



WORLD TRADE
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Enhanced Integrated Framework

Trade for LDC development

LDCs and the multilateral trading system: looking forward

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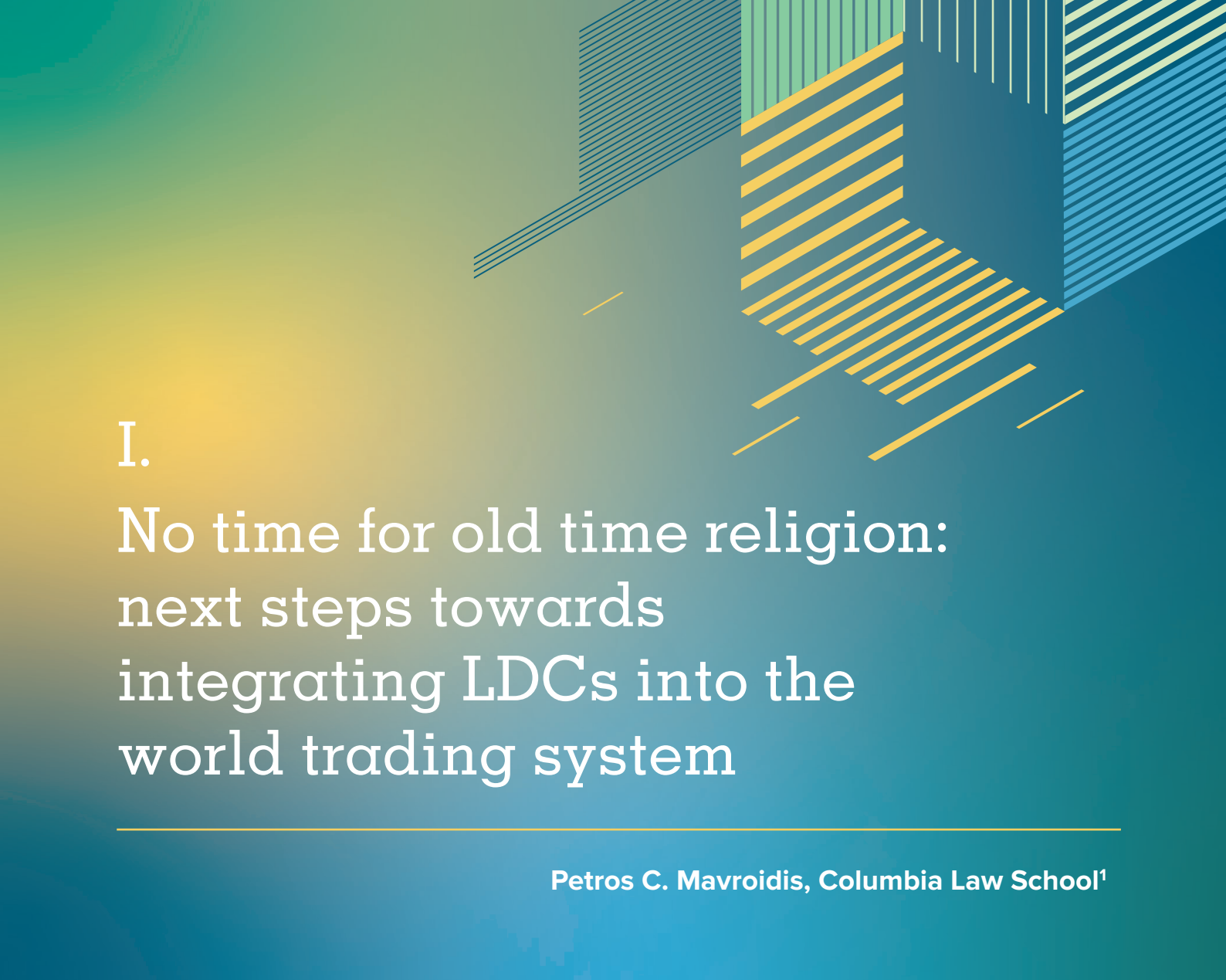


The Doha Programme of Action for LDCs for the decade 2022-2031 recognizes the role of trade for realizing the socio-economic development ambitions of least developed countries (LDCs). This collection of essays on LDCs and the multilateral trading system covers a range of topics, from trade and development to transparency and monitoring. It also explores possible areas of engagement of LDCs in emerging trade discussions.

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I.

No time for old time religion: next steps towards integrating LDCs into the world trading system

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GATT-Think for LDCs

The GATT's approach to LDCs was intimately linked to the Enabling Clause, which permitted granting preferences to developing countries and additional preferences to LDCs. A short detour to this legal instrument is thus necessary.

Special and differential treatment

The original GATT included no provisions on special and differential treatment (S&D). Following requests by developing countries, and amidst fears that the United Nations Conference on Trade and Development (UNCTAD) might become the forum of developing countries,² GATT members decided to add Part IV, on trade and development, into the agreement and allow for preferences. A waiver was the appropriate interim solution against potential challenges that preferences were inconsistent with the agreement's "most-favoured-nation" (MFN) clause.³ The waiver was adopted by postal ballot, with 48 votes in favour and none against.

The waiver was supposed to run for ten years but, before it expired, GATT members adopted the awkwardly titled "Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries",⁴ which became widely known as the Enabling Clause, since it "enabled" donors to provide tariff preferences. The Enabling Clause was supposed to make the transitional waiver permanent. WTO members now had the legal shelter necessary to treat goods originating in developing countries preferentially for as long as they deemed it appropriate.

LDCs could lawfully benefit from more generous preferences than the remaining developing countries, but it was all a matter of national practice.

LDC trade preferences

In 1999, WTO members adopted a waiver that allowed developing countries to provide preferential tariff treatment to products originating in LDCs, without being required to extend the same tariff rates to similar products of any other member.⁵ This waiver has been extended twice so far, the last extension running until 30 June 2029.⁶ Thanks to this waiver, LDCs will benefit from one-way preferential treatment since they are not required to reciprocate.

A few years later, the WTO membership went one step further. It enacted important duty-free and quota-free (DFQF) decisions in Hong Kong (2005) and in Bali (2013),⁷ whereby developed nations would agree to grant DFQF access to at least 97 per cent of all goods originating in LDCs. Developing countries incurred a best-efforts obligation to increase

their efforts regarding goods originating in LDCs. A transparency obligation would oblige donors to notify all DFQF schemes. The Bali (2013) and Nairobi (2015) Ministerial Conference Decisions on Preferential Rules of Origin for LDCs⁸ introduced a simple, easy-to-meet threshold in order to decide whether a good originated in an LDC.⁹

Developed nations and some developing countries have notified their schemes, including Chile, China, Chinese Taipei, the Republic of Korea and Thailand, among others.¹⁰ Currently, Australia, New Zealand, Norway and Switzerland provide 100 per cent DFQF market access to LDCs. Meanwhile, Chile, the European Union, Iceland and the United Kingdom provide over 99 per cent. In addition, Canada, China and Japan offer at least 97 per cent DFQF market access to LDCs.¹¹

In addition, several preference-granting members offer transition periods to LDC graduates. For example, the European Union's Everything But Arms (EBA) Initiative allows countries that graduate from the LDC category to profit from EBA for three years following graduation.

Assessment

To provide an evaluation of Generalized System of Preferences (GSP) schemes, one needs a benchmark. Such evaluation would require more sophisticated analysis after 1971 than mere causal relationships. It must be a sophisticated analysis of exports by developing countries and LDCs after 1971, with preferences (the real world) and without (the simulation). Various economic studies have used different benchmarks, but they all conclude that the record is disappointing. The record looks even worse if a comparison is made between those countries that embraced preferences and those that refuted them. Sachs and Warner (1995) showed that developing countries and LDCs with more liberal trade policies have achieved higher rates of growth and development than countries that are more protectionist. Özden and Reinhardt (2003), in an empirical study, underscored this conclusion. Countries that gradually extricated themselves from GSP schemes subsequently undertook greater liberalization than those that chose to retain their eligibility to participate in GSP schemes, and developed more quickly. The Republic of Korea and Chinese Taipei are the most prominent illustrations in this realm. Porter (1990), in a pioneering study, showed that companies flourish under competitive conditions. Since firms typically develop within a

domestic context prior to expanding internationally, the home base plays a key role in shaping the identity of the firm, the character of its top management, and its approach to strategy and organization, as well as having a continuing influence in determining the availability and qualities of resources available to the firm. According to this line of thought, competitive conditions at home are the best predictor for success in export markets. Conversely, lack of competition at home is not a good omen. It is a sort of wicked variation on the Jevons paradox: preferences were supposed to help beneficiaries graduate to non-beneficiary status but, instead, beneficiaries become “hooked” on the benefit granted, use it more than before, or as much as they can, and never graduate. The WTO gradually becomes irrelevant to them: many developing countries and LDCs live in the WTO world, but are practically outside its legal disciplines.

Grossman and Sykes (2005), citing abundant empirical evidence to this effect, concluded that the candle is not worth the flame. They conclude that there is little support for the proposition that GSP schemes have had substantial positive welfare effects on recipients.

Take the old European Economic Community (EEC) scheme, for example, which distinguished between non-sensitive, semi-sensitive, sensitive, and very sensitive products. The authors have calculated that during the period covered by their investigation, developing countries received tariff reductions of roughly 100 per cent for non-sensitive products, 65 per cent for semi-sensitive products, 30 per cent for sensitive products, and 15 per cent for very sensitive products, compared with the usual MFN rate for goods in each category. Joshi (2011) ended up with similar numbers. Of course, the export interests of most developing countries concentrate on what the EEC termed a “very sensitive” category of products, which is the category that received the smallest preference margin.

Reductions of little interest to developing countries and LDCs have happened, because beneficiaries did not negotiate the areas where tariff reductions would take place (see later in this note). This is, of course, less of an issue for LDCs because of the DFQF programmes that have been adopted, even though Bangladesh, for example, complained that when some donors decided not to extend preferences to 100 per cent of tariff lines, items in their interest, such as textiles, were left out. In the same vein, Blanchard and Matschke (2015) provide empirical evidence to the effect that many

donor decisions are driven by endogenous reasons: in the wide sample of countries they examine, trade preferences follow investment patterns by donors. In fact, therefore, quite often when granting preferences, they favour intra-industry trade, their own investors who have delocalized production, or both.

Why is this so? One could imagine dozens of plausible explanations, but a key one is that GSP schemes simply do not reproduce a negotiation based on reciprocal concessions.

Doha Round improvements

The Doha Round addressed the missing-negotiation problem head on: Aid for Trade and the Trade Facilitation Agreement (TFA) constitute a departure from “GATT-Think” in this respect.

Aid for Trade

This initiative was launched in 2005, at the Hong Kong Ministerial Conference. It was clarified that Aid for Trade would aim at strengthening the capacity to trade of developing countries and LDCs, and that it would be a complement and not a substitute for the development benefits for developing countries stemming from the Doha Round.¹² Therefore, Aid for Trade would not substitute tariff preferences and the various S&D provisions that had already been agreed in previous rounds.

Trade facilitation

The entry into force of the TFA was another significant milestone for supporting the integration of developing countries and LDCs into the multilateral trading system. Trade facilitation is the quest for reducing trade costs and, in principle, can cover a slew of heterogeneous instruments. Negotiators of the TFA took a pragmatic view, and decided to narrow down the scope of the Agreement to measures coming under three different GATT provisions: Article V (goods in transit), Article VIII (fees and formalities in connection with importation and exportation),

and Article X (publication and administration of trade regulations). Negotiators were well aware that developing countries faced higher trade costs than the developed world (for example costly customs procedures and lack of infrastructure), which hampered the access of much-needed imports and/or lowered their export earnings. Section II of the TFA reflects the S&D provisions.¹³

Aid for Trade and the TFA share the same approach: it is through dialogue between donors and beneficiaries that aid will be channelled. As Bagwell and Staiger (2013) have noted, this approach signals the end to unilaterally defined preferences by agents who might be somewhat dis-incentivized to match the actual needs of donors. Because the two instruments are complementary to S&D provisions, the S&D-world of the GATT era continued to live on. But how much of it really mattered?

Transparency

During the Bali Ministerial Conference in 2013, the WTO membership adopted the Monitoring Mechanism on Special and Differential Treatment¹⁴ to review implementation of S&D provisions. It is fair to conclude that this initiative has not been a success. We simply do not know the lay of the land here. For various reasons, no written submissions were put forward for members' discussions. The LDCs, especially, have felt that such methods would increase their workload without any guarantee of success at improving the implementation of S&D provisions. And this is mostly due to LDCs' capacity constraints, which have not been so far adequately addressed, the commitment of the WTO Secretariat to capacity building notwithstanding.

Assessment

Finger and Schöler (2000), and Finger (2007), point to two different costs for developing countries and LDCs, one by inclusion, and one by omission. The first concerns "implementation costs", and the idea is that the implementation of the agreed package is not anodyne from a cost viewpoint. To establish, for example, an inquiry point as per the agreements on Technical Barriers to Trade (TBT) and the Application of Sanitary and Phyto-Sanitary Measures (SPS), developing countries would need, besides the costs associated

with physical infrastructure, to train their administrative personnel to be able to explain the domestic regulatory framework to interested traders. The second is "trade costs", a rather amorphous concept that can be defined narrowly and/or broadly. A broad definition of trade costs includes policy barriers (tariffs and non-tariff barriers), transportation costs (freight and time costs), communication costs, information costs, enforcement costs, exchange rate costs, legal and regulatory costs, and local distribution costs.

The Aid for Trade and TFA address both implementation and trade costs.

Implications of Doha-Think

The TFA conditions assistance upon assumption of multilaterally agreed rules. That is, the TFA does not provide for a two-tier system, or a leeway to evade WTO obligations. There is, thus, a marked difference between the "classic" S&D provisions and the TFA approach. Whereas the former amounts to "exit" from the WTO contract, the latter facilitates "entry": S&D is exclusive, but TFA is inclusive. And this is the key reason why it is worth contemplating the merits of the approach, and emulating it in other contexts as well. Multilateral trade liberalization continues to contribute significantly to development. If so, what matters is to ensure that it is implemented and not evaded. This is what the TFA aims to accomplish.

Integrate, not deviate

While developing countries form an amorphous group, LDCs are rather homogenous, characterized by small markets and weak currencies. Export income in dollar terms is quite important for all of them. The two Doha Round initiatives thus strike the right tone in this respect, as they aim to ensure trade integration in lieu of exit from the markets through long transitional periods. Even assuming everyone adhered to EBA, EBA is an opportunity, not a contractual promise to import specific volumes. To make effective use of the opportunities presented by EBA, LDCs would need to address both implementation and trade costs. This is where Aid for Trade and the TFA come in handy.

Customizing interventions

Even within a homogenous group like the LDCs, needs are not necessarily identical. Different countries might be asymmetrically endowed. Non-discrimination, if understood in superficial or formalistic terms, could hamper efforts to channel funds and technical assistance to those really needing them. Aid for Trade and the TFA are, in principle at least, ideally suited to customize interventions to intended beneficiaries. Of course, political economy on the two sides of the bargain, as well as dozens of other factors, might eventually dictate sub-optimal solutions. But at the very least, one hurdle is not in the way anymore.

Moving on

Is the above enough to solve the problems that LDCs have faced in the WTO? Definitely not. The trading community has been contemplating actions for six decades now in this realm, and yet few countries have graduated from LDC status. But on the other hand, Aid for Trade has been around for less than 20 years, and the TFA for less than ten. It is probably too early to pass judgement, even though the first assessments have seen the light of day and reveal a mixed record.¹⁵ And, siding with Low (2021), we reiterate that these two steps point to the right direction, that of integration rather than de-coupling LDCs from the multilateral trading system.

Here are four additional easy-to-implement steps that could substantially help LDCs that do not require consensus-based agreement.

Enhancing technical capacity through mapping of weaknesses

The idea behind the Trade Policy Review Mechanism (TPRM) is quite straightforward: a mapping exercise that will help reveal trade policy as practised by individual members. While specific measures are routinely notified to WTO committees,¹⁶ TPR is the only forum where the overall trade policy is reported.

The frequency of reporting is a function of capacity constraints – as the WTO Secretariat, the reporting agency, cannot dedicate more than a dozen staff to the exercise – and the importance of the reviewed

member in terms of world trade share. Unlike what common sense would dictate, members with a larger share are reviewed more frequently than others. But bigger players, such as the European Union and United States, are quite transparent because of domestic constitutional norms. This is not necessarily the case for, say, sub-Saharan African countries. It is their policies that need to be brought into the light. Reversing the order of visits¹⁷ is only the first step. There is an additional step: the trade policy review exercise should be slightly tweaked when reviewing LDCs.

Trade policy reviews for LDCs should dedicate a chapter to implementation and trade costs for LDCs. LDCs would then be better prepared to table requests before Aid for Trade and TFA meetings.

Exemption from contingent protection instruments

The European Union recently imposed safeguards on imports of rice originating in Cambodia, an LDC. The competent court in Luxembourg (General Court) did not agree with the imposition of safeguards.¹⁸ This should not be. WTO members should stop imposing contingent protection instruments on imports from LDCs, or at least unless imports from LDCs represent a relatively high share (say, 20 per cent) of their total volume of imports. Circumvention – say China subsidizes Cambodian goods that qualify as Cambodian but either include a percentage of Chinese value added, or the Cambodian exporter is a branch of a Chinese holding company – could be addressed in various ways. But, to the extent that products originate in LDCs, they should not face safeguards (anti-dumping, at least) or, depending on anti-circumvention rules, countervailing duties.

Think necessity

While WTO members have to observe international standards when regulating issues coming under the aegis of the TBT/SPS agreements, deviations are allowed and do happen. The larger the deviation, the more difficult it will be for LDCs to meet the regulatory standard in the exporting market. Deviations should be justified. The legal institution of specific trade concerns (STCs) could come in handy in this vein: those wishing to adopt higher standards should be asked to explain their regulatory rationale to their counterparts and, more specifically, the necessity for deviating.

Trade support to LDCs

2024 will mark the completion of the second phase of the Enhanced Integrated Framework (EIF), the only LDC-focused Aid-for-Trade programme aimed at building strong trade institutions and supporting key productive sectors with high export potential. At the same time, LDCs still require support to improve their participation in global trade. It is a shared responsibility of LDCs and their development partners to shape fit-for-purpose trade support for LDCs with a lasting impact. The WTO's 13th Ministerial Conference (MC13) offers an opportunity to lift trade support for LDCs to new heights.

Concluding remarks

Over the years, WTO members have taken steps to support the integration of LDCs into the multilateral trading system. The two topics discussed in this note constitute a welcome departure from the GATT's old time religion of S&D provisions and slow implementation of measures, sometimes at the cost of developing countries and LDCs. These measures can certainly be supplemented. Realistically though, with the WTO legislative process pointing to half-past dead, this is not the time for root-and-branch reforms. This is why we have limited our proposals to two easy-to-implement but quite impactful measures. For the rest, it all depends on the use LDCs make of the opportunities offered by Aid for Trade, the TFA or any other process. This is the time for active involvement, not passive behaviour.



II. Transparency matters for LDCs too: the relevance of current debates on WTO reform

Robert Wolfe, Queen's University¹⁹

Central to current WTO reform debates about more deliberation in WTO bodies are proposals to improve transparency and monitoring mechanisms. The purpose of this essay is to outline why these reforms matter for LDCs, and how they could benefit more from WTO committee work, and then suggest which reform ideas are most important for them. My main conclusion is simple: given the small size of LDC delegations in Geneva, the goal of reform should be to make it easier for LDC capitals to engage in WTO work.

If the objective of a trade agreement is to have binding commitments, and thereby reduce the policy uncertainty that would otherwise afflict trade relations, then the credibility of those commitments matters, and it matters for LDCs as much as for any WTO member. Transparency reduces the inherent information asymmetry when a government knows more about its domestic policies than do its trading partners. Monitoring in WTO committees provides an opportunity to seek more information, ask for clarification and even request changes.

The uncertainty that increases trade costs also matters for firms. Information is a huge trade cost, especially at the extensive margin – relating to trade in new products, with new firms or with new markets – and more so for small firms and small countries. While the WTO is primarily a contract among governments, its rules are also meant to help traders that are only served if governments publish information at home²⁰ and if all WTO data are accessible in user-friendly form. That WTO role is vital for LDCs because procuring information is more costly for them. They lack a large diplomatic network of officials gathering commercial information abroad and their micro, small and medium-sized enterprises (MSMEs) lack in-house trade intelligence capacity. Free trade agreements (FTAs), including among developed countries, cannot fill this gap because they lack strong notification and committee processes. The WTO can and should help. LDCs should demand that help, but they should not seek exemption from doing their part.

LDCs are right to stress that they lack bureaucratic capacity. But capacity should be seen as a challenge, not an obstacle, to benefiting from the WTO. That challenge includes both providing information (notifications) to reduce the uncertainty faced by importers to their markets and making use of information to better understand export markets. The question for LDCs then is not merely “What are my country’s obligations?” but “How can we use the WTO as a tool to solve a problem or address information gaps with a trading partner?”

Providing information

Notification under WTO agreements is an obligation, but unsatisfactory performance undermines more than monitoring. Providers of information must see

how doing so helps them meet their own objectives. If countries do not think they are learning about themselves in preparing a notification, and if they do not see such information contributing to public good, then notification is indeed merely a burden.

Transparency efforts are easier to justify if they focus on information that matters and is most relevant. WTO bodies could consider whether existing requirements should be reviewed in light of contemporary needs, including whether simplifying notification formats is possible. The Committee on Agriculture (CoA) is discussing ways to streamline notifications, including for LDCs. One new procedure had immediate effects when the committee decided²¹ that a delegation that did not have recourse to export subsidies could simply say that in a meeting. The Secretariat contacted a number of delegations to make sure they knew, and at the March 2023 meeting six WTO members cleared a total of 125 years of outstanding notifications. Similarly, the new notification portal makes it easier for small delegations to find everything they need in one place, allowing a WTO member to know what they ought to have notified, what to do and who to contact.

Notification is also a problem when trade officials lack knowledge about complicated domestic programmes or when they are unsure about what to notify. The required Quantitative Restrictions (QR) notification is an extreme example of where a country’s trade ministry must coordinate with many domestic agencies that may not see how a WTO notification improves their own work. Assistance from technical experts in the Secretariat helps. It also helps when LDC trade officials based in capital can come to a meeting in Geneva or participate in hybrid format, because they can see what use is made of a notification. Participation in capacity-building workshops, such as a recent one on QR notifications, also helps when officials can learn from the experiences of peer countries. The Transparency Champions Programme is an innovative form of targeted training on how the transparency provisions work in SPS and TBT, including work on topics, and possible interventions, helping participants to think about their country’s interest in the agenda, necessary advance consultations at home and potential allies in Geneva.

It seems that individual TPR reports note the status of notifications an LDC submits, but not how it prepares its notifications, nor how a lack of capacity or inability to coordinate “in capital” might affect its participation. This

sort of institutional analysis is not seen as the purpose of TPR reports. Perhaps it should be. Preparation of TPR reports is an opportunity to address this challenge to notification because all relevant ministries are involved. Going further, would it be possible to use the data in a TPR report to help an LDC prepare notifications, for example where the obligation is to submit a copy of the relevant legislation and it has been collected for the TPR? The Secretariat cannot submit a notification for a member, but WTO's Trade Policy Review Division staff or experts from technical divisions could match information collected for the TPR with gaps in notifications for action by authorities. Similarly, the Secretariat can directly source data on import and tariff statistics for the Integrated Database with a member's approval²².

The Director-General's annual monitoring reports on the trading system as a whole might be able to provide more information on LDCs if they notified more and participated more actively in the preparation of the reports. On the other hand, since LDCs do not impose many trade restrictions, it is not surprising they do not often appear in the reports.

Making use of information

Officials need to be able to talk to each other about the implementation and interpretation of WTO rules, which they do in dozens of committee meetings every year. In those meetings they often raise "specific trade concerns" (STCs) on behalf of their firms. STCs are most closely associated with the SPS and TBT committees, but questions and concerns are raised in all WTO bodies. Most often those concerns about laws, regulations or practices are addressed by their trading partners, without resort to dispute settlement. This is the vital monitoring function, a central aspect of work in WTO committees. All WTO members would benefit from improved processes in WTO bodies, the subject of many reform proposals. But some would be especially beneficial for LDCs.

How LDCs can make better use of regular committee work is a vital question, because LDCs hardly make use of committees at all. Why does this matter? Tariffs and export restrictions harm LDC trade, especially in

countries that do not extend DFQF access, but they are also affected by many non-tariff barriers, including in other developing country markets. More than half of LDC exports face subsidies from rivals in import markets.²³ LDCs therefore have offensive interests in improving WTO transparency and monitoring. They need to know where those subsidies are, and they should be posing questions in WTO committees about all these measures that restrict their trade. They do not. LDCs raise relatively few trade concerns and others raise relatively few concerns about them.

Of the 1,158 trade concerns raised in WTO bodies other than the CoA or the SPS and TBT committees between mid-October 2014 and mid-October 2019, only 18 concerned measures implemented by LDCs, and only four trade concerns were raised by LDCs. The [Trade Concerns Database](#) includes concerns raised in the SPS, TBT committees and the Committee on Market Access (CMA); it contains 1,450 concerns since 1995. LDCs raised 29 concerns, supported 26 concerns and responded to 22 concerns. In the CoA, where the work concerns agriculture subsidies that affect LDC exports, 62 questions have been addressed to LDCs since 1995; they have not answered all of them, and they have asked no questions of other members. Not surprisingly then, only two LDCs have requested access to the CoA system for posting questions and answers. The Bali and Nairobi Ministerial Decisions require preference-granting members to notify their preferential tariffs and import statistics from LDCs. When the most recent report was discussed in the WTO Committee on Rules of Origin, no LDC took the floor. LDCs rarely intervene in the Committee on Trade and Development's dedicated session on preferential trade arrangements.

The Trade Policy Review Body (TPRB) holds a special place in regular work for discussions about TPR reports prepared on individual members. Nobody in a small mission has the time to read a lengthy TPR, even on a neighbour, let alone a large trader, and so LDCs do not pose many questions in the TPRB meetings. Shorter reports would help them too. They are more likely to ask other countries for support, help or leniency than to ask them for more transparency in their trade rules. They also do not receive many questions: the greater the importance of a country in world trade, the more oral and written questions are posed in the review process. LDCs might benefit if they were asked more questions: responding to multiple questions is sometimes seen as a burden,

but finding the answers can help authorities learn more about their own policies.

Why are LDCs not more involved in WTO bodies? One common response is the glass house syndrome. Many developing countries do not like being questioned, not least because the Geneva delegates do not know the answers and may have difficulty getting a response from the responsible authorities in capitals, and so they do not question their peers or neighbours. Any country must calculate whether a matter can be resolved bilaterally, perhaps in the context of trade-offs on other issues. And some small countries might worry (unnecessarily?) about antagonizing a major trading partner. Would the cost of challenging them be worth the reward if larger countries will do so anyway? But if the members that do participate only raise issues that matter for larger countries, or if any resolution is not MFN, then LDCs lose out.

Do LDCs not ask questions or raise STCs because they lack sufficient information even to understand where they have a problem with another country that might be susceptible to being addressed in the WTO? How does an LDC firm learn that its problems at the intensive margin of trade – which relates to existing trade relationships – let alone obstacles at the extensive margin are due to foreign government policies somewhere in a complex global value chain that may be inconsistent with WTO obligations? In any country, officials need to be talking to the private sector, and it is hardest to connect with MSMEs. Any one MSME and any one LDC has a small stake in a new regulation imposed in a large market, but they are the only ones that would know if a new measure would affect their export possibilities.

Countries with sophisticated alert systems and good internal coordination receive more comments from industry and other ministries, and hence raise more STCs. LDCs that learn how to submit their own notifications more easily develop the capacity in capitals to analyze notifications by key trading partners, and hence are able to raise an STC or support another country's concern. Engagement with traders will help identify problematic measures that have not been notified. One way to do that is by encouraging them to use the ePing system that sends out tailored alerts of new SPS and TBT notifications. Just nine per cent of ePing users are in LDCs, both public and private. Of these 1,719 LDC users, 977 are in just three countries.

While any one STC or question in a committee might not resolve an LDC's current problem, it might deter future ones by educating the officials involved in the importing country, and by the deterrent effect on those officials of not wanting to be embarrassed again by being called out. That is where LDC participation is so important, because it can help bigger traders see how their measures have a possibly unintended effect on LDCs. The fifth bullet point in the SPS Declaration²⁴ asks how to increase participation by LDCs, which is not so much about the implementation of the agreement but the challenges of complying with importing countries' SPS requirements. One approach would be to help LDCs use the SPS Committee (or any other committee) to show importing countries where their measures create difficulties. Importing countries will not change scientifically based health regulations to assist LDCs unless these regulations can be shown to be more onerous than necessary.

Digital tools should be seen as a package

Most LDCs do not have a mission dedicated only to the WTO. Ambassadors with a small staff must also follow other international organizations, which makes the Geneva mission a chokepoint. One or two people cannot follow everything and cannot explain everything to the capital. The new digital tools with which members are experimenting offer a way to engage the broader group of officials in capital directly. The first tool is the eRegistration system, the key to all the rest. Users can indicate the committees they follow so they can be added to email lists to receive information about meetings and new documents. It also allows them to join virtual meetings easily. Delegations must control access to the system for their country, but the task is to facilitate wider participation in capital.

Annotated agendas

Many reform proposals mention the need for annotated agendas, and they are now being tried on an experimental basis, for example in the Council for Trade in Services. Agendas could be annotated to provide context to regular items with links added that trace previous discussions or factual information

provided by members to help understand the purpose and expectations for each agenda item. The annotated agenda could remind delegates of what happened the last time this issue came up or what happened when it came up in other committees. Such a process could be invaluable for LDCs. Would it also be useful to have the Secretariat call attention to an issue that matters for an LDC so that the delegation could seek instructions from capital, or signal issues affecting the monitoring of decisions intended to favour LDCs?

eAgenda

The next step after approving an annotated agenda is to develop an eAgenda and improve the registration in the eAgenda of people in capitals. The delegation in Geneva does not need to follow the committee closely if somebody in the capital is paying attention. Small missions sometimes bring up a trade concern in the General Council, which is a political body, rather than in the technical committee because nobody is available to attend the committee. But with the eAgenda, an official in capital would not even have to attend the meeting in hybrid format to be able to raise a concern in writing.

An eAgenda is a real-time tracking system that can be populated automatically without a flood of last-minute documents. And all members get a notice that specific trade concerns or questions have been added to the agenda, which allows them to do the necessary research and to ensure coordination in the capital. eAgenda can send a registered user an alert every time their country is mentioned, which can be overwhelming for officials who follow more than one committee. LDCs might ask the programmers to find a way to automate an alert when an issue involving a close trading partner comes up. With eAgenda and ePing, officials in capitals can also pose questions to other national Enquiry Points before considering whether they need to pose a more formal STC – which can also be posed and answered through the eAgenda system. Even necessary follow-up can be done by an official in capital: officials can interact with each other through the WTO without having to come to Geneva. In TBT only eight LDCs have access to eAgenda, which they have not used much so far. This should change.

Advance preparation is only part of the problem. The other is knowing what happened in a meeting the delegation could not attend. Quick summaries or oral

briefings after meetings might help smaller delegations, as long as country positions are not identified in an informal document that has not been vetted. For formal meetings, it would be easy, following the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) example, to have part one of the minutes issued quickly: basically, everything the chairperson said, everything the Secretariat said, and whether an issue was agreed or whether members took note of the discussion. Part two of the minutes in due course could record all the statements.

LDC options in discussions on transparency and WTO reform

LDC policies do not have a huge impact on the trading system, but LDCs need to know more about themselves, which they can do in providing better notifications and responding to questions posed by others. And they need to know about and comment on the policies of bigger traders that affect them. A generic appeal to take account of the generic needs of LDCs will not be helpful. LDCs are alike only in that they are poor and face severe resource constraints affecting their participation in the WTO. But they are not alike in their trade interests, which limits the ability of a coordinator to speak on behalf of all of them, risking a lowest common denominator position.

LDCs are not best served by exemptions from WTO transparency and monitoring, so the question is how procedures can be adapted to take account of their needs and capacities. The extensive reforms under discussion will be enabling for smaller delegations but ultimately what matters is whether capitals make use of the new opportunities – which means starting in Geneva and asking why missions do not attend or speak in committees could be taking the wrong end of the stick. Delegates are sent to meetings and if there is no demand from the capital, supply from Geneva will be lacking. Solutions that work for large delegations will not work for LDCs. Some of the proposed changes may initially be burdensome for Geneva delegates but make life much easier for capitals.

No matter how much the functioning of a committee is improved, if a small delegation or their capital does not see an issue of relevance for them, they will not come and hence will not learn. Perhaps committee secretaries should periodically brief the LDC Group privately about their committee, the big topics on its agenda and how to engage.

Many agreements and their procedures are necessarily complex, as are the training materials. Committees are all different, from the most basic – the notion of how the meeting is convened – to where the list of issues to be discussed is included. Would a streamlined guide to the essentials be useful for LDCs? Could there be a synthesis of new committee manuals aimed at small LDC missions that have to cover multiple WTO bodies, showing exactly which parts of each committee might be important and how committee practices differ? More WTO bodies should consider using something like the Transparency Champions Programme.

It would be worth having sessions with users in LDC missions and capitals to understand what they need from the package of digital tools, and how each might be tweaked by the programmers:

- eRegistration for capitals
- Notification portal
- Virtual meetings
- eAgenda
- Annotated agendas
- ePing and the Trade Concerns Database.

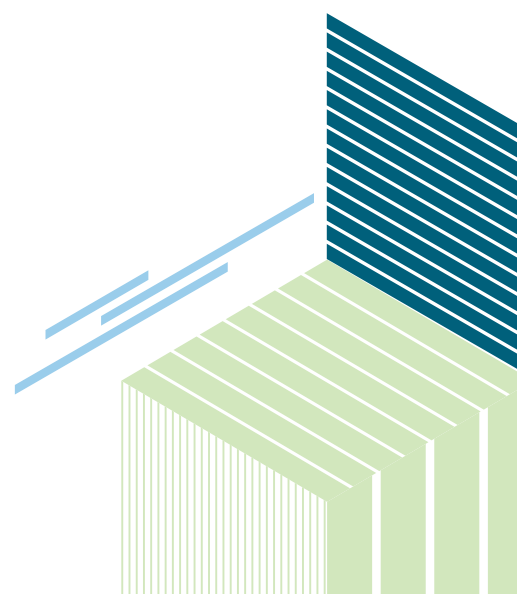
The mission in Geneva cannot reach out directly to officials from line ministries to encourage them to use these tools. Perhaps another topic for an experience-sharing session would be helping LDCs learn from each other about how to solve such coordination problems, including how to encourage relevant technical ministries to use the new digital tools.

LDC officials certainly need basic grounding in trade policy, but with modern online tools they may be able to do much of that without coming to Geneva. But what they cannot do from home is get an on-the-ground sense of how the WTO works and what is at stake for their country in WTO committees. With video tools, capitals can participate at little cost in thematic sessions, but there could also be a dedicated budget to allow more LDC officials from capitals to learn by participating in meetings in Geneva – and allow others to learn from presentations by them. Between 2017

and 2019, the WTO held 105 thematic sessions with 1,153 WTO officials and Geneva-based delegates making presentations, less than two per cent of whom represented LDCs.

LDCs may engage better in small groups at the invitation of a chair or the Secretariat where the intent is to hear their views or provide specific information that might not be of interest to a wider group. For example, the CMA had a series of experience-sharing sessions on the response to the COVID-19 pandemic, one of which focused on the experiences of LDCs, with eight LDC speakers. Experience-sharing sessions focused on LDCs, with background analysis by the Secretariat or other international organizations, could be a better use of LDC time than trying to engage in all aspects of a committee agenda of more relevance to larger traders. It might be helpful to have a two- or three-year indicative schedule of such sessions, including on cross-cutting issues implicating more than one committee. LDCs should ask for more background information, as they have on the services waiver, perhaps as part of a systematic yearly planning exercise to ascertain where more data and analysis would be helpful to understand how changes in the trading system affect LDCs.

A final note: the experience with the Monitoring Mechanism on Special and Differential Treatment should be a cautionary tale. It took years to negotiate before being agreed at the Bali Ministerial²⁵. It specifies that the monitoring “shall be undertaken on the basis of written inputs or submissions made by members” on the implementation of S&D provisions. No such submissions have ever been made. Having in mind years of discussions on WTO reform, instead of investing effort in formal solutions perhaps members should look for incremental change.





III.

Supporting LDC participation in open plurilateral agreements

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Introduction

Plurilateral cooperation on trade-related policies has a long history within the trading system. Mostly this has taken the form of preferential (discriminatory) trade agreements in which the parties remove trade barriers on a reciprocal basis, but there have also been agreements among groups of WTO members to liberalize trade on a non-discriminatory basis – for example, the removal of tariffs on information technology products.

In recent years there has been an increasing focus on plurilateral initiatives centred around cooperation on regulatory policies with the objective of facilitating trade by reducing transactions costs for firms. Such plurilateral arrangements do not involve the liberalization of substantially all trade, as is required by WTO rules on the formation of free trade agreements between WTO members. They may be better suited than trade agreements to reflect the significant diversity among countries in their desire and ability to regulate certain aspects of commerce. Cooperation among groups of countries to improve regulation and the operation of associated administrative implementation processes, even if other countries do not wish to follow suit, can be beneficial to participating states without adversely affecting non-participating nations. Plurilateral arrangements also allow for greater flexibility in membership, in that participation is possible for a group of countries – and perhaps many countries – that are not willing or able to conclude a traditional preferential or multilateral trade agreement in which explicit market access liberalization commitments are made. In these respects, plurilateral agreements can be superior to trade agreements.

Plurilaterals nonetheless give rise to concerns regarding their potential for discrimination and exclusion. Arguments have been made that such cooperation is a mechanism for powerful states to set rules of interest to them; that power asymmetries result in issues of importance to LDCs and other developing countries being kept off the table; that this will give rise to pressure on non-parties to join in the future without being able to alter what was agreed by the incumbents; that government capacity constraints undermine the ability of developing countries to participate; and that plurilateral agreements reduce the ability of the WTO Secretariat to serve all members equally (Patrick, 2015; Kelsey, 2022). While some of these concerns arguably are less salient for plurilateral agreements that are open to any country, where participation is voluntary and benefits extend to non-signatories, such factors help explain why many LDCs have been hesitant to participate in the plurilateral “joint statement initiatives” launched in 2017 at the WTO Ministerial Meeting in Buenos Aires.

These concerns are important to address and point to the need for strengthening the governance framework to ensure plurilateral cooperation on trade-related policies is consistent with multilateralism and the broad goals laid out in the preamble of the WTO Treaty. While

recognizing the great importance for the trading system of clarifying and agreeing to the conditions that must be satisfied for cooperation among sub-sets of WTO members to be appropriate and desirable, this note does not engage with the question of governance of plurilaterals.²⁶ Instead, it provides an overview of possible areas of engagement for LDCs in ongoing plurilateral initiatives; discusses opportunities and challenges confronting LDC engagement in plurilateral cooperation; and suggests options for the international community to better support LDCs in overcoming capacity constraints to enable more active participation in plurilateral arrangements.

An increasing proliferation of plurilaterals

Plurilateral agreements among groups of WTO members can involve market access commitments that either create benefits for all WTO members on a non-discriminatory basis (such as the Information Technology Agreement) or restrict benefits to signatories to the agreement, but which have been sanctioned by the WTO membership as a whole for inclusion as an “Annex 4” agreement into the WTO.²⁷ As noted, plurilateral cooperation increasingly focuses not so much on removing policies that explicitly discriminate against foreign goods and providers but on domestic regulatory policies that give rise to redundant transactions costs. Such regulatory policies may be associated with the implementation of trade agreements, but need not.²⁸ Plurilateral cooperation that is either non-discriminatory in its outcome or – if it is restricted – is “open” in the sense of permitting participation (accession) by any country that meets certain conditions defined by the agreement is typically domain-specific and often will involve regulatory cooperation. Examples include the identification of good regulatory practices, commitments to implement such practices, and mechanisms through which participants mutually recognize the equivalence of specific dimensions of regulatory regimes.

There are several formal plurilateral agreements and ongoing plurilateral talks in the WTO. A recently concluded agreement is the 2021 Joint Initiative on

Services Domestic Regulation negotiated between 69 WTO members, with participants agreeing to include the negotiated provisions into their General Agreement on Trade in Services (GATS) schedules as additional commitments. This agreement seeks to reduce trade costs for business through the adoption of good regulatory and administrative practices relating to licensing and qualification requirements for foreign services providers and associated technical standards, including through transparency and due process commitments. Plurilateral negotiations on e-commerce and investment facilitation are ongoing, as are dialogues on environmental issues such as fossil fuel subsidies and plastics pollution. The WTO e-commerce talks involve 80-plus WTO members, including Benin, Burkina Faso, Lao People's Democratic Republic (Lao PDR), and Myanmar. They focus on a mix of trade restrictive policies and digital trade facilitation, including regulation of cross-border data flows, electronic signatures, e-invoicing, cross-border payments, and consumer protection. Talks on investment facilitation encompass over 100 participants, including many LDCs,²⁹ and centre on matters such as transparency and predictability of investment-related policies, administrative procedures, information sharing and monitoring and evaluation.

In addition to activity under the auspices of the WTO, plurilateral initiatives motivated by trade-related objectives have also been negotiated outside the WTO. An example is the Digital Economy Partnership Agreement (DEPA) between Chile, New Zealand and Singapore.³⁰ This is open to accession by additional countries and is designed to be modular, permitting participation by countries in some of the areas covered and not in others. Ongoing non-WTO talks that are explicitly plurilateral in nature include the Indo-Pacific Economic Framework for Prosperity (IPEF), the Americas Partnership for Economic Prosperity (APEP) negotiations and the Global Cross-Border Privacy Rules Forum.³¹ These US-led initiatives aim to define cooperation to achieve different types of objectives, both economic and non-economic. They do not involve reciprocal negotiations on binding market access liberalization commitments.³² Other ongoing plurilateral talks are climate change related, such as negotiations on an Agreement on Climate Change, Trade and Sustainability between Costa Rica, Fiji, Iceland, New Zealand, Norway and Switzerland. These seek to establish commitments on using trade policy to foster greening of the economy.

Many plurilateral initiatives focus on the recognition of equivalence of regulatory regimes as a means to facilitate trade by lowering trade/compliance costs for firms. Mutual recognition agreements (MRAs) for the certification of authorized economic operators (AEOs) are an example. In 2021, there were 87 such MRAs worldwide. While most are bilateral, a plurilateral MRA for AEO certification was implemented by Chile, Colombia, Mexico and Peru in 2018, the first example globally, followed in 2022 by a plurilateral MRA spanning 11 Latin American states (WCO, 2021). Plurilateral mutual recognition arrangements need not be formal agreements. Saluste (2021) notes that some of the states that have obtained data adequacy decisions from the European Union are plurilateralizing these bilateral arrangements with the European Union by recognizing each other's data protection regimes. This has reportedly been done by Argentina, Israel, Switzerland, the United Kingdom and Uruguay.

Opportunities and challenges for LDCs

The various plurilateral initiatives mentioned above and others³³ are potentially relevant to LDCs, either because they set standards that firms must conform with in order to trade or because implementation of whatever is agreed puts LDC firms and products at a competitive disadvantage by lowering the costs of documenting compliance with specific regulatory norms for firms that are based in signatory nations when engaging in international trade or investment. For example, agreements between states that recognize prevailing data protection and privacy regimes and permit data to cross borders freely may provide a competitive advantage to firms located in the participating jurisdictions by removing the need to demonstrate compliance with the applicable foreign regulatory standards.

Administrative capacity constraints affect the ability of LDCs to engage on an equal footing in the negotiation of plurilateral agreements. This is one reason why LDC participation in most plurilateral initiatives has been limited. Governments may find it difficult to determine the "return" to applying a proposed rule developed by participants in a plurilateral negotiation. More

generally, limited participation may reflect perceptions that an issue or regulatory domain that is the subject of plurilateral negotiation is not of sufficient interest to justify participation, given limited personnel and scarce resources. While resource constraints are clearly significant and highly salient, whether perceptions that the issues being discussed are not of sufficient interest to warrant engagement is an empirical question. As important is the question of what might be done in the context of any given plurilateral initiative or negotiation to increase the relevance and potential benefits of an agreement, i.e. to identify measures and actions that would enhance the “rate of return” for LDCs. This is distinct from issues such as assessing potential implementation costs, transitional arrangements such as the gradual or step-wise application of agreed good practices, and the provision of technical and financial assistance to LDCs. As discussed below, all of these are important and should be a central element of open plurilateral agreements to assure inclusivity and consistency (coherence) with the Sustainable Development Goals.

From an LDC perspective, what matters therefore is not only to ensure that plurilateral cooperation among groups of WTO members is not harmful to national interests, but to increase the prospects of plurilateral agreements being beneficial by addressing matters that improve the ability of firms located in LDCs to use trade as an instrument for sustainable development. In addition to identifying such factors and tabling them in plurilateral deliberations or negotiations, there is a need to identify more generally issues that are important to LDCs that could be put forward for plurilateral discussion and potential agreement. That is, rather than limiting the focus on extant or ongoing plurilateral initiatives, the question to ask is what issues could be the focus of new plurilateral agreements that directly address – centre on – issues that are important from a sustainable development perspective and are particularly salient for LDCs.

The point is that plurilateral cooperation could be an instrument through which to focus the attention of government agencies, donors and the private sector on a specific policy domain that is important from a competitiveness and supply capacity perspective. Identifying specific issue areas requires consultations with investors and business associations and dialogue with potential partner countries to determine how cooperation can address specific constraints that

impede the realization of trade and investment opportunities for LDCs. What such opportunities are and the specific design of cooperation to help realize them is a matter to be determined by groups of LDCs. There are many potential areas, ranging from initiatives to bolster cooperation at the regional level to implement measures to reduce trade and transactions costs (for example, in the context of regional integration agreements) to agreements that focus on the adoption and effective implementation of good regulatory practices in a given area (for example, facilitating cross-border payments for MSMEs; data protection; and investment facilitation). Deliberations to assess a potential “menu” of options must be informed by analysis as well as consultations with the private sector in LDCs. This requires resources that could be provided by donor countries. As noted in the subsequent section, this is an activity that could in itself be construed and designed as a plurilateral initiative.

Leveraging plurilateral opportunities for sustainable development

Addressing differences in levels of economic development and institutional capacities calls for tailored and targeted measures in plurilateral agreements as opposed to general opt-outs and exemptions.³⁴ Inclusion of the “standard” type of S&D would defeat a major rationale for groups of WTO members to consider plurilateral agreements: namely, to adopt what signatories agree are good regulatory/policy practices. Insofar as governments consider provisions of an agreement to be beneficial – for example, they constitute good practice – it makes no sense to consider that some countries should permanently fail to implement parts of whatever standards and processes are agreed, as this would undercut the achievement of the associated domestic regulatory objectives and make cooperation impossible. Instead, the focus should be on ensuring that rules and common regulatory principles and approaches are, in principle, beneficial to participating countries

independent of their levels of development, and that those countries that cannot immediately implement an agreement are assisted to do so. A commitment that parties to a plurilateral agreement assist non-signatories that desire to participate but are unable to do so because of capacity weaknesses would overcome a key barrier pertaining to countries' ability to participate and benefit from a given agreement. Doing so is important to assure inclusion and to increase the benefits of plurilateral cooperation by expanding the set of countries that can participate. Putting in place a mechanism through which members of plurilateral agreements and arrangements provide such assistance will enhance the credibility of commitments by proponents that this type of cooperation is consistent with and supportive of an open, rules-based, multilateral trade order.

Currently there is no system that makes assistance available on request in areas proposed for plurilateral cooperation, either to aid the technical aspects of countries' accession or to assist countries subsequent to signing an agreement in implementing provisions that need not be enacted as a pre-condition for membership. The establishment of such a mechanism to make plurilateral agreements effective and inclusive could be organized around domain-specific epistemic communities that have an interest in supporting plurilateral deliberations but do not have the resources to do so. Entities that are asked to provide expertise need to be able to cover the associated costs. Even if international development organizations such as the World Bank, UNCTAD or UN Regional Commissions are tasked with information gathering and analysis, this needs to be resourced. The same pertains to meeting technical assistance requests, whether for diagnostic assessments of the prevailing regulatory regime in a country or to address needed reform or upgrading.

This has been done for specific policy domains in the past – for example, the programme to support the epistemic community that prepared the ground for and informed the content of the TFA. A multi-donor supported facility that is designed as a plurilateral

agreement to support engagement by LDCs in plurilateral initiatives and agreements – both ex-ante and ex-post – would fill an important gap constraining their participation and informing the design of potential plurilateral initiatives. The terms of reference for such a facility must go beyond local capacity strengthening and span upstream research and analysis of the type that was done for the TFA negotiations to clarify the potential gains and (opportunity) costs of alternative options and the associated implications for participating – and non-participating – WTO members. A facility could also play a valuable role in funding robust monitoring and evaluation of the implementation of plurilateral agreements to help guide efforts to improve the development impact of agreements over time.

There are many potential areas where support to domain-specific epistemic communities with strong interest in a policy area and knowledge of the institutional setting and contexts prevailing in LDCs – and other developing nations – could bring positive results. Supporting engagement by such communities could do much to help make plurilateral agreements more inclusive and relevant from a sustainable development perspective. For example, the Informal Working Group on MSMEs has called for exchanges of good practices to help identify measures that can facilitate MSMEs' access to finance and cross-border payments. Operationalizing identified good practices in LDCs – and working with importing countries to address constraints that inhibit access to or use of cross-border payments – will require expertise, analysis and resources. Another example is the ongoing plurilateral negotiation on an Agreement on Investment Facilitation for Development (IFD Agreement). This excludes a focus on applied policies such as investment incentives. A multi-donor facility to support plurilateral cooperation could provide resources for harnessing the epistemic community with an interest in leveraging investment for development – for example, research institutes and investment promotion agencies – to complement an eventual IFD Agreement by supporting analysis of policies towards foreign investment that are not included in the agreement.





IV. Options for an LDC-driven trade agenda

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Background

Most of the existing agreements and ongoing negotiations in the WTO do not meaningfully reflect the offensive interests of LDCs.³⁶ This may be because most LDCs are not WTO members and therefore have no say in what is decided in the WTO. But this is misleading. Of the current 46 LDCs, 35 are WTO members. Most were founding members, with only six acceding after the Uruguay Round of trade negotiations. An alternative explanation could be that LDCs do not have a powerful voice in the WTO.

But this is arguably not true. To illustrate this, I counted the number of times that the term “LDC” appears in the final documents of the “Geneva package” of agreements.³⁷ In the three-page outcome document, it appears 18 times. In contrast, the document fails to mention “Africa,” “Asia,” “America,” “low-income countries” or “landlocked countries.” The term “developing country/member” appears only six times. It is, therefore, difficult to argue that LDCs are not visible, active and well-organized in the WTO. I will argue that LDCs’ commercial interests are not reflected in WTO agreements because LDCs’ negotiating strategy in the WTO has focused on obtaining exceptions to global rules, starting with exceptions to Article I of the GATT. This has resulted in trade agreements that drifted away from LDCs’ commercial interests.

A shift in LDCs’ WTO strategy towards proactively championing their commercial interests is needed for WTO agreements to reflect LDCs’ interests. Instead of leveraging their institutional visibility to seek exceptions, an offensive – rather than defensive – negotiating strategy that is aligned with their development interests could lead to more valuable outcomes and a more inclusive WTO. This note explores some principles that could underpin such a negotiating strategy and help LDCs identify three areas where they could play a constructive and important role in future WTO negotiations.

From a “catenaccio” to “total football” LDC negotiating strategy

As demonstrated in football, moving from a defensive “catenaccio” style of negotiating to a more offensive “total football” strategy does not necessarily require new players but a new perspective.³⁸ The new offensive strategy requires three principles. First, it needs to move away from a defensive “wait and see” strategy towards a strategy based on controlling the ball. Second, it needs to be simple and not overly complex. Finally, it needs to be based on the fluidity – rather than entrenchment – of positions, and always seeking the best available opportunities.

We can translate these three football principles into three criteria that LDCs could use to identify areas to engage constructively. First, LDCs should identify offensive interests whose championing would lead to a stronger integration with world markets aligned with LDCs’ development objectives. Second, current WTO rules are absent or obscure, and their simplification could benefit LDCs, and other members. Finally, there is potential for coalitions of interests with other WTO members that could lead to quick negotiating wins.

Using these principles, I identify two new areas where an LDC-led offensive strategy could emerge: labour standards and developing country (or LDC) status.³⁹ Some may argue that these areas are not new. I agree. Some will argue that these are not areas corresponding to the key commercial interests of LDCs. I disagree. Below, I shed new light on these two important areas and explain how they could contribute to a more offensive, LDC-led WTO agenda, as they comply with the above-mentioned criteria.

Labour standards

While labour standards were discussed before the 1996 Singapore Ministerial Conference, WTO members have so far agreed to disagree and have left negotiations outside the WTO. In the meantime, trade agreements on labour standards have proliferated. According to Carrère et al. (2022), around 40 per cent of preferential trade agreements (PTAs) negotiated since 1990 include a labour clause. The trend has accelerated since 2008, with more than half of trade agreements notified containing a labour clause with strong enforcement mechanisms and/or deep cooperation.

Do labour standards satisfy the three criteria of an offensive LDC strategy? Developing countries strongly opposed the inclusion of labour issues at the Singapore Ministerial Conference, based on a two-pronged argument that it would lead to hidden protectionism in areas where developing countries had a comparative advantage. This seems to go against the first criterion that LDC-led issues need to be in the commercial interests of LDCs and aligned with their development objectives. There are two responses to this. Let us start with the easier one. While the comparative advantage of some LDCs may be in products in which violations of

labour rights are common, this cannot be considered a development strategy. To my knowledge, and beyond the ethical and moral arguments, there is no empirical evidence that a country has successfully developed based on the exploitation of its labour force.⁴⁰ Even if labour standards are not discussed within the WTO, according to its website, “all WTO member governments are committed to a narrower set of internationally recognized core standards: freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination).”⁴¹ Indeed, a successful strategy for sustainable development must be based on respect for workers’ rights. The more difficult issue is hidden protectionism by higher-income members, which could use rules on labour standards to protect their domestic markets, particularly if trade sanctions are allowed in the presence of violations. The evidence, however, suggests that the inclusion of labour chapters in PTAs leads to more, not less, exports from low-income countries to rich countries, and from countries with weak labour laws to countries with strong labour laws (Carrère et al., 2022).⁴² Importantly, the increase in exports from countries with weak labour rights to countries with strong labour rights is stronger when labour clauses include provisions for deep cooperation, technical assistance, and capacity building. LDCs negotiating an agreement on labour standards should seek the inclusion of these provisions following the logic of the Trade Facilitation Agreement, and the Agreement on Technical Barriers to Trade, etc.

The second criterion is also met as there are currently no rules at the multilateral level, and their introduction would simplify and clarify a set of rules which vary depending on the PTA involved. The complex relationship between labour standards and trade becomes even more problematic if we include private standards and codes of conduct used by large multinational corporations often headquartered in rich countries but sourcing from LDCs. When businesses are exposed to labour-rights violations, their responses range from withdrawing from high-risk countries to the monitoring and tracing of global supply chains and the imposition of even more varying standards. More importantly, private standards address the problem in their supply chain but not the broader labour-rights problem in the source country, as labour-rights abuse may be displaced to other firms with no global exposure.

Finally, many of the WTO’s high-income members would welcome a link between trade and labour standards, which meets the third criterion. An agreement on labour standards would bring coherence between member countries’ commitments in different international organizations. If we go back to the Singapore Ministerial, Canada, the European Union and the United States could be partners in such a coalition. Interestingly, those that opposed the introduction of labour standards in 1996 were low-income countries that, as argued above, would also benefit from a multilateral agreement on trade and labour standards, implying that many may support such a negotiating coalition. Of course, a plurilateral approach could also be envisaged (WTO, 2023).

To sum up, an agreement on labour standards would satisfy our three criteria for a more offensive LDC negotiating strategy. It would be in the commercial and development interests of countries with weak labour protection that aim to export to high-income markets, particularly when the agreement is accompanied by deep cooperation and capacity-building provisions. It would also simplify a complex set of existing rules, and a coalition with other WTO members is feasible.

Thoughts on LDC status

Special and differential treatment is an important pillar of the WTO, allowing developing country members to comply with their WTO obligations without neglecting their development objectives. Tensions arise around this principle because access to special and differential treatment is granted to self-declared developing countries, which can then be challenged by other members. This creates two problems. The first one is the uncertainty around which members can benefit from special and differential treatment. The second one is that, as the number of countries self-declaring as developing countries grows, the incentives to grant meaningful special and differential treatment in new agreements decline. More clarity in terms of which members have developing country status would reduce uncertainty and lead to deeper provisions for countries that need them for WTO obligations to be consistent with development objectives.

LDC status is perhaps clearer, as a list exists, but its future is also more uncertain. LDCs in the WTO are recognized as those in the United Nations' list of 46 countries. However, 16 countries are on the path to graduation, and no new countries are joining the list of LDCs. Logic implies that in the near future there will be no countries left on the United Nations' LDC list. While this may make no sense, as 20 per cent of countries will always occupy the bottom quintile in terms of quality of life, decisions on LDC status in the United Nations cannot be addressed in the WTO as they are determined by the United Nations General Assembly based on the recommendation by the Committee for Development Policy (CDP) that reviews the list of LDCs every three years.

It is in LDCs' commercial and development interests that special and differential treatment is given only to those countries that really need it to meet their development objectives. This would induce more generous provisions. It would introduce clarity and reduce uncertainty, as it would not depend on what could be a political and ideological process in the United Nations.⁴³ For that, the designation of which countries could benefit from LDC or developing country status needs to be decided by fair and pre-determined criteria, and not by WTO members. Negotiations should be upon ex-ante criteria, not ex-post.

Machine learning techniques could be used by the Secretariat or an external committee to determine the list of LDCs or developing countries. A perhaps obvious, but limited, criterion for LDC or developing country status could be based on income per capita, as employed by the World Bank. However, vulnerabilities and structural impediments to sustainable development go beyond income per capita. To explore what would be the group of LDCs determined by a large set of variables, I downloaded the more than 500 variables available in the World Bank's World Development Indicators for the period 2016-2019 and used an

unsupervised machine learning algorithm to cluster all countries in the world into five groups.⁴⁴ For five of the current LDCs, there was no data available for the variables used in the algorithm and therefore they could not be clustered.⁴⁵ Of the remaining 41 countries, only five countries were not classified in the algorithm's LDC cluster. These five countries are all on the graduation path, and all five were in the same cluster as other low-income countries. The LDC cluster produced by the algorithm had a total of 53 countries, suggesting that the current United Nations LDC list suffers from a false negative problem or type II error if we believe the machine learning list is the correct one. The algorithm used can certainly be improved upon, but it runs in a few milliseconds on a standard laptop.

The third criterion for a successful LDC-led agenda is also likely to be satisfied, as there are potential negotiation coalitions with other members that could be identified. Given recent discussions around developing country status, it is likely that powerful WTO members would welcome a proposal that moved away from the self-declaration of developing country status. Also, a less political and more data-driven approach to determining which countries would need special support would likely be welcomed by those fragile members that suffer from the false negatives of the current list.

Wrapping up

An offensive, LDC-led WTO agenda is possible. The three criteria proposed in this note led to the identification of two perhaps unexpected areas in which LDCs could engage constructively in the WTO or elsewhere, not only supporting their commercial interests and development objectives but also strengthening the institution.



Abbreviations

AEO	authorized economic operators
APEP	Americas Partnership for Economic Prosperity
CDP	Committee for Development Policy
CMA	Committee on Market Access
CoA	Committee on Agriculture
DEPA	Digital Economy Partnership Agreement
DFQF	duty-free and quota-free
EBA	everything but arms
EEC	European Economic Community
EIF	Enhanced Integrated Framework
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
JSIs	joint statement initiatives
IFD	Investment Facilitation for Development
IPEF	Indo-Pacific Economic Framework for Prosperity
ITA	Information Technology Agreement
LDC	least developed country
MC13	13th WTO Ministerial Conference
MFN	most favoured nation
MRA	Mutual recognition agreements
MSME	micro, small and medium-sized enterprise
NTB	non-tariff barrier
PTA	preferential trade agreement
QR	quantitative restrictions
S&D	special and differential treatment
SDGs	United Nations Sustainable Development Goals
SPS	sanitary and phytosanitary measures
STC	specific trade concern
TBT	technical barriers to trade
TFA	Trade Facilitation Agreement
TPR	Trade Policy Review
TPRB	Trade Policy Review Body
TPRM	Trade Policy Review Mechanism
TRIPS	WTO Agreement on Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCTAD	United Nations Conference on Trade and Development

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Endnotes

- 1 For helpful comments, Petros C. Mavroidis would like to thank Christina Davis, Henrik Horn, Clarisa Long, Patrick A. Low, André Sapir, Sunayana Sasmal, and Mark Wu.
- 2 Cordovez (1967), Gardner (1964), and Nye (1974) all agree that the deepest fear of the United States and the Western world was that UNCTAD might come under the spell of the Soviet Union. The consequences at that time, during the apex of the Cold War, for Western economies were hard to predict.
- 3 GATT document: L/3545 of 28 June 1971.
- 4 GATT document: L/4903, GATT Doc. BISD 26S/203 of 28 November 1979
- 5 WTO document: WT/L/304 of 17 June 1999.
- 6 WTO document: WT/L/1069 of 16 October 2019.
- 7 WTO document: WT/MIN(13)/44 and WT/L/919 of 11 December 2013.
- 8 WTO document: WT/MIN(15)/47 and WT/L/917 of 19 December 2015.
- 9 One might legitimately wonder why a decision along these lines cannot also be extended to goods produced by developing countries (assuming a reasonable understanding of the term “developing countries”, of course).
- 10 WTO document: WT/COMTD/W/222 of 22 November 2016.
- 11 WTO document: WT/COMTD/LDC/W/70 of 18 October 2022.
- 12 WTO document: WT/MIN(05)/DEC of 22 December 2005.
- 13 Neufeld (2014) provides an excellent, comprehensive account of the letter and the negotiating history of the TFA.
- 14 WTO document: WT/MIN(13)/45, WT/L/920 of 11 December 2013.
- 15 Hoekman and Prowse (2009); Hoekman and Shepherd (2015); Gamberoni and Newfarmer (2009); de Melo and Wagner (2016).
- 16 Even though notifications are largely a function of incentives to notify, and consequently the notification record is asymmetric across committees, and anyway sub-optimal, see Collins-Williams and Wolfe (2010).
- 17 In Hoekman and Mavroidis (2000) we argued for a reversal of the order of visits to WTO members, and pleaded for more frequent visits to smaller players, and especially LDCs.
- 18 T-246/19. The EU Commission did not appeal, but reopened the investigation. <https://curia.europa.eu/juris/document/document>.
- 19 Robert Wolfe is Professor Emeritus in the School of Policy Studies of Queen's University, Canada. He is grateful for many helpful conversations with delegates and officials in Geneva. This note draws on Wolfe (2020), and Low and Wolfe (2020).
- 20 GATT Article X:1
- 21 WTO document: G/AG/R/104, 22 November 2022
- 22 WTO document: G/MA/367, 3 June 2019
- 23 Simon Evenett, “Corporate Subsidies & World Trade: Evidence from the Global Trade Alert Subsidy Inventory 2.0” Presentation May 9, 2023, slide 11.
- 24 WTO document : WT/MIN(22)/27, 22 June 2022
- 25 WTO document: WT/MIN(13)/45, 11 December 2023
- 26 Hoekman and Sabel (2021) propose principles for strengthening the extant governance framework, including that agreements be truly open to any country wishing to join, be fully transparent, and include mechanisms to assist countries not able to participate because of institutional capacity constraints.
- 27 There is only one example of the latter in the WTO: the Agreement on Government Procurement.
- 28 An example of a plurilateral arrangement that is linked to the implementation of a trade agreement is the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), under which signatories (26 as of May 2023, including China, the European Union and Japan) agree to a process through which dispute settlement panel reports can be appealed while the Appellate Body is in abeyance.
- 29 Afghanistan, Benin, Burundi, Chad, Djibouti, Guinea, Guinea-Bissau, Lao PDR, Liberia, Mauritania, Myanmar, the Solomon Islands, The Gambia, Togo, Uganda, Yemen and Zambia.
- 30 <https://www.mfat.govt.nz/en/trade/free-trade-agreements/free-trade-agreements-in-force/digital-economy-partnership-agreement-depa/overview/>
- 31 <https://ustr.gov/ipef>; <https://www.state.gov/americas-partnership-for-economic-prosperity/>; <https://www.commerce.gov/global-cross-border-privacy-rules-declaration>
- 32 The IPEF discussions focus on four policy areas (‘pillars’): (i) trade (with a focus on digital economy/e-commerce-related regulation, and labour, environment and corporate accountability standards for traded products); (ii) enhancing supply chain resilience through cooperation on early warning systems, mapping, and enhancing traceability in key sectors; (iii) measures to green the economy (renewable energy and decarbonization); and (iv) commitments to implement effective tax, anti-money laundering and anti-bribery regimes. The approach is modular in that not all countries need to participate in all four pillars – e.g. India is an observer in the trade-related talks. The Global Cross-Border Privacy Rules Forum seeks to establish a certification regime to facilitate trade and data flows by helping firms demonstrate compliance with internationally recognized data privacy standards, while accepting differences in domestic preferences and regulation.
- 33 See e.g. <https://wtoplurilaterals.info/>.
- 34 This section draws on Hoekman et al. (2021).
- 35 Marcelo Olarreaga prepared this note at the request of the WTO Secretariat. Marcelo Olarreaga is a professor of Economics at the University of Geneva, Research Fellow at the Centre for Economic Policy Research in London, and Senior Fellow at FERDI in Clermont-Ferrand. Email: marcelo.olarreaga@unige.ch.

- 36 This is not new. More than 20 years ago, Rodrik (2001) forcefully argued that most WTO agreements respond to “the mercantilist interests of a narrow set of powerful groups in advanced industrial countries.” And since then, Ministerial Conferences have led to mini-packages, but no new comprehensive agreement has been signed. Importantly, the future of the WTO may lie in plurilateral agreements, as discussed in WTO (2023).
- 37 WTO document: WT/MIN(22)/24 WT/L/1135.
- 38 Total football strategy | Total soccer tactic, style, formation, meaning (football-guide.com)
- 39 This list is not exhaustive. There are many other areas where the three criteria are likely to be met. A potential area is environmental negotiations, particularly carbon border adjustments. Unfortunately, only three of the 35 LDCs that are WTO members are currently participating in the ongoing Trade and Environmental Sustainability structured discussions (Chad, Gambia and Senegal). Competition policy is also a likely candidate for LDCs to explore. Unfortunately, the working group on Trade and Competition Policy has been inactive since the “July 2004 package” of agreements. Rules of origin is also an area that matches the three criteria. All LDCs’ indirect exports to high-income country markets do not benefit from duty-free access. Only direct exports benefit. This is an important point raised by the GVCs for LDCs initiative pushed by Antimiani and Cernat (2021). Blockchain or other technology could be used to trace the origin of inputs, bypassing the discrete yes or no origin decision with current rules. It would also solve the problem discussed in WTO (2021) that more lax rules of origin for LDCs may lead to less LDC value-add being embedded in LDC exports to high-income countries.
- 40 Of course, there is much historical evidence that some countries have successfully developed based on the exploitation of other countries’ labour forces. The absence of strong labour standards and enforcement in LDCs will only perpetuate this.
- 41 See WTO | Understanding the WTO – consensus, coherence and controversy
- 42 The increase in exports occurs through three channels. First, the demand channel is linked to what is known as the California effect. As more information is provided to potential consumers regarding the compliance of goods and services produced in other countries with protected labour rights, demand for those goods and services increases. The second is a supply-side channel; labour productivity increases when workers are better treated (Brown et al., 2013). A third channel is the investment channel linked to the first two. As demand and productivity increase, this will lead to more investment and, in particular, more foreign investment from high-income countries with concerns regarding the exposure of their global supply chains to violations of labour rights. This is important because if LDCs account for a small share of world trade, they account for an even smaller share of foreign direct investment.
- 43 For a discussion of problems with the current criteria used by the CDP, see WTO (2021).
- 44 I first took averages of each variable between the period 2016-2019, then dropped all variables for which there were more than nine missing observations, i.e. variables for which there was no information on more than nine countries (so that the clustering was not biased by the absence of information). I then standardized all the remaining variables, and used a k-median algorithm based on Canberra distances. The 15-line Stata code is available upon request.
- 45 Technical assistance and capacity building is needed to ensure that the necessary data is collected in all countries. This could be part of a WTO agreement on LDC and developing country status.

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