

**UN Working Group to further study and strengthen the smooth transition process for the countries graduating from the LDC category**

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**Special measures for LDCs and implications of graduation in the area of trade.  
Possible ways forward in the area of trade**

You have asked me to speak about special measures for LDCs and implications of graduation in the area of trade. So, first of all, what are those measures in WTO (we call those S&D measures in WTO speak). Such special provisions fall into a number of main categories: (a) increased market access; (b) safeguarding of the interests of LDCs; (c) increased flexibility for LDCs in rules and disciplines governing trade measures; and (d) technical assistance. CDP, jointly with the WTO, has made a thorough analysis of all these S&D measures. The LDC Portal of CDP offers access to a special database designed to search Special and Differential Treatment provisions related to LDCs. Moreover, WTO's document TN/CTD/W/33 of June 2010 also provides information.

Generally, specific commitments in favour of LDCs are found in all three pillars of the rules covered by the WTO: Goods (such as the Agreement on Agriculture, TRIMs), Services and trade-related intellectual property rights (TRIPS). Most specific commitments are found in the TRIPS, GATS, and Subsidies and Countervailing measures Agreements. There are also provisions in favour of LDCs which address measures that could frustrate the benefits of preferential treatment, notably in TBT, SPS and Import Licensing. ("Minimize barriers that ...Regulations could present to the exports of LDCs."... Facilitate provision of TA). More in detail:

- TRIPS (extension of deadline to conform to the TRIPS Agreement),
- GATS (increasing participation of developing countries facilitated through negotiated specific commitments, with special priority to those sectors and modes of supply of interest to LDCs: this has led to the Modalities text, which has in turn led to the recent Services Waiver at MC-8),
- Agreement on Subsidies and Countervailing measures (LDCs are not subject to the export subsidies prohibition (note: on industrial products only!).

However, to contextualize, our joint study also found that these S&D provisions have not been used to the full.

Hence, rather than go into these, I thought it much better use of our time to look ahead and review some of the avenues open to graduating LDCs to obtain a smooth transition. I understand that what really matters is to provide some facts-based comfort to LDCs being considered for graduation.

Experience seems to point to roughly three potential areas of trade-related action to ensure a smooth transition for graduated LDCs. Each has a different mode for legal coverage in the WTO and this, in turn, would dictate on how to go about it. These are: non-reciprocal

preferential market access; extension of other special treatment measures for LDCs by WTO Members; and level of support (technical assistance, capacity building) provided to graduating countries by development partners.

- Non-reciprocal preferential market access: or, more in particular the extension of DFQF market access intended for LDCs to graduated LDCs. Note that the provision of DFQF to LDCs is done on a unilateral basis, and this is *a-fortiori* the case for the extension of such treatment to graduated LDCs.<sup>1</sup> For example EU's extension of its EBAs scheme to the Maldives has been done by the EU on a unilateral basis. "Unilateral" as opposed to an action within WTO. An observation is in place here: there are non-reciprocal preferential trade-preference schemes benefiting LDCs but also cover non-LDC developing countries, such as AGOA. AGOA is for example benefitting Cape Verde, no longer an LDC. It would be interesting to see whether Maldives' trade-related benefits under for example SAFTA have changed after its graduation. Or whether this will be the case for Samoa in PACER or the PACER plus negotiations after its graduation?

Bringing this to the level of WTO, extending DFQF to graduated LDCs is one of several possible special treatment measures which individual WTO Members could consider. How can this be done in conformity with WTO rules?

Potential extension of such measures may theoretically be done bilaterally. Legally, this is difficult in view of WTO's MFN rule: you provide a concession to one WTO Member, you have to provide it to all, or applying S&D, while limiting the beneficiaries of your concession to developing countries, you still cannot apply to only one country. However, there are a few ways to legally deviate from this rule. Moreover, I must also tell you the bottom line in the WTO: in case no WTO Member complains about a measure, which allegedly violates a WTO rule, for example because there is widespread support for that measure and no damage is considered to be done to other trading partners, then the risk is much smaller that any legal action against the measure will be taken in the WTO. Legal action in the WTO always starts with the Members. Against this background, how can one legally deviate from MFN? There is the waiver in the WTO which requires a particular procedure (Art. IX,3 of the Agreement establishing the WTO). In order to avoid having to request a waiver for every single case and at the same time reassure graduating LDCs by providing more predictability, one avenue to explore might be a blanket, time-bound waiver in the WTO. This waiver could for example cover all S&D measures - including, but not limited to - market access measures, extended for a transitional period to graduated LDCs. A caveat: one would need to look more into the legalities of this. Moreover, all action in the WTO needs to start with Members; it cannot start with the Secretariat. There are examples of such blanket waivers in the WTO, although not for graduated LDCs, such as the one allowing developing countries to provide preferential market access to LDCs, without having to extend this to other WTO Members, done in 1999, and extended in 2009 for another 10 years<sup>2</sup> Apart from the waiver, there is one other exceptional avenue to legally extend a particular concession

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<sup>1</sup> The WTO Hong Kong Ministerial Decision of December 2005 on DFQF for LDCs stipulates that "we agree that developed-country Members shall, and developing country members declaring themselves in a position to do so should: provide duty-free and quota-free market access on a lasting basis, for all products originating from all LDCs by 2008 or no later than the start of the implementation period in a manner that ensures stability, security and predictability...".

<sup>2</sup> WTO document WT/L/304, extended for another 10 years in WT/L/759.

to one WTO Member only, Accession negotiations to the WTO. Which leads me to an important observation: the recently graduated LDC, Cape Verde as well as Samoa which is slated to graduate in 2014, coincidentally (is it??) both recently went through the accession process in the WTO. Cape Verde became a WTO Member in July 2008 and the negotiating process for Samoa was concluded late last year. Once Samoa will have ratified its negotiated package nationally, it will join the WTO, expected in 2012. It is in such negotiations for example that LDCs and their trading partners could agree on specific extensions of S&D treatment through transitional arrangements. Having said this I will be the first to say that, looking to the future, this time-coincidence between accession to the WTO and graduation is not a general rule. In that context, and looking at a country which had been recommended for graduation, Equatorial Guinea, the Working Party on the Accession of Equatorial Guinea to the WTO was established in 2008 but we are still very much in the beginning of this process. Other LDCs in accession to the WTO at this moment are: Laos, Yemen, Ethiopia, Afghanistan, Bhutan, Comoros, Liberia, STP and Sudan.

- o Taking Cape Verde's accession to the WTO as an example, its Protocol of Accession makes the link between its accession to the WTO and its graduation. It notes the country's wish to seek transitional arrangements for certain measures in the light of its imminent graduation from LDC status. Cape Verde agreed with its trading partners on a number of transition periods. For example in the area of rules on subsidies in the WTO, Cape Verde confirmed that prohibited subsidies would be withdrawn by the earlier of 1 January 2015 (8 years after its graduation) or at the end of the term originally granted to these firms and individuals. Another example is in the area of SPS. Cape Verde confirmed that it would implement progressively the provisions of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures and would ensure full implementation of the Agreement no later than 1 January 2010. In the area of Intellectual Property Rights, Cape Verde confirmed that it would apply the Agreement on Trade-Related Intellectual Property Rights by no later than 1 January 2013 with the understanding that some provisions be applied no later than 1 January 2016 (in light of the Doha Declaration on the TRIPS Agreement and Public Health). Hence, Cape Verde and its trading partners agreed on certain transition periods, which, while done in the context of its accession to the WTO, de-facto provide a transition period in relation to its graduation from LDC status.

Allow me now to turn to a broader question: what are *relevant* benefits in the multilateral framework of the WTO for a country, once it has graduated from the LDC category? "Relevant" in the sense that these benefits could potentially reassure graduating LDCs so that they can envisage their further development process with confidence and not necessarily depend only on transitional arrangements? To reply, and foremost, any legitimate trade interest is positively considered in the WTO. For example, the draft negotiating texts available in the DDA negotiations, the "Modalities texts", contain country-specific exemptions. Another example: in 2005, after the Tsunami, and responding to a legitimate trade interest, WTO Members took a decision applicable to one country only, extending the transition period to apply the TRIPS Agreement for the Maldives, to 2013, or to its graduation (mark that this was done earlier than the December 2005 Ministerial Decision to extend the deadline from 2006 to 2013 to all LDCs). This may be a good place to pause a moment on the situation of the Maldives, a WTO Member since 1995, and since January 2011 no longer an LDC. Since that moment, it belongs to the so-called Small and Vulnerable Economies (SVEs) in the WTO. While not formally a category in the WTO (and

Members are at pains to remind each other of this continually), de facto it carries implications with it. For example, as an SVE, Maldives may benefit from more flexible measures in any successful conclusion of the DDA. To clarify, while still in draft form and unclear what their status is at the moment, the draft negotiating texts on for example Market Access negotiations and on Agriculture negotiations provide for tariff/subsidy cuts for SVEs which are less than those proposed for other developing countries.

Secondly, Maldives's Trade Policy Review (TPR), undertaken in 2009 at the WTO shows the relevance of this instrument in that it drew WTO Members' attention to the implications of Maldives' graduation, thereby providing an effective platform to argue its case with its trading partners<sup>3</sup>.

The 2009 TPR of the Maldives firstly recognizes that "*Graduation will have implications for the Maldives' obligations with respect to the implementation of certain provisions of the WTO Agreements as well as its commitments arising from the DDA negotiations*". Secondly, it addresses "*Maldives' major concern associated with graduation, namely the loss of duty-free market access for its tuna exports to the EC market, where it enjoys a preference margin of 24% under the EBA*". And notes that "*the EC, sympathetic to the Maldives' concerns, has agreed to provide the EBA benefits for an additional period of three years from the date of graduation or until 2014*". Importantly, no waiver was requested for this MFN-violating measure, and no Member has complained. Thirdly, the TPR also observes that "*Similarly, graduation will change the level of commitments that the Maldives will have to undertake arising from the DDA negotiations, and the range of special and differential provisions to which it will have access, in the areas of market access and rules, arising from the conclusion of the DDA negotiations*". As we have seen, ever since its graduation, the Maldives is engaged in the negotiations as a small and vulnerable economy, with a view to securing relevant special benefits, which, while not the same as for LDCs, are still more favourable than for other developing countries. Fourthly, "*Graduation will also have implications for the Maldives' obligations with respect to the implementation of certain provisions of the WTO Agreements. The Maldives needs technical assistance in order to understand the full implications*".

Which leads me to the third broad action area.

- Indeed the relevance of TA and capacity building cannot be overstated, and not only to enhance the capacity to implement WTO commitments. Increasing capacities to carry out economic and legal reforms is important but equally important is support to enhance productive capacities to become more competitive in the international market place. Transition periods without capacity building will lead to erosion of any benefits from preferential treatment.

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<sup>3</sup> In the WTO, periodic reviews of Members' trade policies take place in the Trade Policy Review Body comprising the WTO's full membership. The reviews are essentially peer-group assessments, although much of the factual leg-work is done by the WTO Secretariat

- Support to LDCs first of all brings to mind the Enhanced Integrated Framework (EIF). The EIF is a multi-donor programme, which supports LDCs to be more active players in the global trading system. The EIF global partnership of LDCs, donors, core agencies (IMF, ITC, UNCTAD, UNDP, World Bank, WTO) and UNCTAD as an observer agency, is supporting LDCs' own drive to: mainstream trade into national development strategies; set up structures needed to coordinate the delivery of trade-related technical assistance; and build capacity to trade, which also includes addressing critical supply-side constraints. The Executive Secretariat of the EIF is administratively housed in the WTO. It has a Trust Fund, managed by UNCTAD. (However, I must add for clarity that the bulk of the funds needed to address trade-related supply side constraints, while identified under the EIF, come from an LDCs traditional bilateral/regional/multilateral donors, not from the EIF Trust Fund). In terms of the EIF, we have some success to report. Thanks to collective efforts, not in the least by the delegation of the Maldives in Geneva, the governing structures of EIF partnership, the EIF Board, decided to extend access to the EIF to graduated LDCs for three years. The Board might consider extending such initiatives for a longer period of time on a case by case basis. Cape Verde, Maldives and Samoa all three (stand to) continue to benefit from the EIF.
  
- The EIF is aid for trade in action for the LDCs. Going to the wider Aid for Trade Initiative, what is the trend of Aid for Trade figures for Cape Verde, Maldives and Samoa? WTO uses the OECD figures for its Aid for Trade statistics and these figures tell us that Cape Verde has seen an increase in its Aid for Trade commitments from US\$70.8 million in 2007 to US\$126.4 million in 2009, after of its graduation. Disbursements have also gone up from US\$43.8 million in 2007 to US\$74 million in 2009. The figures for the Maldives show a more mixed trend going from US\$30.8 million in 2007, down to US\$13.4 million in 2008 and up again to US\$26.7 million in 2009 in terms of commitments. However, actual disbursements have gone up from US \$5.6 million in 2007 to US \$ 10.6 million in 2009. Samoa shows yet another picture of decreasing commitments from US\$65.6 million in 2007 to US\$4 million in 2009. However, the disbursement figures for Samoa show the opposite trend, a doubling from US\$9.1 million in 2007 to US\$18.7 million in 2009. As we have no figures yet beyond 2009, it is too soon to tell whether the same trend we see for Cape Verde, an increase after graduation, will also be the case for the Maldives and Samoa. One last note: the 2012 - 2013 Aid for Trade Work Programme sets as one of its objectives that "Mobilizing additional, predictable, sustainable and effective financing remains at the heart of the Aid-for-Trade Initiative. Against the backdrop of an uncertain global economic outlook and fiscal pressures in donor countries, mobilizing Aid-for-Trade financing is challenging. It is important therefore that existing pledges should be met and that other sources of financing should be leveraged. The increasing, complementary role of South-South trade-related cooperation should be recognized and further encouraged. Support should be aligned with national and regional priorities and take due consideration of the specific circumstances of partners".

(US\$ millions (2009 constant))

	Commitments					Disbursements			
	2002-05 avg.	2006	2007	2008	2009	2006	2007	2008	2009
Cape Verde	79.2	27.6	70.8	106.6	126.4	46.5	43.8	95.9	74.0
Maldives	8.7	2.6	30.8	13.4	26.7	0.4	5.6	6.5	10.6
Samoa	14.5	2.5	65.6	17.8	4.0	9.5	9.1	8.4	18.7

Source: OECD-DAC, Aid activities database (CRS)

- In the WTO, specific priorities are established for LDCs in the organization's biennial TRTA Plan. So far this special treatment is not being extended to graduated LDCs. Graduating LDCs and their partners in the WTO could envisage exploring the benefits of changing this rule to allow special focus on LDCs having just graduated. It would mean WTO Members launching a diplomatic campaign formally, for example through the Committee on Trade and Development. That said, the TRTA Plan is aimed at all developing countries, including graduated LDCs. The Plan is designed and implemented by the WTO Secretariat and is approved by the WTO Members. It allows beneficiaries to take full advantage of the rules-based Multilateral Trading System, deal with the challenges emerging from it and enforce their rights and obligations. One can always do better but at its actual stage it is my belief that graduated LDCs can draw maximum benefit from this Plan, as is. It foresees in many different types of courses, at the national, regional and global level. National courses are demand driven. For the many regional and Geneva-based courses, governments nominate potential participants, from among whom the WTO Secretariat will make a selection. De facto it seems already the case that the fact that an LDC has just graduated will certainly positively weight in the selection of participants. Moreover, recent experience is showing that we sometimes have trouble in filling the courses. So I think that for the moment there is a margin to do something extra for graduated LDCs, as long as they make their needs known.

### **What policy advice can we draw from all this?**

If you are a graduating LDCs and in accession to the WTO, you may wish to consider using those negotiations as a platform to negotiate any possible transition arrangements with the WTO Members in tune with WTO rules and regulations.

In case you are already a WTO Member, use your rights and the platforms available to WTO Members to make your case. This can for example be done through the Trade Policy Review mechanism, as we have seen with the Maldives, as well as through those WTO' Committees which focus on issues of development and include WTO's full Membership, such as the Committee on Trade and Development and the Sub-Committee on LDCs. Moreover, graduated LDCs may find themselves part of the "SVEs" which is not a formal category of Members in the WTO but de facto has implications in terms of additional flexibilities.

In terms of extending non-reciprocal trade preferences, which are initially intended for LDCs only: this is done unilaterally. Creating awareness of your situation to obtain an extension could take the form of several actions. Inside the WTO, use your TPRs and any specific Committees to reach the entire membership and effectively make your case.

You may consider launching a diplomatic campaign in the WTO to have a time-bound, blanket waiver agreed on by the full WTO membership for certain transition measures for graduated LDCs for a particular transition period. Please be aware that this may need some careful planning as perhaps not all Members may be in favour. The legal issues to be further explored.

Please keep in mind that transition periods without capacity building will lead to erosion of any benefits from preferential treatment. Hence capacity building may be among the most effective measures to be considered. In the same vein, let us not forget that eventually, even LDCs will have to comply with the rules after a transitional period. Transition measures are not for eternity.

In case of extending the benefits of the EIF once you are graduated, here we have some success to report. Access to the EIF for graduated LDCs has been extended for three years. Moreover, the EIF Board might consider extending such initiatives for a longer period of time on a case by case basis.

In terms of Aid for Trade figures, we see that those for Cape Verde point to an increase both in AfT commitments and disbursement after graduation. As we have no figures yet beyond 2009, it is too soon to tell whether the same will also be the case for the Maldives and Samoa.

In all of the above, and in order to ensure increased chance of success it is important to give high visibility to the LDC's national development strategy and trade being mainstreamed. Operationalization of Aid for Trade (which is part of ODA) lies in the hands of developing countries, regional economic communities and their development partners. Mainstreaming of trade into national and regional development programmes helps ensure that demand for Aid for Trade is expressed in dialogues with development partners; demand against which Aid-for-Trade support can be aligned. Hence, graduating LDCs might be advised to consider their national development strategies not only as their national policy reform tool, but also as the analytical framework in which their aid for trade support needs are being mainstreamed. This, by the way, is the logic behind the EIF and its Diagnostic Trade Integration Study (DTIS).

And with these words on the EIF, I thank you.