wto.org/english/tratop_e/roi_e/roi_info_e.htm.

[30] Ministerial Declaration of 7 December 2013, *supra* note 20.

[31] *Id.*

states, as a general principle, that LDCs should not be needed to provide a certificate of non-manipulation when their goods are shipped through other countries.[32]

Post-the Nairobi Decision, WTO's Committee on Rules of Origin annually reviews the progress made in preferential rules of origin for LDCs.[33] There has been a notable progress in providing flexible rules of origin conditions to LDCs. For example, when exporting clothing products to the EU, LDC firms are only required to undertake a single-stage transformation from fabric to clothing under its 'Everything but Arms' initiative.[34] In fact, one-stage process or single transformation rule or lower threshold of local value content (Canada) have significantly facilitated clothing exports from LDCs to Canada and the EU. It also had a substantial effect on the preference utilisation rates by the LDCs in the EU.[35]

Developing countries have also offered favourable treatment to LDCs. For example, India's LDC scheme requires that imports from LDCs meet a regional value content of 30% and that a change in tariff sub-heading has occurred. China also has similar origin conditions with a slightly higher value content of 40%. Annex 2 provides a comparative summary of RoO conditions in LDC schemes of selected preference-granting Members.

Despite considerable progress in improving the RoO conditions in favour of LDCs, challenges remain in view of the industrial capacity of LDCs, lack of knowledge on the origin requirements and the administrative procedures to ensure compliance with such requirements. The gains from utilisation rates of preferences differ across LDCs and sectors. For example, utilisation rates were lower for African countries, whereas South Asian countries tend to have a relatively higher utilisation rate.[36] The heterogeneity in utilisation rates is also explained by inadequate "hard" infrastructure like transportation facilities or "soft" infrastructure like public and private institutions. In such cases, changing RoO will not influence preference utilisation. Thus, revising the RoO might not be the ultimate solution. Other trade reforms addressing LDCs' structural barriers are needed to complement revised RoO.[37]

IV. Preferential Market Access for Services

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[32] Ministerial Declaration of 19 December 2015 *supra* note 22.

[33] *Rules of Origin*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/roi_e/roi_e.htm.

[34] Tobias Sytsma, *Rules of origin and trade preference utilization among least developed countries*, 39 CONTEMPORARY ECONOMIC POLICY, 701–718 (2021).

[35] *Id.*

[36] *Id.*

[37] *Id.*

This section takes a critical look at the progress made in helping LDCs improve their participation in services trade, especially with the so-called operationalisation of LDC services waiver.

The adoption of the LDC services waiver in 2011, which allows Members to provide preferential market access to LDC services and services suppliers,[38] has been an important stepping stone in helping LDCs broaden their export opportunities. The waiver releases the Members from their MFN obligation under the GATS with an objective to enhance LDC Members' participation in services trade.

In line with these decisions, 51 developed and developing Members accounting for around 86% of global services trade have notified measures under the LDC services waiver between May 2015 and May 2017.[39] However, a close examination of these measures reveals very little preferential element for LDCs. Also, it should be noted that a higher number of sectors covered in those measures do not necessarily correspond to greater preferential treatment. Measures were notified under several sectors, with the top sectors being business services (included in 90% of the 24 notifications); transport services (84%); tourism and travel (80%); recreational, cultural and sporting services (64%); distribution services (48%); and construction and related engineering (44%).[40] However, opportunities offered through such sectors are not exclusive to LDCs.

Ten years after the adoption of the LDC services waiver, along with two complementary decisions for its operationalisation, this instrument has not brought tangible results for LDCs. The LDCs have expressed concerns related to lack of precision on how preferences will operate for LDCs as well as on the issue of only limited preferences going beyond the traditional market access. Non-market access concerns of LDCs in the form of visas, work permits, residence permits, and recognition of professional qualifications and accreditation were not targeted. The LDCs identified only six Members that notified preferential measures in services that go beyond market access which include Norway, Switzerland, Iceland, Turkey, China, and India.[41]

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[38] *Preferential Market Access for Services and Service Suppliers – Services Waiver*, UNITED NATIONS LDC PORTAL, https://www.un.org/ldcportal/preferential-market-access-for-services-and-service-suppliers/.

[39] The 51 Members include individual EU member states. Twenty-four (24) notifications have been received. *See* Trade in Services and LDCs, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/serv_e/ldc_mods_negs_e.htm.

[40] Ministerial Declaration of 7 December 2013, *supra* note 20.

[41] *LDCs Welcome Progress on Preferential Treatment for Services*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/news_e/news15_e/serv_02nov15_e.htm.

Supply-side constraints have also been crucial in impeding LDCs from making the best use of the available services waiver. Services trade of the LDCs is limited to Mode 2, which comprises tourism. Other Modes of interest, especially Mode 4, which allows for movement of natural persons is severely restricted and does not allow LDCs to harness their comparative advantage of low-cost labour. The LDCs thus operate from a low services export base.

Lack of interagency coordination, reliable physical and digital infrastructure and financial resources have been identified as common roadblocks that hinder the development of the services sector in LDCs and limit their utilisation of the services waiver.[42] These constraints are further aggravated by the unavailability of timely, disaggregated and reliable data in the services sector for effective policymaking.[43] In its recent work, Enhanced Integrated Framework (EIF) also highlighted the importance of digital connectivity for LDCs in the services sector. LDCs like Bangladesh, Nepal and Rwanda have made progress in the Information and Communications Technology (ICT) sector but further and a more inclusive digital transformation is needed for the LDCs.[44] Developing key digital technologies will allow for retail, financial, business and engineering services to flourish as leading services activities in the LDCs.

The services sector plays an important role in structurally transforming economies. It is a source for LDCs to not only diversify their exports but also simultaneously increase the competitiveness of their economies. It thus necessitates that the LDCs assess the role of services in their development strategies and prioritise the sectors and modes of supply of services export interests to LDCs.

V. Institutional Priority to LDCs

Apart from providing favourable treatment in goods and services trade under the framework of WTO, prioritisation of LDCs has also been manifested in the institutional arrangement of the WTO Secretariat. There is a dedicated LDC Unit that assists the LDC groups daily by providing technical advice on their participation in the WTO. The only dedicated Committee to look at systemic issues of interest to LDCs in the WTO, the Committee on Trade and Development, is also serviced by the LDC Unit. The Committee provides a forum for WTO Members to discuss priority issues of LDCs in the system and to see how LDCs could be assisted to

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[42] Miguel Rodriguez Mendoza et al., *The LDC Services Waiver – Operationalized? A first look at preferences granted, constraints persisting, and early conclusions to be drawn* (United Nations Conf.rade & Dev., 2016).

[43] *Id.*

[44] *Aid For Trade At A Glance 2017: Promoting Trade, Inclusiveness And Connectivity For Sustainable Development*, WORLD TRADE ORGANIZATION 243 (2017), https://www.wto.org/english/res_e/booksp_e/aid4trade17_chap9_e.pdf.

beneficially integrate them with world trade.[45] One of the flagship reports that this Committee prepares every year is the review of market access conditions of LDC exports in goods and services, which keeps track of trends of LDC trade.

Despite the specific attention to the needs of LDCs at the multilateral level, there is scope to do more to support the LDCs through analytical work and address the gaps in trade capacity building. While LDCs are becoming a key constituency in the decision-making process of the WTO and have become more active in recent years than a decade ago, the small size of LDC delegations in Geneva, along with a lack of technical capacity prevent them from maximising the gains from the Committee work in the WTO.

VI. WTO's Efforts in Trade Capacity Building

The multilateral trading system has also prioritised building human and institutional capacity in LDCs to take advantage of WTO Agreements and to exercise their rights in the system. WTO offers a variety of products to enhance the capacity of developing countries and LDCs to benefit from their participation in the system.

Under the Technical Assistance and Training Plan, WTO attaches special priority to impart training and technical assistance activities for LDC officials.[46] LDCs benefit from increased access to face-to-face and dedicated courses such as the 'WTO Introduction' course and the past thematic course on 'Priority Issues of LDCs' in the multilateral trading system.[47] Moreover, LDCs are a clear priority in various internship programmes whereby LDC capital-based trade officials get an opportunity to work either in their respective missions in Geneva or at the WTO Secretariat and get a unique first-hand knowledge of negotiations and processes in WTO.[48] There has been a visible improvement in the participation of LDCs in the work of the WTO through increased submission of proposals as well as greater engagement in regular negotiations. This remains an area where capacity building is continuously needed, especially due to the evolving landscape of trade and new issues being considered for WTO rules driven by technological developments leading to a digital economy.

To address supply-side constraints in LDCs and to build their trade-related infrastructure, at the Sixth Ministerial Conference in Hong Kong in December 2005,

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[45] World Trade Organisation, Committee on Trade and Development, *Decision for the Establishment of the WTO Sub-Committee on Least-Developed Countries,* WTO Doc. WT/COMTD/2 (July 18, 1995).
[46] World Trade Organisation, Committee on Trade and Development, *Biennial Technical Assistance and Training Plan 2020 – 2021,* WTO Doc. WT/COMTD/W/248/Rev.1 (Nov. 1, 2019).
[47] *Id.*
[48] *Id.*

WTO Ministers launched the Aid-for-Trade Initiative.[49] Since then, the Aid-for-Trade Initiative has played a vital role in mobilising support to address trade-related constraints in developing countries and particularly LDCs, as well as to mainstream trade issues into the development planning of both beneficiaries and donor countries.

Global Reviews of Aid-for-Trade, which normally take place every two years, provide a platform for the trade and development communities to dialogue on Aid-for-Trade, monitor its progress and evaluate its impact on-the-ground.[50] Recent Global Reviews of Aid for Trade covered a variety of topics, including global value chains (2013), trade costs (2015), connectivity (2017), as well as economic diversification and empowerment (2019). In March 2021, an Aid-for-Trade stocktaking event highlighted the essential role of Aid-for-Trade for a sustained and inclusive recovery from the COVID-19 pandemic. The next Global Review of Aid for Trade will be held in July 2022.

In 2019, Aid-for-Trade disbursements to LDCs amounted to USD 13.9 billion, of which around 60% went to economic infrastructure projects (energy, transport and communications) while close to 40% aimed to build productive capacity in various sectors (Table 2). The prioritisation of LDCs has increased since the start of the Initiative as their share in country-allocable Aid-for-Trade disbursements have increased from 31% during 2006-08 to 37% in 2019. However, the financial terms have hardened over time, with loans overtaking grants as the predominant financing type. In 2019, only 40% of Aid-for-Trade to LDCs came in the form of grants compared to 68% during 2006-2008.

[49] Ministerial Declaration of 18 December 2005, *supra* note 19.
[50] *Aid for Trade - Gateway*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm.

Table 2. Aid for Trade disbursements in USD millions (2019 constant) and %

	2006-08 avg.	2009-11 avg.	2012-14 avg.	2015-17 avg.	2018	2019	Δ2006-08 to 2019	Δ2009-11 to 2019	Δ2018 to 2019
Total Aid for Trade	**22,418.9**	**31,199.3**	**37,872.8**	**42,616.2**	**45,304.0**	**45,768.0**	104.1%	46.7%	1.0%
LDCs	**5,986.5**	**8,752.3**	**9,814.1**	**11,332.5**	**13,557.1**	**13,935.0**	132.8%	59.2%	2.8%
Building Productive Capacity	2,734.4	3,995.9	3,973.4	4,608.8	5,153.3	5,246.8	91.9%	31.3%	1.8%
Economic Infrastructure	3,118.9	4,572.9	5,583.6	6,478.7	8,164.1	8,470.3	171.6%	85.2%	3.7%
Trade Policy & Regulations	125.4	158.2	255.1	244.2	239.0	217.4	73.5%	37.5%	-9.0%
Trade-related Adjustment	23.6	25.3	2.0	0.8	0.7	0.5	-97.9%	-98.0%	-31.3%
Other low-income countries	20.1	72.9	80.9	66.2	49.2	67.7	236.2%	-7.2%	37.5%
Lower middle-income countries	7,826.4	11,533.0	15,301.0	17,334.7	17,218.5	18,601.3	137.7%	61.3%	8.0%
Upper middle-income countries	5,561.8	5,427.2	7,364.2	7,076.8	6,086.7	4,829.7	-13.2%	-11.0%	-20.7%
Non-country specific	3,024.1	5,413.9	5,312.6	6,806.0	8,392.5	8,334.3	175.6%	53.9%	-0.7%
LDCs' share in total AFT	**26.7%**	**28.1%**	**25.9%**	**26.6%**	**29.9%**	**30.4%**			
LDCs' share in country-allocable AFT	**30.9%**	**33.9%**	**30.1%**	**31.6%**	**36.7%**	**37.2%**			
Grant-element in LDCs' AFT	**68.1%**	**70.6%**	**62.4%**	**51.2%**	**40.7%**	**40.5%**			

Source: OECD-DAC CRS, aid activity database.

The WTO also provides a home to the EIF, which is a partnership between LDCs, donors and international organizations, and the only Aid-for-Trade Programme exclusively dedicated to support LDCs. Its main objective is to support LDCs in strengthening their institutional capacity to mainstream trade into their national development plans and coordinate the delivery of aid for trade. Through Diagnostic Trade Integration Studies (DTIS), the EIF helps LDCs identify constraints to trade and opportunities for trade expansion, including future Aid-for-Trade interventions. The EIF also supports projects aimed at building the productive capacities of sectors with export potential. Capacity constraints in LDCs, as well as project management related challenges, have prevented LDCs to benefit fully from this Programme. The EIF is up for a major evaluation to see how best to support trade capacity building in the coming years.

VII. Joining the WTO – Accession

This section briefly highlights the progress of accession of LDCs to the WTO. Members have made special efforts to facilitate the accession of LDCs to the WTO. In 2002, WTO Members adopted LDC accession guidelines to simplify and streamline accession procedures in the areas of market access, WTO rules, process and Trade-Related Technical Assistance (TRTA) and capacity building.[51] In 2012, these guidelines were further strengthened by establishing benchmarks for market access negotiations on goods and services, and including provisions relating to transparency, special and differential treatment and transition periods.[52]

Since the establishment of the WTO, nine LDCs successfully completed the accession process.[53] Five LDCs (Cambodia, 2004; Nepal, 2004; Cabo Verde, 2008; Samoa, 2012; and Vanuatu, 2012) joined after the adoption of the initial LDC accession guidelines in 2002, and four LDCs (Lao People's Democratic Republic, 2013; Yemen, 2014; Afghanistan, 2016; and Liberia, 2016) joined following the adoption of the improved set of guidelines which presumably have facilitated these accessions.[54]

Despite the guidelines to facilitate and accelerate LDC accessions, it remains a challenging process for LDCs as these negotiations are complex and long and require technical and substantive capacity in LDCs to advance their interest through the accession process. Perhaps the time has come to assess the effectiveness of the LDC accession guidelines, especially how they could accelerate the accession process of LDCs to the WTO.

Currently, eight LDCs are at different stages of the WTO accession process (Bhutan, Comoros, Ethiopia, Sao Tomé and Principe, Somalia, South Sudan, Sudan, and Timor-Leste); and three LDCs have no status with the WTO.

VIII. LDC Graduation

This section briefly touches upon one of the topmost priorities of the LDC group currently pursued in the WTO, i.e., how to address the challenges that could arise due to their graduation from the LDC status.

The 2011-2020 Programme of Action for the LDCs adopted at Istanbul in 2011 (IPoA),[55] sets for the first time, the goal of "enabling half the number of least developed countries to meet the criteria for graduation by 2020." During the first

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51 *Guidelines on the accession of Least-Developed countries*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/acc_e/cbt_course_e/c3s3p1_e.html.

52 World Trade Organization, General Council Decision of July 25, 2012, WTO Doc. WT/L/508/Add.1 (2012).

53 *Accessions Week 2020*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/thewto_e/acc_e/accweek20_e.htm.

54 U. N. CONF. ON TRADE & DEV., THE LEAST DEVELOPED COUNTRIES REPORT 2016, THE PATH TO GRADUATION AND BEYOND: MAKING THE MOST OF THE PROCESS, at 99, U.N. Doc. UNCTAD/LDC/2016/Corr.1, U.N. Sales No. E.16.II.D.9 (2017).

55 *Comprehensive Programmes of Action for LDCs*, UNITED NATIONS, https://www.un.org/ldcportal/comprehensive-programmes-of-action-for-ldcs/.

forty years since the creation of the category in 1971, only three LDCs have been able to graduate. Since 2011, however, progress towards graduation has accelerated, and several LDCs are progressively reaching the different graduation thresholds of GNI per capita, Economic Vulnerability Index and Human Asset Index, as defined by the UN Committee on Development Policy (CDP).

At present, sixteen LDCs are at different stages of their graduation path.[56] In the past years, LDCs have had limited gains from the preferential schemes available to them as well as flexibilities under various WTO Agreements. With the LDCs graduating, they are at the risk of losing even the exiting provisions which can prove to be challenging to their economic progress. Graduating LDCs are exposed to dual erosion of preferences in the world market – loss of preference margin and the loss of favourable RoO conditions. The risks are further aggravated by the fact that the graduating LDCs have a limited export base and are dependent on certain international markets. It has been estimated that the loss of preference margins for LDCs in the EU market would be close to 10% in clothing and in the range of 6-10% for certain fish products.[57]

Loss of preferences and reduced flexibility under the WTO system in the implementation of rules has become a new source of concern to the LDCs.[58] The momentum to help LDCs sustain their development efforts in the coming decades will depend on the effective support measures that WTO as well as the international community grants to the graduating LDCs.

In preparation for WTO's next Ministerial Conference scheduled from November 30 to December 3, 2021, the LDCs have submitted a proposal to establish a smooth transition mechanism for graduating LDCs under the WTO system. The proposal requests that the existing support measures available to the LDC Members should be extended for a period of twelve years to ensure a smooth transition of the LDCs. The proposal also stresses upon the need for developed and developing country Members to make the necessary arrangements to extend and gradually phase-out the LDC preferences over a period of twelve years following exit from the LDC category.[59]

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[56] World Trade Organisation, General Council Decision of Oct. 18, 2021, WTO Doc. WT/GC/W/829.

[57] U. N. CONF. ON TRADE & DEV., THE LEAST DEVELOPED COUNTRIES REPORT 2020, PRODUCTIVE CAPACITIES FOR THE NEW DECADE, at 7, U.N. Doc. UNCTAD/LDC/2020/Corr.1, U.N. Sales No. E.21.II.D.2 (2020).

[58] *Trade impacts of LDC graduation*, World Trade Organization, at 5, https://www.wto.org/english/news_e/news20_e/rese_08may20_e.pdf.

[59] *Least Developed Countries (LDCs)*, UNITED NATIONS, https://www.un.org/development/desa/dpad/least-developed-country-category.html.

WTO Members are currently exploring possible ways to address the challenges of graduating LDCs. An agreement on this issue would be an important contribution to remedy the difficult circumstances that graduating LDCs experience. It would also represent a concrete contribution of the multilateral trading system to fostering the advancement of LDCs and to achieve the goals set by the international community to support LDCs integration with global economy.

IX. Looking Forward

The beneficial participation of LDCs in the multilateral trading system is a yardstick for WTO's inclusiveness and success. Ever since the establishment of the WTO in 1995, Members have accorded priority and attention to the needs of LDCs and made special efforts to help them further integrate into the multilateral trading system.[60]

Today, LDCs benefit from comprehensive DFQF market access as well as simplified RoO criteria in several developed and developing markets. They benefit from dedicated technical assistance and capacity-building by the WTO ~~and~~, the EIF, and the Aid-for-Trade Initiative that highlight their trade-related constraints. LDCs are also receiving special attention in their on-going trade negotiations.

Nevertheless, the share of LDCs in global exports has been stagnating at around 1% over the past decade. Even though their trade value has increased considerably, LDC trade continues to be characterised by a narrow export base, concentrated in primary commodities and low-value added manufacturing. Reliance on a few market destinations has been a key challenge during the COVID-19 pandemic. The trade deficit for almost all LDCs has been increasingly widening. There has also not been any significant qualitative improvement in their productive capacity.

Within the WTO, there is room for further progress in several areas. Increased efforts are required in the implementation of existing decisions related to duty-free and quota-free market access, preferential rules of origin, and the LDC services waiver. Only generous implementation of these decisions would create further trade opportunities for the LDCs. Moreover, Aid-for-Trade support and technical assistance will continue to play a crucial role in further strengthening the trade capacities of LDCs to enable them to exploit their preferential market access opportunities fully.

Furthermore, as more than a third of LDCs are on the path to graduation, it will be important that appropriate measures are taken to ensure a smooth transition from the LDC status.

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60 *WTO Technical Assistance and Training*, WORLD TRADE ORGANIZATION, https://www.wto.org/english/tratop_e/devel_e/teccop_e/tct_e.htm.

The trading landscape is changing rapidly due to technological changes, including a faster progression to a digital world economy. The COVID-19 pandemic has acted as an accelerator for economies to upgrade their digital infrastructure to ensure trade as well as new economic activities. For LDCs to harness the future opportunities, it is imperative to assist them in bridging the existing digital divide.

WTO has been responsive to the special circumstances in LDCs. But the efforts have not been adequate. It is time to prepare the LDCs better for them to harness their trade potential and fuel their economic growth. All the deficiencies experienced by the LDCs, like limited human and institutional capacity and other supply-side constraints, must be addressed simultaneously without any order of preference or priority. Without such concerted efforts at the global level, the international community will not be able to make a difference in the lives of people in LDCs in the coming decades.

ANNEXURES

Annex 1: Major multilateral non-reciprocal LDC preference schemes of selected preference-granting members (as of 2020 or latest available year)

Preference granting Member	Description	Duty-free tariff line coverage (and major exclusions)
Australia	Type: GSP Entry into force:1 July 2003	100%
Canada	Type: GSP Entry into force: 1 January 2000.	98.5% (dairy and other animal products, meat, meat preparations, cereal products)
Chile (2019)	Type: LDC-specific Entry into force: 28 February 2014	99.5% (cereals, sugar, milling products)
China (2017)	Type: LDC-specific Entry into force: 1 July 2010	96.6% (chemicals, transport vehicles, machinery and mechanical appliances, electrical machinery, paper)
European Union	Type: GSP Entry into force: 5 March 2001	99.8% (arms and ammunition)
India (2016)	Type: LDC-specific Entry into force: 13 August 2008	94.1% (plastics, coffee and tea, alcoholic beverages, tobacco, food residues)
Japan	Type: GSP Entry into force: 1 April 2007.	97.8% (fish and crustaceans, footwear, milling products, cereal products, sugar)
Korea, Republic of	Type: LDC-specific Entry into force: 1 January 2000	89.9% (fish and crustaceans, mineral fuels, oil seeds and oleaginous fruits, wood products, vegetables)
New Zealand	Type: GSP Entry into force: 1 July 2001	100%
Norway	Type: GSP Entry into force: 1 July 2002	100%
Russian Federation	Type: GSP Entry into force: 10 October 2016	61.2% (transport vehicles, machinery and mechanical appliances, beverages, iron and steel products, electrical machinery, meat products, articles of wood)
Switzerland	Type: GSP Entry into force: 1 April 2007	100%

Preference granting Member	Description	Duty-free tariff line coverage (and major exclusions)
Chinese Taipei	Type: LDC-specific Entry into force: 17 December 2003	32.1% (machinery and mechanical appliances, chemicals, electrical machinery, fish and crustaceans, plastics)
Thailand	Type: LDC-specific Entry into force: 9 April 2015	71.0% (transport vehicles, electrical machinery, machinery and mechanical appliances, iron and steel products, apparel and clothing)
Turkey (2019)	Type: GSP Entry into force: 31 December 2005	78.7% (iron and steel products, fish and crustaceans, food preparations, meat, oil seeds and oleaginous fruits)
United States	Type: GSP (expired on 1 January 2021) Entry into force: 1997	79.7% (apparel and clothing, cotton, fibres, footwear, dairy and other animal products)
	Type: Other PTA - African Growth and Opportunity Act (AGOA) Entry into force: 18 May 2000	97.0%

Source: WTO Secretariat Note WT/COMTD/LDC/W/68 and WTO Database on Preferential Trade Arrangements: http://ptadb.wto.org/

Annex 2: Rules of Origin conditions in LDC schemes of selected preference-granting Members

	Canada	China	European Union	India	Japan	United States
General rule:	Regional value content: 20%	Regional value content: 40% *or* Change in tariff heading	None, rules are product-specific based on regional value content and change in tariff classifications	Regional value content: 30% *and* Change in tariff subheading	Change in tariff heading	Regional value content: 35%
Product-specific rules for textile and apparel:	Specified process (SP) for made-up textile articles and "SP or SP + RVC 25%" for apparel	None	One-stage process or single transformation rule (e.g., weaving)	None	One-stage process or single transformation rule	None (textiles and apparel not covered by US GSP-LDC)
Cumulation:	Bilateral LDCs Some developing countries (with exceptions and some limitations)	Bilateral Regional cumulation with 2 ASEAN countries (Cambodia and Myanmar) and 7 ECOWAS countries (Benin, Guinea-Bissau, Liberia, Mali, Senegal, Sierra Leone and Togo)	Bilateral Regional cumulation with another beneficiary of the same region; Norway, Switzerland or Turkey (except for Chapters 1–24) Cumulation with a country which has an FTA with the EU subject to certain conditions	Bilateral	Bilateral Regional cumulation with 5 ASEAN countries (Indonesia, Malaysia, Philippines, Thailand and Vietnam)	Beneficiary LDCs and GSP countries

Source: Adapted from WTO-EIF, 2020: Trade Impacts of LDC Graduation