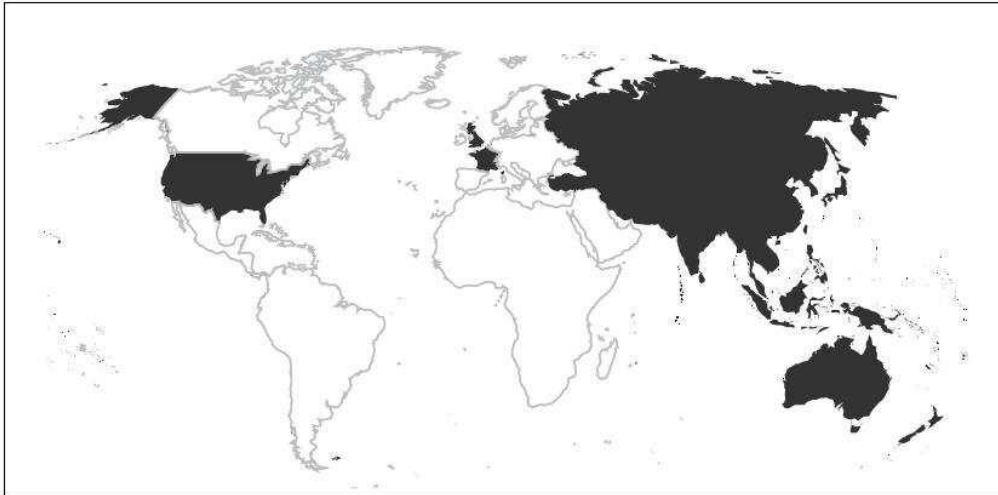


**IN PREPARATION FOR WTO MC12:
SAFEGUARDING TRADE INTERESTS OF
LDCs AND SECURING TRADE INTERESTS
OF GRADUATING LDCs**



PREPARED BY
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The Economic and Social Commission for Asia and the Pacific (ESCAP) serves as the United Nations' regional hub promoting cooperation among countries to achieve inclusive and sustainable development. The largest regional intergovernmental platform with 53 member States and 9 associate members, ESCAP has emerged as a strong regional think-tank offering countries sound analytical products that shed insight into the evolving economic, social and environmental dynamics of the region. The Commission's strategic focus is to deliver on the 2030 Agenda for Sustainable Development, which it does by reinforcing and deepening regional cooperation and integration to advance connectivity, financial cooperation and market integration. ESCAP's research and analysis coupled with its policy advisory services, capacity building and technical assistance to governments aims to support countries' sustainable and inclusive development ambitions.



The shaded areas of the map are ESCAP members and associate members.

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This publication was prepared as part of the project “Harnessing Trade for Sustainable Development with Focus on Graduating LDCs in Asia and the Pacific”, undertaken by ESCAP to respond to the capacity-building requests from a number of LDCs. The project’s objective was to strengthen capacity in the region to position development interests of developing countries, especially graduating LDCs, through the multilateral trading regime, ahead of the Ministerial Conference of WTO. Valuable comments and suggestions that helped shape the publication were received from participants of the Regional Consultation on Harnessing Trade for Sustainable Development with Focus on Asia-Pacific Least Developed Countries, held on 2 and 3 December 2019 in Bangkok. The ESCAP Regional Consultation provided a platform to discuss, in a transparent and inclusive manner, the state of play in the preparation of the WTO MC12 and its relevance for all developing and least developed countries, especially graduating LDCs. Participation by government officials, representatives of civil society and selected business representatives facilitated capturing the ongoing dynamics of negotiations and possible innovative options for reforming the global trade regime to ensure its fitness for the purpose for accelerating progress for meeting the SDGs.

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Foreword and Summary

When the ESCAP Secretariat embarked on the project “Harnessing Trade for Sustainable Development with Focus on Graduating LDCs in Asia and the Pacific” in early 2019, global economy, trade and investment were already ailing from trade tensions and uncertainties. By the end of 2019, the estimates of GDP and trade growth prospects in 2020 were already less than promising. Now, after four months of production, trade and investment across the globe almost completely stopped due to efforts by Governments to contain the spread of COVID-19, these prospects are very bleak. In April, World Trade Organization (WTO 2020a) provided two scenarios on the possible outlook for global trade in 2020, both with trade plummeting between 13 per cent (positive scenario) and 32 per cent (negative scenario) in 2020. WTO also issued a report demonstrating a sharp increase in restrictive trade policies, especially those targeting products important to fighting the pandemic (WTO 2020b).

The “Great Lockdown” (as the response by the countries to the pandemic was coined by the International Monetary Fund), has not only caused the greatest economic crisis since the 1930s’ Great Recession, but has also derailed many actions, including the WTO Ministerial Conference 12 (MC12) which was planned to be held in June this year in Nur-Sultan, Kazakhstan. That occasion was the target for the capacity-building project of ESCAP, which included this study entitled “In Preparation for WTO MC12: Safeguarding Trade Interests of LDCs and Securing Trade Interests of Graduating LDCs”. At the time of issuing this publication, it is still unknown when and where this Ministerial Conference will be held. Given the significance of MC12, as explained in the publication, which is amplified by the impact of the COVID-19 pandemic, it is hoped that MS12 can be still held in 2020.

The global economy has never fully recovered the since 2008 global financial crisis. Despite the indisputably positive net effects, the lack of adequate social policies to support those adversely affected by openness to globalization has created a backlash against multilateralism, especially in some developed economies. Strong disagreements have emerged on how and even whether to “promote a universal, rule-based, open, non-discriminatory and equitable multilateral trading system under WTO”, which is a target of Sustainable Development Goal 17. Since 2018, the situation has been worsened by growing unilateral protectionism to address (ineffectively) serious and worsening issues of inequality and access to economic opportunities. The risks of wide-spread trade wars have accumulated, deepening policy uncertainties as well as threatening regional and global economic growth and the achievement of the sustainable development goals, as ad hoc trade policy decisions can lead to job displacements and other undesirable and largely unpredictable socio-economic impacts. All these challenges were aggravated many times by the impacts of the Great Lockdown.

As the WTO and its members continue to prepare for the twelfth Ministerial Conference, hopefully to be held in 2020, they will have to address at least some of these new

challenges to maintain the relevance of trade to development. It is no secret that several recent Ministerial Conferences have not achieved their objectives, nor have they met the expectations of many of the WTO members. It is true that every WTO Ministerial Conference is burdened with great expectations and a setback is subject to serious scrutiny. Nevertheless, MC12 has been viewed as one that cannot fail. Even before the pandemic there was almost a grand consensus in seeing MC12 as the milestone for the rules-based trading system. By now it is clear that it might be “make it or break it” for the multilateral trading system.

It is also clear that for the 164 member countries, the MC12 may mean many different things and may be expected to deliver different results. The LDCs and graduating LDCs in particular were placing great hope on the outcomes of MC12 to be used to accelerate their efforts to achieve the SDGs.

This publication was prepared in order to respond to several of the LDC members of ESCAP and to assist them in preparing to position their trade-related development interests through the upcoming MC12. Considering the state of affairs in the global economy and the weakening confidence in the multilateral solutions, the present publication focuses on four issues. First, it presents some of the key developments that form the global scenario and which have important implications for the LDCs as they prepare their stance for the next Ministerial Conference. Next, it deals with – to use the trade jargon, the “offensive” and “defensive” trade interests of the LDCs. These are carefully considered, one by one, including the new issues arriving from the “joint statements” and proposals for the possible stance of LDCs in view of those issues. Finally, the issues of trade-related concerns and interests of the cohort of graduating LDCs are discussed and some elements of a support package for helping these countries move towards their smooth transition, graduation with momentum, and sustainable and robust LDC graduation are put forward. It is argued that, in the course of the current critically important transition phase from an LDC to a developing country, the graduating LDCs will need targeted support from multilateral and bilateral development partners. While graduating LDCs do their own homework with regard to implementing their own national smooth transition strategy, they will need support from the global community.

LDCs will need to mobilize the support of the various broad-based groups in WTO if they are to be able to create the critical mass in favour of issues of interest to LDCs and graduating LDCs at MC12. As the various initiatives undertaken in support of graduating LDCs testify, WTO as an institution as well as many developed countries on their own are agreeable to extending help in support of sustainable graduation of the LDCs. The strategy at MC12 should be four-fold: (a) mobilizing support in favour of graduating LDCs on the grounds that their graduation is in the interests of all WTO members; (b) mobilizing issue-specific support through targeted coalition-building; (c) mobilizing support for graduating LDCs in a special situation, such as the acceding LDCs; and (d) participating in the discussion by keeping the post-LDC future as developing countries in perspective.

As already noted, this publication is a part of the project, “Harnessing Trade for Sustainable development with Focus on Graduating LDCs in Asia and the Pacific”, that provides an advanced capacity-building programme to strengthen the hands of LDC negotiators in dealing with issues of concern and interest of LDCs by making available a well-augmented set of analysis and proposals. In its mandate to promote regional cooperation, the ESCAP secretariat remains committed to supporting all LDCs, including graduating LDCs, with a view to enhancing their integration into the global economy and to supporting them in achieving the sustainable development goals.



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IN PREPARATION FOR WTO MC12: SAFEGUARDING TRADE INTERESTS OF LDCs AND SECURING INTERESTS OF GRADUATING LDCs

Introduction

The twelfth World Trade Organization Ministerial Conference (MC12) was to be held in Nur Sultan, Kazakhstan in June 2020 yet the COVID-19 pandemic warranted the change of plans.¹ Amidst newly heightened global economic and trade uncertainties caused by the pandemic, the MC12 was of course going to take place with the backdrop of the WTO-MC11 in Buenos Aires, which concluded without any Ministerial Declaration. While this is reflective of the challenges faced by multilateralism in general, and multilateral trading system in particular, the least developed countries (LDCs) have always maintained that a rule-based and predictable trading system is in the best interests of the relatively weaker economies. The LDCs have also continued to profess that WTO has played and could potentially continue to play an important role in advancing the trade and development interests of the LDCs. Indeed, there is widespread recognition of the fact that the WTO market access provisions favour the LDCs. The special and differential treatment (S&DT) accorded to the LDCs as part of various WTO agreements in the form of derogations, protracted implementation period and various flexibilities, and the Aid for Trade support provided by the WTO have contributed significantly to strengthened global integration of the LDCs.

It is also true that WTO, as an institution and as a collective of its members, has not been able to fulfill the expectations and aspirations of the LDCs to the desired level and extent. Indeed, there has been criticism on the grounds that many decisions of the successive WTO Ministerial Conferences have not been followed up with neither concrete nor quick actions, and that the expected support from the rest of the membership have not been

¹ At the time of issuance of this report it is still not known when and where the WTO Ministerial Conference 12 will be held. It is assumed it will still be held in 2020 and thus this report contains timely and relevant material for the LDCs and other countries to prepare for their participation in the upcoming Ministerial Conference.

forthcoming. The LDCs felt that they needed more effective preferential treatment on the market access side as well as Aid for Trade and technical assistance in building the required trade-related, supply-side capacities that would enable them take advantage of such preferential treatment and other various S&DT provisions of WTO. Nonetheless, the LDCs, have remained interested and committed to WTO as a key institution for providing stewardship to global trading regime and for helping to address the offensive and defensive concerns and interests of the relatively weaker economies.

However, as the MC12 is being planned, there are reasons to be concerned in view of the recent developments in WTO. The discussions at the previous Ministerial Conference in 2017 (MC11) exposed a deep divide among the members with regard to the modalities for implementing the built-in agendas, the stance with regard to ongoing issues on the negotiating table as well as the newly emerging issues that many WTO members were keen to pursue through discussion. Moreover, the mandate and role of the WTO itself, as an institution for guiding global trade, has come under serious scrutiny by powerful members. WTO systematic issues and decision-making modalities have been questioned, doubts have been raised as to whether the provision of single undertaking is the best way to reach agreement at the MCs, and whether the dispute settlement mechanism (DSM) is functioning the way it should.² There have been calls to make wider and more effective use of non-multilateral options, including regional and mega-regional trading arrangements.

From the above vantage point, MC12 is likely to prove to be a critical milestone, and perhaps an important turning point, in deciding the way multilateralism will move forward and whether the WTO can overcome the existential crisis that it currently faces. Since the LDCs need and are interested in a rule-based multilateral trading system steered by WTO, with embedded flexibilities for the weaker members of the organization, it is important that they demonstrate their interest through active engagement in the discussions to be held at MC12 as well as contribute to the successful outcome of MC12. The need and urgency for such a positive approach is also underwritten by the fact that a large number of LDCs (members of the WTO and a few that are not yet members) are

² The paralysis of the dispute settlement body arising from the inadequate number of judges in the appellate body is a case in point.

slated for graduation from the LDC group in the next few years.³ Annex table 1 shows the planned years of these LDCs' graduation. Once graduated, these LDCs will lose the benefits accruing from the various S&DT provisions shown in annex table 2, although they will then start (after graduation) to enjoy benefits granted to all developing countries. In view of this, articulating the interests of this particular cohort of LDCs and designing a set of trade-related support measures towards their sustainable graduation have emerged as a task that needs to be addressed. Indeed, the MC12 still planned for 2020 has added urgency to this task.

It is pertinent also to recall in the above connection that the 2030 Agenda for Sustainable Development adopted in 2015 features trade as an important means of implementation of the sustainable development goals (SDGs) (United Nations, 2015). For example, SDG 17 on global partnerships underscores the aspiration to “promote a universal, rules-based, open, non-discriminatory and equitable multilateral trading system under the WTO”. While, regrettably, the world has not made much progress towards meeting the targets associated with the high aspirations articulated in 2015, MC12 should be viewed as yet another opportunity to remind the global community about the commitments embedded in the SDGs. The urgent need for action on the 2030 Agenda, called upon by the United Nations Secretary-General at the start of 2020, should also be recalled in the preparations for the next WTO Ministerial Conference.

Against this backdrop, the present report focuses on four issues. Section 1 presents some of the key developments that form the global scenario and have important implications for the LDCs as they prepare their stance in view of the next Ministerial Conference. Section 2 deals with the offensive and defensive interests of the LDCs. Section 3 takes a close look at the new issues and proposes the possible stance of LDCs in view of those issues. Section 4 examines the issues of trade-related concerns and interests of the particular cohort of graduating LDCs, and proposes elements of a support package for helping these countries move towards their smooth transition, graduation with momentum, and sustainable LDC graduation. Section 5 presents the conclusion.

³ The 12 graduating LDCs include Angola, Bangladesh, Bhutan, Kiribati, the Lao People's Democratic Republic, Myanmar, Nepal, Sao Tome and Principe, Solomon Islands, Timor-Leste, Tuvalu and Vanuatu. As may be discovered from this list, excepting Angola, the other LDCs are from the Asia-Pacific region.

1. The distinctive context of MC12

The trade-related interests of the LDCs, including the graduating LDCs, in view of MC12, are informed by several important developments concerning WTO specifically, and the global trade scenario in general. Some of the salient features of this emerging scenario, which have relevance in view of the LDC stance at MC12, are presented in the following subsections.

(a) Lack of progress in WTO negotiations

As it is, the initial enthusiasm generated at the time of the Doha Agenda adoption and commencement of the Doha (Development) Round negotiations has been lost, and some of the positive initiatives agreed upon in the course of subsequent MCs have not been followed through during the subsequent years (Rahman and others, 2017).

As shown in figure 1, following MC4 in Doha, a number of decisions were taken in support of the LDCs at various MCs. The Hong Kong MC6 decision related to Duty Free-Quota Free (DF-QF) market access, following some progress as regards its operationalization, has lost traction in recent years (WTO, 2001).⁴ No significant departure has been made in the context of the other initiatives envisaged under the Doha Development Round (DDR) in favour of the LDCs. The promise of additional support for building supply-side capacities in LDCs and significantly raising Aid for Trade and trade-related technical assistance did not materialize. Decisions taken at the Bali MC9 in favour of the LDCs – the Bali LDC package – related to ensuring meaningful market access in implementing the DF-QF market access decision, and putting in place a monitoring mechanism for operationalizing the S&DT provisions of WTO have not been followed through (Bhattacharya and Mikic, eds. 2015). No tangible progress has been made in connection with the promised and much hyped expeditious and effective operationalization of the LDC services waiver and its periodic review. As LDCs move towards MC12, there is a need to revisit what was agreed upon at the earlier MCs, examine the progress that has been

⁴ Various formulae were considered for the reduction of tariffs, including the so-called Swiss formula; a number of options including negative lists. A staggered method of tariff reduction and measures to assuage the concerns of African LDCs were also discussed.

(c) The rise of plurilaterals

At Buenos Aires, in the absence of a consensus, a large number of WTO members (mostly developed and developing countries, but also a few LDCs) indicated an interest in pursuing trade-related discussions outside of the ambit of WTO through various joint statements, which implied a subgroup of membership pursuing certain initiatives (subsequently, the term “plurilaterals” was replaced by “joint statements”). Lack of progress in negotiations in WTO as well as an overall perception of dysfunctionality of the WTO as an institution have contributed to this situation. The joint statements and working groups with regard to e-commerce, investment facilitation, micro, small and medium-sized enterprises (MSMEs), gender and domestic regulations in services indicate the preference of a large number of WTO members to explore new issues, through new modalities, outside of the ambit of WTO. On the other hand, many WTO members – including most LDCs – perceive such plurilateral discussions to be leading to a weakening of WTO as an institution. It remains to be seen (a) whether MC12 will be able to adopt a work programme that accommodates discussions of these issues; and (b) whether there is an inclination on the part of the members participating in such discussions to multilateralise the outcomes of the plurilateral discussions, if and when an agreement on specific issues is reached through such discussions.

(d) The rise of mega-regionals

There has been a significant rise in the number of RTAs and mega-regionals during the past decade. Two very recent such initiatives that should be mentioned in this connection are the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and the Regional Comprehensive Economic Partnership (RCEP). These RTAs have diverse implications for the market access of both included and excluded members, many of those later being LDCs. While RTAs per se have to be WTO-compatible,⁵ the relative preference for such arrangements indicates a willingness on the part of a large number of WTO members to pursue the cause of faster liberalization through the non-WTO route (thus with selected partners). This has two important implications. First, if key trade interests of members are served through the RTAs, the appetite for actively engaging in

⁵ As of 1 September 2019, 302 RTAs were in force, which corresponded to 481 notifications from WTO members. These covered the areas of goods, services and accession. WTO Article XXIV permits setting up of RTAs, but the plan for trade liberalization must be WTO-plus (deeper than what is mandated by WTO) and will need to be notified to WTO.

multilateral negotiations, to that extent, diminishes. Second, LDCs that are not members of particular RTAs face significant disadvantage because they do not enjoy the market access preferences offered through such arrangements. This is true both for LDC and non-LDC WTO members outside of the particular RTAs. The first point is relevant, for example, in the case of the United States-Mexico-Canada Agreement (USMCA), and the second point is relevant in the case of, for example, the recently signed RCEP Agreement. The latter is a grouping of 16 countries that includes LDCs such as Myanmar, the Lao People's Democratic Republic and Cambodia, but excludes some of the other LDCs in the Asia-Pacific region.⁶ The case with the CPA-TPP⁷ is the same.

(e) Slow global economic recovery⁸

The tepid global recovery following the economic and financial crises of 2007-2008 has resulted in a slowdown in the global growth of trade, which has had consequent adverse implications for export performance of the LDCs (UNCTAD, 2019). Global growth has yet to reach the pre-crisis level with a resultant adverse demand-side effect on global trade. For the first time, both the World Bank and the International Monetary Fund (IMF) have downgraded their GDP forecasts for 2020 (IMF, 2019). For the LDCs, the global economic slowdown has meant that their exports are taking a hit. For example, for the first time in recent memory, many LDCs are experiencing either a slowdown in their exports or a negative export growth.⁹ In addition, and perhaps as a consequence of the slow recovery, protectionist measures and policies pursued by WTO members – and more particularly by the developed countries – have been on the rise (WTO, 2019a).¹⁰ The trends indicate

⁶ This would mean, for example, that the three mentioned LDCs will have preferential access in the markets of the ASEAN-RTA, while, for example, group non-members Bangladesh, Nepal and Bhutan will have to access those markets on non-preferential terms. This would undermine the competitiveness of exports of the excluded LDCs quite significantly.

⁷ The CPA-TPP would allow preferential market access to a developing country (e.g., Viet Nam), in the case of apparel exports to Australia, Canada and Japan, while the apparel-exporting Asia-Pacific region LDCs (e.g., Bangladesh and Nepal) will not be able to enjoy similar preferential access to those markets. As a result, these LDCs will lose their competitive edge vis-à-vis Viet Nam, which is a developing country.

⁸ This report was finalized before the outbreak of the COVID-19 pandemic. Instead of re-writing the sections referring to the current and quickly evolving health of the global economy, we are inviting the reader to peruse the more recent report with the updates on the 2020 and beyond macroeconomic developments. For example, IMF 2020, ESCAP 2020, WTO (2020a), and others.

⁹ For example, Bangladesh exports during the first six months of the current fiscal year 2019-20 (July-December) have posted a negative growth of (-)5.8 per cent over the corresponding period of the previous year, a hitherto unseen phenomenon.

¹⁰ At the meeting of the Trade Policy Review Body, held on 12 December 2019 the WTO Director-General observed that trade restrictions by WTO members were at historically high levels. Indeed, between mid-October 2018 and mid-October 2019, the trade coverage of import-restrictive measures implemented by members was

that the graduating LDCs are to set off on their graduation journey at a time when the global developments are not conducive to their exports and, for that matter, the growth of their economies.

(f) Emerging global uncertainties¹¹

LDCs are facing additional challenges in view of the emerging uncertainties that have negative implications for their participation in international trade. The growing use of non-tariff and protectionist measures in international trade has emerged as a major concern (Mikic, 2019; ESCAP and UNCTAD, 2019). Some of the others include uncertainties associated with Brexit, the ongoing trade dispute between the United States and China,¹² and the recent developments in the Middle East region and the likelihood of its escalation.¹³ Possible negative implications of BREXIT are a case in point. The United Kingdom is a key market for many LDCs, which have enjoyed DF-QF market access under the Everything But Arms (EBA). Following Brexit, continuation of preferential treatment will depend on the terms that the United Kingdom will be ready to offer to the LDCs.¹⁴ In view of the likely adverse implications, the aforesaid developments will call for initiatives at MC12 to help the LDCs to cope with the attendant challenges and mitigate the impact of the emerging uncertainties.

(g) Trade issues and the SDGs

MC12 is expected to be taking place at a time when WTO members will have passed a third of the period of implementation of the SDGs. As noted above, the SDGs have recognised the role of trade as an important tool, as it is a key means for implementation of the SDG goals and targets. A number of concrete targets have been articulated in the SDGs, including: the target of doubling the share of LDCs in global exports; helping to raise remittance flows to LDCs by reducing the cost of sending money through key corridors;¹⁵

estimated to be US\$ 747 billion. This was the highest trade coverage recorded since October 2012 and 27 per cent higher compared with the figure recorded at the time of the previous annual review (WTO, 2019).

¹¹ The uncertainties prevalent at the end of 2019 were only deepened by the pandemic; see footnote 8 above.

¹² While an agreement between the two countries has recently been reached, considerable uncertainties remain with regard to the future direction of the next phase of the bilateral talks.

¹³ Already, global fuel prices are showing a rising trend. Fuel price has important implications for global commodity prices.

¹⁴ In this connection, the Rules of Origin (RoO) could become more stringent.

¹⁵ The target is to reduce the cost of sending money to the level of 3 per cent of the remitted amount, through key corridors.

and promoting investment and technology flow and raising the innovation capacity of the LDCs (Bhattacharya and Rahman, 2019).

MC12 should be seen as an opportunity to leverage the SDG commitment and maximize the synergies between the SDGs and WTO trade-related initiatives. Earlier, the Financing for Development Conference (FfD), held in July 2015 in Addis Ababa, called on the developed countries to strengthen their support of the LDCs. The Addis Ababa Action Agenda (AAAA) recognized that the graduation process of the LDCs should be strengthened with appropriate measures, so that progress towards the SDGs will be sustained (AAAA, paragraph 73) (FfD, 2015).

(h) Leveraging LDC V in 2021

A new Programme of Actions in support of the LDCs will be adopted at the fifth United Nations Conference on the LDCs (UNLDC V) to be held in Doha from 21 to 25 March, 2021. Indeed, LDC V will be an important opportunity to revisit what has been done in view of the Istanbul Programme of Actions (IPOA) adopted at LDC IV in 2011 (UN-OHRLLS 2011).¹⁶ Indeed, it was at LDC IV that the ambitious target of halving the number of LDCs meeting the graduation criteria was adopted.¹⁷ MC12, to be held a year prior to LDC V, ought to be seen as an opportunity to articulate trade-related demands of the LDCs, which then could also be followed up through the LDC V Programme of Actions in support of the LDCs. Thus, it is important that MC12 sets a benchmark for the new action agendas to be adopted at LDC V next year.

(i) LDC Graduation and MC12

MC12 will be taking place at a time when an unprecedented large number of LDCs have been earmarked for graduation. As it currently stands, 12 LDCs have now attained eligibility for LDC graduation, with the majority located in the Asia-Pacific region.¹⁸ The graduating LDCs will be facing formidable challenges, as upon graduation they will lose the international support measures (ISMs) that have put in place during past years, particularly for the LDCs. In the context of MC12, a new demand has been created – the need to design a package of support to help these LDCs towards graduation with

¹⁶ Indeed, IPOA is supposed to be an integral part of the 2030 Agenda (paragraph 42 of the SDGs). The SDGs and IPOA, for example, reaffirm the commitment made by many developed country ODA providers to achieve the target of 0.15 per cent to 0.2 per cent of ODA/ GNI to LDCs (paragraph 43 of the SDGs).

¹⁷ The target was to bring down the number of LDCs from (then) 48 to 24, by 2020.

¹⁸ Angola is the most notable non-Asia-Pacific LDC.

momentum and sustainable graduation. From this vantage point, the singular importance of the MC12 cannot be overemphasized.

2. Issues of LDC interests in the context of MC12

Section 1 has spelt out some of the salient features of the emerging global scenario that will influence both the perspectives and the demands of the LDCs in view of MC12.

The evolving developments in the global scenario have four types of implications for the LDCs as they prepare for MC12. First, rising protectionism, growing global uncertainties and an increasingly hostile stance of certain powerful countries against multilateralism should induce the LDCs to position themselves strongly in favour of international trade order as well as support the strengthening of WTO as the key institution guiding global trade and enforcing regulatory discipline in the global trading system. Second, as the backdrop of the decisions taken at the earlier MCs, the LDCs should spell out their stand in view of the built-in agenda, ongoing negotiations and the decisions taken in favour of the LDCs. Third, in the context of the new issues, the LDCs should remain engaged in the discussions with a view to securing their interests, should there be a multilateral agreement in that regard.¹⁹ Fourth, to secure the interests of the graduating LDCs, those LDCs as a group should formulate a package of support towards sustainable graduation in view of the significant number of LDCs being considered for graduation. They need to keep in mind the fact that today's LDCs are tomorrow's graduating LDCs and developing country members of the WTO (Bhattacharya and others, 2018).

In the above context, the following subsections put forward some of the strategies that LDCs should pursue in connection with the key areas that are of their concern and interests as they prepare for MC12.

¹⁹ There is no consensus among the LDCs in this connection. Some are in favour of participating in the discussion while others feel that these issues should either be discussed at the various WTO platforms or as part of the WTO mandate. However, what is argued here is that the overwhelming majority of the WTO members have signed on to the discussions on the new issues, including a number of the LDCs. In view of this, it will better serve the collective interest of the LDCs if they remain engaged in the discussions.

(a) A pragmatic approach to reignite interest in DDR

It is becoming increasingly obvious that WTO members have divergent perspectives concerning both the Doha mandate and the Doha Round agendas. This became apparent immediately after MC4 in Doha and then at MC5 in Cancun, which failed to come up with any agreed Ministerial Declaration. While subsequent Ministerial Declarations have been able to make some progress, powerful members were not ready to travel all the way to meet the aspirations of the LDCs and developing countries. This growing schism became obvious, particularly at MC10 in Nairobi where the Ministerial Declaration itself recognized the divergent views being pursued by members with regard to the Doha Agenda and the Doha mandate.²⁰ Against this backdrop, LDCs will need to revisit the Doha Agenda and identify what is salvageable and feasible, and to prioritize their strategies. Programme maximum may not be a pragmatic approach; recognizing the realities and designing the approach and strategies in view of this situation are perceived to be the most practical way of moving forward.

(b) DF-QF market access

The MC6 in Hong Kong, China gave shape to one of the key and longstanding demands of the LDCs through the decision on duty-free, quota-free market access for exports originating in the LDCs, starting from 97 per cent of tariff lines of exports to markets of developed countries and “developing countries in a position to do so” (WTO, 2005a).²¹ As is known, LDCs were unhappy with this decision as it allowed the provider-countries to offer (limited) market access, also in terms of tariff lines and not in value terms, with resultant back-loading of market access and limited benefits (if and when the decision came into force). During negotiations in Geneva, various formulae and modalities were examined for operationalizing the decision.

²⁰ It is pertinent to recall the paragraph 30 statement of the MC10 Declaration in this regard, which clearly evinced the conflicting perspectives on the part of WTO members. Seriously undermining the spirit of single undertaking (nothing is agreed unless everything is agreed principle of WTO, it was stated: “We recognize that many Members reaffirm the Doha Development Agenda, and the Declarations and Decisions adopted at Doha and at the Ministerial Conferences held since then, and reaffirm their full commitment to conclude the DDA on that basis. Other Members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations.”

²¹ The decision, however, envisaged move towards DF-QF market access for 100 per cent of the tariff lines through incremental expansion, although no predictable time line was set for this.

At the subsequent MCs, to assuage LDC concerns, the implementation modality of DF-QF decision was qualified with a view to ensuring meaningful market access to the LDCs. It is also pertinent to keep in mind that, in the past, LDCs have not been able to secure the implementation of the DF-QF decision also because of the divergence of interests between Asia-Pacific LDCs and the African LDCs. Taking cognizance of the developments until now, it may be pragmatic for the LDCs to opt for a second-best solution. Thus, it may be prudent to ask for implementation of the Hong Kong decision to start with 97 per cent of the tariff lines. This could be an early harvest at MC12, which then could be pursued towards 100 per cent through further negotiations. Since most of the large LDCs (e.g., Bangladesh and Angola) will be graduating in the next few years, and LDCs will, for all practical purposes, transit to an African grouping, the likelihood of granting DF-QF market access by developed and developing countries for 100 per cent of tariff lines of exports from LDCs appears to be an outcome with high possibility at the next MC (MC13).²² This change in stance could help to address the current stalemate. The fact that the graduating LDCs will be left with only a few years to enjoy the benefits to be accrued from such a decision should also serve as a powerful argument in this connection.

(c) Services waiver decision

The discussion on implementing the services waiver decision favouring the LDCs was first put forward in 2008. A decision in connection with this discussion was adopted at MC8 in Geneva in 2011 (WTO, 2011), but it has not resulted in any tangible outcome so far.²³ Despite the dedicated session of the Council for Trade in Services held in October 2019 (as a follow-up of the MC10 decision), not much has happened in terms of operationalizing the waiver decision. On the other hand, LDCs have strong offensive interests in services exports, particularly, in GATS Mode-4 (movement of natural persons) but also in the other Modes. Servicification of global trade²⁴ indicates that

²² It should be noted that as large LDCs such as Bangladesh and Angola graduate, the value of the preferential treatment will come down significantly. In such a scenario, the preference-provider countries will likely be more forthcoming in implementing the Hong Kong, China DF-QF decision.

²³ The waiver allows the granting of preferential treatment to any service or service supplier from an LDC member with regard to: (a) market access measures; and (b) other measures (e.g., qualification requirements and procedures, licensing requirements and procedures, technical standards, measures concerning visas, work and residence permits; and fees). Non-market access measures need approval by the WTO Service Council. The waiver permits a preference-granting country to violate the MFN principle; however, it does not extend a right to the preferential treatment to the LDCs.

²⁴ This is because of the rising share of services in global trade with services being embedded in a large part of trade in goods.

market access in services trade will be of increasingly heightened interest to the LDCs in the foreseeable future. Although LDCs currently make up only 0.7 per cent of global service exports, during the recent past the importance for their economies has been on the rise. On average, services raise the value of exports by about 30 per cent. Hence, the value of S&DT provisions in services is significantly high for the economies of the graduating LDCs. On the other hand, the waiver, which has been extended until 2030, does not allow much time for the graduating LDCs to reap any tangible benefits. For the currently graduating LDCs the time is indeed running out. Against this backdrop LDCs could consider putting forward a proposal that identifies the common elements in the offer lists and request lists in order to negotiate an early harvest decision to operationalize the waiver. This would allow some of the currently graduating LDCs to enjoy the benefits of such a decision for at least a few years.

(d) Implementing the Bali LDC Package

A number of decisions were taken at the Bali MC9 in favour of the LDCs; this came to be known as the Bali LDC Package (Bhattacharya and Mikic, eds, 2015). The LDCs have a specific interest in the decision on RoO, and asked the Committee on Rules of Origin to annually review the developments regarding preferential RoO. The objective is to gain a better understanding of the underlying factors contributing to utilization of the preferences and undertake measures to help the LDCs take advantage of preferential market access initiatives.

Earlier, LDCs had articulated their stance in this connection in the following ways: (a) the formula should be based on materials calculation; (b) the percentage level should reflect the state of industrial development of the LDCs and the consequent domestic value addition capability (value addition criteria at the level of 15-25 per cent was proposed in this context); and (c) transport costs associated with inputs should be kept outside the calculation of RoO.

The Committee on RoO has already developed a template for notification by members with regard to the preferential RoO. While a large number of members have started to notify WTO of the RoO requirements for preferential market access offered by them, at MC12 the LDCs should ask members to come up with concrete initiatives to implement

the decision. LDCs have indicated their preference for value addition at a flat rate.²⁵ At MC12, LDCs may ask for a more concrete commitment in this regard to enable them to take full advantage of the preferential market access schemes notified to WTO.

The Bali decision on monitoring the implementation of the S&DT provisions was a step forward in view of operationalizing the relevant provisions. The objective was to ensure that LDCs are actually able to reap the expected benefits. The decision envisaged undertaking a clinical examination to identify the causes as to why LDCs were not able to take full advantage of the S&DT provisions provided under the various Agreements in WTO. However, the decision was criticised on the grounds that while the clinical examination could potentially serve as the basis for subsequent actions, the decision itself envisaged no such follow-up measures.²⁶ In view of this, MC12 should be seen as an opportunity to argue the case that implementation of this decision should entail identification of appropriate measures to address the attendant deterrents to utilisation of the S&DT provisions, with a view to coming up with actionable agendas towards their better and more effective use. These agendas could be in the form of time-bound measures to mitigate the concerned difficulties, by way of (a) changes in the requirements and terms for enjoying the preferential treatment and (b) through an extension of the period for reaping the benefits accruing from particular provisions.

(e) Ask for support in implementing the Agreements

Despite the initial opposition voiced when some of the proposals were first floated, LDCs have agreed in good faith to go along with WTO initiatives in a number of areas. The opposition of the LDCs may be recalled with regard to the four so-called Singapore issues, first proposed at MC1 in Singapore in 1996.²⁷ Subsequently, LDCs extended their support and became signatories of one of the Agreements that concerned one of the Singapore issues – the WTO Trade Facilitation Agreement. A large number of the LDCs have ratified the Agreement which came into force in February 2017. Many LDCs have also indicated their readiness to remain engaged in the discussions on another of the Singapore issues

²⁵ Some of the LDCs have indicated a preference for a Canadian type of RoO, which requires compliance with a flat (in the Canadian case, 25 per cent) domestic value addition for preferential market access.

²⁶ LDCs had at that time criticised the decision on the grounds that it was a non-binding one, and that there was no mandate to address the identified difficulties in order to help the LDCs make better use of the provisions.

²⁷ The four Singapore issues are: trade facilitation; government procurement; trade and investment; and trade and competition.

– investment facilitation. The TFA envisages that the LDCs will be provided with the needed support to take advantage of the decision (WTO, 2017b). As per the Agreement, three categories of measures are foreseen: Category A measures, for which LDCs have indicated their readiness to implement immediately; Category B measures, which LDCs would implement within a stipulated period; and, most importantly, Category C measures, which LDCs are to implement subject to availability of the needed technical and financial support (South Centre, 2015). A review of the TFA-related notifications show that LDCs have given notification of a large number of areas where they would need support to implement the identified actions.²⁸ However, for example, the required support by way of targeted aid for trade facilitation, or under the Enhanced Integrated Framework (EIF) window of WTO, has not been forthcoming to the extent needed.

Indeed, it does not help the LDCs that they cannot be faulted for failing to take the required actions because no support has been forthcoming to address Category C measures. These measures are, in themselves, of crucial importance to the LDCs since better trade facilitation is crucial to raising their export competitiveness and for strengthened global integration of their economies. MC12 should be seen as an opportunity for the LDCs to argue in favour of a time-bound decision with regard to support to help implement Category C measures notified by them to WTO.

In view of the ongoing discussions on fisheries, the interest of the LDCs lies in addressing their concerns through adequate S&DT provisions. The fisheries text, which is now being negotiated, has gone through a number of revisions.²⁹ In this connection, LDCs have articulated their demands in the areas of securing the interests of artisanal fishing and flexibilities in terms of allowable subsidies to their fisheries sector, and for fishing in the economic zones in international waters, among other matters. At MC12 the LDCs should project a unified front to ensure that their demands are adequately reflected in the agreed text of the Agreement.³⁰

²⁸ The need varies across the LDCs. For example, for Bangladesh the commitments are as follows – Category A: 35.4 per cent; Category B: 38.2 per cent and Category C: 27.3 per cent; for Myanmar-Category A: 5.5 per cent; Category B: 9.2 per cent; Category C: 83.5 per cent.

²⁹ It is highly likely that a decision will be taken in this regard at MC12

³⁰ More on this in the next section in the context of the discussion on new issues.

(f) Graduation issues in view of MC12

The 12 graduating LDCs constitute an important subgroup within the LDC cohort in terms of population (28.2 per cent), GDP (47.3 per cent), exports (54.3 per cent) and remittance earnings (57.6 per cent). Indeed, as noted above, these LDCs are graduating at a time of significant multidimensional changes and challenges. This will necessitate the provision of adequate support measures to help them navigate the graduation journey. WTO members will need to take cognizance of their needs, particularly because these LDCs will have to adjust their economies to the post-LDC scenario when specific support measures for the LDCs will no longer be available. On the other hand, WTO members offering support will need to take cognizance of the fact that graduation of such a large number of LDCs will lead to significant reduction of the demands on the preferential treatment offered by them. In view of this, they should have an enlightened self-interest in extending support to the graduation process.

In the following section, the new issues are discussed from the perspective of the LDCs, with a view to identifying key issues of their concern and interest.

3. New issues and the LDCs

While MC11 failed to come up with a Ministerial Declaration, it will be remembered for the plurilateral discussions that were initiated on a number of issues. As may be recalled, the Ministers failed to make any tangible progress with regard to the core areas of the Doha mandate related to market access for the LDCs, i.e., agriculture, public stockholding for food security, domestic support and implementation of the S&DT provisions. The United States made it clear, early on, that for any progress to be made in these areas, the members would have to first ensure more transparency of current policies. The United States also strongly argued in favour of appropriate notifications concerning domestic support in agriculture as a precondition for further negotiations in this area. Indeed, in opposing any discussion on the aforesaid issues, the United States referred to paragraphs 30 and 31 of the MC10 declaration in this connection. It contested the statement in paragraph 31, which stated that “there remains a strong commitment of all members to advance negotiations on the remaining Doha issues”, by citing paragraph 30 where it was mentioned that “other members do not reaffirm the Doha mandate” (WTO, 2015). On the other hand, in order to move the discussion forward, members in various combinations

came up with joint statements on a number of issues that the signatories felt were important from the perspective of future negotiations and the post-MC11 Work Plan. These were related to fisheries subsidies, (a built-in agenda), e-commerce (a working group was set up on this in 1998), investment facilitation (an echo of one of the four Singapore issues) and micro, small and medium-sized enterprises (MSMEs) (a new issue). While during MC11 many LDCs were unsure about how to react, several LDCs subsequently joined the discussions and expressed a desire to remain engaged in relevant discussions.

As the information in Annex 3 reveals, a large majority of WTO members are interested to discuss the new issues; in terms of global trade these countries collectively accounted for a very high share (critical mass). At MC11, several drafts were circulated for discussion and possible decision. In the end, the members were able to issue only joint statements in the absence of any consensus. As Annex Table 3 shows, a number of LDCs, including graduating LDCs, despite initial reservations, joined the discussions on these issues held at various platforms following MC11. It is likely that these discussions will lead to setting up of Working Groups in WTO, which is why LDCs should remain engaged in these discussions as well as identify their offensive and defensive interests in this connection, and propose S&DT measures to secure their interests. The following discussion highlights the key issues and debates concerning these issues and the possible stance of LDCs in this connection.

(a) e-Commerce

Against the backdrop of the rise in Internet access globally, e-commerce has been a subject of considerable interest in recent years. The Internet penetration rate has risen significantly from 1.7 per cent in 1997 to 17.8 per cent in 2007 and 54.4 per cent in 2017 (Internet World Stats, 2019; Statista 2019a).³¹ This rapid progress has led to an impressive rise in e-commerce, with worldwide sales currently standing at approximately US\$ 2.3 trillion, and projected to rise to US\$ 4.8 trillion in a few more years (Statista, 2019b).

³¹ Internet World Stats reports a penetration rate of 54.4 per cent in 2017, which is higher than the 46.8 per cent projected by Statista.

Following MC11, during discussions carried out on various platforms several members have proposed additional rules on e-commerce, citing the fact that all countries would benefit from strong, market-based rules in this area.³² However, other members have opposed this stance. Broadly speaking, three groups can be identified with regard to these discussions (Singh, 2017). The first group, led by the United States, with other proponents being the European Union and Japan, wanted to take the global digital business and economy model forward with uninterrupted data flows and with little or no regulation of data and technology. The second group, which included mainly African countries and India, wanted no changes in the approach to e-commerce deliberations and were interested in continuing the discussions as per the built-in 1998 mandate. The third group included some of the developing countries such as Bangladesh, Malaysia, Nigeria and Thailand, which wanted speedier progress on e-commerce, but without directly opting for a working party as was preferred by the European Union and others.

The Joint Statement Initiative (JSI) on e-commerce discussions is organised into four main themes. These are:

- (i) Enabling digital trade/ecommerce where discussions are focused on trade facilitation measures and measures to facilitate electronic transactions;
- (ii) Openness and digital trade/e-commerce that outlines market access of goods and services, and trade-related aspects of cross-border flow of information;
- (iii) Trust and digital trade/e-commerce that involve issues of consumer and personal data protection, industry data protection, source code and algorithms, intellectual property and cyber security; and
- (iv) Cross-cutting issues related to the publication and accessibility of laws and regulations, ways of addressing the digital divide and the importance of cooperation.³³

Measures proposed in the non-paper circulated by the United States are: (i) getting rid of localisation barriers; (ii) barring forced technology transfer; (iii) protecting critical source code; (iv) ensuring technology choice; ;(v) securing non-discrimination principles and (vi) prohibiting digital customs duties (WTO Document: JOB/GC/94). Similar

³² This came out quite clearly in the statement by United States Representative Mr. Robert Lighthizer.

³³ This can be discerned from discussions carried out by various parties in view of, and subsequent to, the joint statement.

proposals have been presented by Japan (WTO Document: JOB/GC/130) and the European Union. Negotiations in these areas, as proposed by some of the members, however, would go beyond the mandate of the 1998 Work Programme on e-commerce. On these grounds, any discussion on the concerned areas was opposed by many LDCs and developing countries, including India.

The Centre for WTO Studies in India has analysed the possible effects of the measures proposed in the United States' non-paper and found that for evolving digital economies such as India, the proposed measures might not yield positive impacts for service providers and e-commerce players. Rather, such measures would disallow the flexibilities that developing countries and LDCs enjoy, and reduce the policy space to regulate their markets (Gupta, 2017). At the TNC meeting in March 2018, LDCs such as Uganda questioned the merit of the initiative as there was no mandate to negotiate the plurilateral issues multilaterally. In indicating their interest to take part in the discussions, LDCs wanted greater clarity with regard to the outcome.

Despite the decision at MC11 to continue the work under the Work Programme on Electronic Commerce as well as the instruction for the General Council to hold periodic reviews, e-commerce was included only as an ad hoc agenda item in the November 2018 session of the TRIPS Council. However, no substantive discussions were held. This absence of active discussion or negotiation reveal, on the one hand, a lack of consensus among the WTO members and, on the other hand, indicates a keen interest on the part of some of the other members to take the discussions forward through the plurilateral negotiations route (Ido, 2019).

At an informal WTO General Council meeting, South Africa and India argued persuasively that the current WTO moratorium for not imposing customs duties on electronic transmissions would have negative fiscal consequences for developing countries in the form of significant revenue losses. They also pointed out the lack of clarity on what would constitute e-commerce transmissions. These are also concerns of the LDCs.

Civil Society Organizations (CSOs) of a number of LDCs have pointed out the need for appropriate democratic governance to restrict unlimited power over data and digital industrialisation, and have argued for policies that would promote innovation and small

businesses, ensure consumer protection, enforce anti-monopoly regulations and actions, and provide policy space.

In connection with the above, LDCs could find UNCTAD's E-commerce Readiness Assessment highly relevant and useful. This tool identifies the strengths and weaknesses of the LDCs with regard to the ICT framework and e-commerce. The tool could assist LDCs to identify where their domestic capacity-building efforts should be targeted. It will also help LDCs to identify their technical and financial assistance needs, and to propose where discretion in applying policy space will be required. The tool will help the LDCs articulate their offensive and defensive interests while participating in e-commerce talks. Together with ESCAP's Cross-border Paperless Trade Readiness Assessment, it can also help countries identify trade facilitation gaps to be addressed for effective engagement in cross-border e-commerce (see box article below).

Digital and sustainable trade facilitation in LDCs: Getting ready for cross-border paperless trade

According to the latest data from the United Nations Digital and Sustainable Trade Facilitation Survey, collected in 2019, the average implementation rate by LDCs of an ambitious set of WTO TFA+ set of measures, including paperless trade measures, stands at 44 per cent and ranges from 20 per cent (Kiribati) to 70 per cent (Cambodia) – see untfsurvey.org for details. This is significantly below the global average implementation rate of 63 per cent. This result confirms the need to provide LDCs with special technical assistance and capacity-building support to help them bridge their existing implementation gaps, particularly in digitalizing their trade procedures to enable to more effectively engage in cross-border e-commerce.

Accordingly, ESCAP, with the support of the Enhanced Integrated Framework (EIF) and bilateral donors, supported readiness assessments for cross-border paperless trade in several countries in Asia in 2019, including Bangladesh, Cambodia, Myanmar and Timor Leste. These assessments have provided a basis for the development of action plans for these LDCs to accelerate progress in this area. The readiness assessment checklists and reports are available at <https://www.unescap.org/resources/readiness-assessments-cross-border-paperless-trade>.

(b) Investment facilitation

Prior to MC11, an Informal WTO Dialogue on Investment Facilitation for Development was proposed by the Friends of Investment Facilitation for Development (FIFD). The

group included developing countries and LDCs. The investment facilitation discussions gained momentum when the FIFD called upon the WTO members at MC11 to adopt a decision to establish an Investment Facilitation Group within WTO, with the objective of having structured discussions to develop a multilateral framework on investment facilitation (Brauch, 2017). Despite a lack of agreement on this proposal, and recognizing the dynamic links between investment, trade and development in the context of the global economy, 70 WTO members signed a Joint Ministerial Statement that called for structured discussions (WTO, 2019b).

The framework suggested for the Informal Dialogue on Investment Facilitation for Development involved the following: (i) improving regulatory transparency and predictability of investment measures; (ii) streamlining and speeding up administrative procedures and requirements; (iii) enhancing international cooperation and information sharing, exchange of best practices and dispute prevention; (iv) clarifying the framework's relationship and interaction with existing WTO provisions; and (iv) addressing the needs of developing country members.

Because contentious issues such as market access, investment protection and investor-state dispute settlement have been kept out of the discussion remit, a large number of members – including some LDCs – have shown interest in joining the discussion table. Recent media reports indicate that India, which opposed negotiation on investment facilitation at both the MC11 and the Hamburg G20 meetings, may reconsider its stance.

Shortly after MC11, Brazil proposed structured discussions on investment facilitation through formal communication. The discussion was to proceed by addressing the objectives of having a multilateral framework of principles and rules to facilitate sustainable investment flows that would stimulate economic growth of trading partners and the development of developing countries. The proposition recognised the importance of ensuring coherence regarding a legal framework applicable to facilitation of investment in services and non-services sectors. It was argued that this would: (i) provide investors with a transparent, predictable and efficient regulatory and administrative framework; (ii) facilitate dialogue between Governments and investors on investment-related issues; (iii) encourage mutually-beneficial business activities; and (iv) enhance participation of developing countries in investment flows by strengthening

the domestic regulatory environment and its efficiency and competitiveness (Kanth, 2018).

Structured discussions were convened on several occasions in 2018 and 2019. Major issues discussed included: (i) improving transparency and predictability of investment measures; (ii) streamlining and speeding up administrative procedures and requirements (APRs); (iii) strengthening international cooperation, information sharing, exchange of best practices, and relations with relevant stakeholders, including dispute prevention; (iv) addressing challenges faced by developing countries and LDCs; (v) and facilitating greater developing and least developed member participation in global investment flows.

At the informal WTO mini-Ministerial meeting held in Shanghai, in November 2019, 92 WTO members signed on to a Joint Statement on Investment Facilitation for Development. They declared their intention to finalise an outcome and emphasize the importance of creating a more transparent, efficient and predictable environment for cross-border investment (WTO, 2019c). However, several important developing countries such as India, South Africa, Indonesia, Malaysia, and Viet Nam, among others, as well as the United States did not join the joint statement on investment facilitation (Kanth, 2019a).

In this context the LDCs have the following interests: (i) safeguarding the interests of developing and LDC members through S&DT provisions, including flexibility commensurate with their state of capacity and development; (ii) asking for technical assistance and capacity-building support towards investment promotion; and (iii) seeking priority consideration of their special economic situation, particularly from the perspective of developmental needs of graduating LDC members. Graduating LDCs should be mindful of proposals that envisage restrictive measures which could reduce their discretionary policy space once they graduate to the group of developing countries.

(c) MSMEs

At MC11, 88 WTO members, whose share of exports was about 78 per cent of world exports, came together as “friends of MSMEs”. They issued a joint statement declaring their intention to create an Informal Working Group (IWG) on MSMEs multilaterally. The

Group was to be open to all members interested in discussing obstacles to foreign direct investment (FDI) that undermined the interests of the MSMEs in particular. The objective was to commence work on disciplines regarding the MSMEs for arriving at horizontal and non-discriminatory solutions that would benefit the MSMEs in undertaking international trade. Proposed measures included: (i) improvement of access to information on trade requirements, regulations and markets for MSMEs; (ii) identification of measures to reduce trade costs for MSMEs; (iii) promotion of access to trade finance; and (iv) support for technical assistance and capacity-building initiatives.

India, in its draft policy document on e-commerce, pointed out how MSMEs and start-ups face problems in developing many innovative solutions because of the lack of access to adequate data. India proposed streamlining access to data, while protecting the privacy of users, which would be a win-win solution for all stakeholders. The document highlighted the fact that leveraging access to data would connect MSMEs, vendors, traders etc., to the digital ecosystem as well as empower consumers to retain control of data generated and owned by them, which was of high importance to consumer-oriented countries such as India. The document explained how transaction costs affected MSMEs and start-ups negatively, disproportionately more than those of the big corporations. In addition, it proposed the removal of the application fee for claiming export benefits (Raghavan, 2019). The document also mentioned that the costs for international logistics were currently borne by the exporting entity, and that the logistic companies providing these services often charged a considerable amount of money.

In a meeting convened by the ICC and B20, discussions were held on MSMEs with regard to a range of other issues. According to a report by WTO (2018), there was a call for identifying major barriers that MSMEs faced in the course of undertaking business. It was proposed that future discussions should focus on the following issues:

- (i) The use of existing tools developed by WTO, including the Trade Facilitation Agreement (TFA) where the impact of the TFA with regard to connecting MSMEs to global markets should be regularly monitored. Other tools such as the Global Trade Helpdesk (GTH) and the ePing initiatives should be further developed through increased financing, regular updating and awareness raising;

- (ii) The improvement of access to information where Governments examine ways of making business-related information easily accessible in order to help MSMEs enter foreign markets;
- (iii) The reduction of trade barriers by minimizing the burden arising from regulatory requirements, with Governments called upon by the participants to eliminate such policies as local content assessment and other compliance issues, and to set up an inventory of existing international rules for trade in services;
- (iv) The enhancement of MSMEs' digital presence by improving access to mobile money to ease business transactions. It was suggested that WTO set up a common protocol for identifying MSMEs in order to help them connect with one another. It was proposed that Governments should set up platforms for supporting small businesses and for addressing regulatory issues concerning data;
- (v) Improvements in access to trade finance;
- (vi) The establishment of a high level of ambition by Governments through the introduction of initiatives towards the implementation of the TFA and the establishment of regulatory cooperation among countries. It was also stressed that more dialogue between Governments and the private sector was needed.

Several members are currently working towards developing language that could then be inserted in the text of a Ministerial Declaration. Following a request from the group, a compendium of MSME-related language in regional trade agreements (RTAs) was prepared by the WTO Secretariat. The study shows that 166 out of 312 RTAs notified to the WTO Secretariat included MSME-related provisions that are featured in 15 different RTA chapters. The intention was to provide a concrete basis from which to start developing recommendations on issues of interest to member countries.

LDCs, in preparation for future discussion and negotiations on the above connection need to: (i) conduct research on the state of domestic MSMEs; (ii) take stock of national policies, particularly with regard to issues related to trade facilitation and e-commerce; (iii) identify measures for addressing specific challenges and propose possible related S&DT provisions; (iv) request aid and technical assistance to strengthen domestic

capacities; and (v) ensure that the proposed measures do not narrow down the policy space that the LDCs have in pursuing strategic trade and investment policies.

(d) Fisheries subsidies

Although no consensus could be reached on binding disciplines, there was wide agreement with regard to continuing negotiations in Geneva on fisheries subsidies towards an agreement at MC12. The Negotiating Group on subsidies has narrowed down the differences and proposed several measures for taking care of the concerns of the LDCs. Prohibitions have been proposed for illegal, unreported and unregulated (IUU) fishing and overcapacity; greater transparency was emphasised in these areas. The group has also proposed a transition period for graduating LDCs. It is important to note that large sections of this draft have not been fully agreed upon and the texts of important provisions have yet to be finalised.

The Chair of the fisheries negotiating group summarized the discussions in a matrix with seven textual proposals submitted by members: (i) New Zealand, Iceland and Pakistan; (ii) the European Union; (iii) Indonesia; (iv) the ACP (Africa, Caribbean and Pacific) group; (v) Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay; (vi) Norway; and (vii) the LDC group. Although members seem to broadly agree on the prohibition of subsidies that contribute to IUU fishing and overfished stocks, there is a significant difference in the views on dealing with subsidies that may contribute to overcapacity and overfishing (Benitah, 2019). In this context, a joint proposal was issued by the United States and Australia on capping subsidies at the current level. The United States and most other developed countries, however, were against extending S&DT for developing country members and the LDCs.

China has proposed capping subsidies along the lines of subsidies on agriculture in the WTO by setting spending limits on government support programmes for fishing as well as extending S&DT for developing countries. However, the United States has stated that it will not accept S&DT flexibilities for developing countries such as China, India, South Africa and Indonesia, among others, as proposed under the graduation or differentiation proposal. Several other developed countries support the position of the United States in this regard. India, South Africa, and a number of other developing and least-developed countries have challenged this stance.

India, in a recently circulated proposal, reiterated the issue of S&DT mentioned at MC11. India proposed that the prohibition of unreported and unregulated fishing should not apply to subsidies granted/maintained by developing countries, including LDCs, for fishing within their territorial waters and their Exclusive Economic Zones (EEZs) as well as the high seas for a certain period. India added that with regard to fishing within their EEZs, these members should be entitled to a certain number of years to withdraw or modify any subsidy for fish stocks that have been declared as overfished by the national authorities, based on the best scientific evidence available to such members (Kanth, 2019b). As for overfishing and overcapacity, prohibition will not apply to subsidies granted/maintained by developing countries, including LDCs, for fishing within their territorial waters and their EEZs as well as fishing by vessels in the high seas, which is subject to the applicable fisheries conservation and management measures.

At an informal ministerial meeting hosted by India, trade ministers from 17 developing and LDCs, who also agreed to work as a like-minded group at WTO, decided “to consult on various issues of common interest to developing members, including comprehensive and effective disciplines on fisheries subsidies with appropriate and effective S&DT provisions for developing countries” (Kanth, 2019c).

There are several issues that should be considered by Bangladesh and other LDCs with relatively underdeveloped fishing sectors:

- (i) The agreement must not restrict the ability of LDCs to support livelihood subsistence and artisanal fishing practices;
- (ii) LDCs should not be restricted in terms of exploiting commercially viable fish stocks in international waters;
- (iii) With regard to assessment, monitoring, reporting and research concerning fish stocks and the fishing sector, LDCs should be provided with additional time following the enforcement of the agreement to build the necessary infrastructure. Technical assistance should be provided to this end;
- (iv) Developing countries should propose a provision to restrict subsidies and other forms of government support to fishing operations in high seas as these encroach on their respective EEZs; and
- (v) Subsidies for fishing activities that improve capacity and exploit underexploited fish stocks as well as subsidies geared to improving safety and administration of

the fishing sector should be exempted from the provisions of the proposed agreement.

(e) New issues: Moving forward

When the new issues were first proposed at MC11 the overwhelming majority of the LDCs expressed reservation in initiating discussion on those issues. The opposition emanated primarily from four concerns:

- (i) The new issues were floated as a diversion from the built-in negotiating agendas of the DDA;
- (ii) The issues went beyond the WTO work mandate agreed upon earlier;
- (iii) There was a possibility that decisions originating from discussions carried out in plurilateral format could be imposed on them; and
- (iv) There may not be adequate S&DT provisions to address issues of interest to the LDCs.

However, many LDCs have gradually come to recognize that issues of their interest and concern could be left out of the discussion and decision if they choose not to remain engaged. This change in perception was underwritten by a number of factors:

- (i) A large number of WTO members, accounting for the overwhelming share of global trade, expressed interest in participating in the discussion;
- (ii) If the LDCs remain involved then they will be able to influence the rules and disciplines that are agreed; and
- (iii) By remaining involved in the discussions, LDCs will be able to ensure that provisions for S&DT, and technical and financial support for the LDCs are adequately incorporated in the proposals.

There is a growing realisation among the LDCs that, in the discussions to be held in Geneva in the run-up to MC12, the new issues will be discussed at various platforms (WTO negotiating committees, plurilateral discussions and informal meetings). The rationale for the LDCs and graduating LDCs to be proactively involved in this process is also underwritten by the fact that as future developing countries they will be asked to comply with the disciplines that are negotiated in the course of the current discussions. In addition, they have an interest in having S&DT provisions not only for developing countries but also for graduating LDCs, if and when an agreement is reached either to

multilateralise the plurilateral agreements, or if dedicated Working Groups (if members agree) are set up within the ambit of WTO for discussion.

The next section analyses the implications of graduation for the graduating LDCs and puts forward a number of propositions towards sustainable graduation in view of MC12. Indeed, a package of support for graduating LDCs would also be of benefit to future graduating LDCs. Section 4 also examines a number of relevant issues keeping in mind the purview of the MC12, and articulates the stance that the LDCs could collectively pursue in this connection in order to secure the interests of the graduating LDCs.

4. Implications of LDC graduation and proposed support measures in view of MC12

As the discussion in the preceding sections bears out, along with issues of concern and interests to the LDCs in general, the issues of sustainable graduation should feature prominently at MC12 in view of the specific challenges that the LDCs will be facing. As is well-known, over the years, a formidable array of support has been put in place in WTO towards strengthened global integration of the LDCs. Some of the key ISMs, in the context of WTO, are presented in table 1. Upon graduation, LDCs will not be eligible for the LDC-specific ISMs in WTO.

Initiatives will be needed so that these LDCs are able to cope with the adverse consequences of graduation, and for the graduation to be sustainable. Support for sustainable graduation should be of common interest among all LDCs since non-graduating LDCs are also expected to be graduating at some point in the future. Thus, the stance of graduating LDCs at MC12 discussions should be informed by their multiple identities:

- (i) As current LDCs, since a number of graduating LDCs will continue to enjoy the benefits as LDCs for some more years until the time they finally graduate out of the group;³⁴

³⁴ This will depend on the time that the graduating LDCs finally graduate out of the group, following two triennial reviews by CDP and the decision by the United Nations General Assembly.

- (ii) As graduating LDCs, which will need additional support to help prepare their economies for smooth graduation, graduation with momentum and sustainable graduation; and
- (iii) As future developing countries, when they will be only be eligible to get benefit from S&DT provisions in place for the developing countries.

Table 1. Overview of selected S&D treatment for LDCs and graduated LDCs

S&DT type	LDCs	Graduated countries
Preferential market access in goods.	Benefit from duty-free and quota-free (DFQF) market access of developed and developing members.	Benefit from Generalized System of Preferences (GSP) schemes of developed members applicable to developing countries.
Preferential treatment in services.	Benefit from commitments made by developed and developing members under the LDC Services Waiver until 2030.	Do not benefit from preferential treatment in services.
General transition period regarding the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).	Exempted from implementing the TRIPS Agreement other than the core non-discrimination principles until 1 July 2021.	Required to implement the TRIPS Agreement and provide respective IP protection.
Transition period for pharmaceuticals in the TRIPS Agreement.	Exempted from providing patent protection for pharmaceutical products until 1 January 2033.	Required to provide patent protection on pharmaceutical products.
Flexibility to use policy instruments under the Agreement on Subsidies and Countervailing Measures (SCM).	Pursuant to Article 27.2 and Annex VII(a) of the SCM Agreement, LDCs have the flexibility to use export subsidies.	Export subsidies are prohibited except for LDCs, and for certain other selected members.
Technical assistance (TA) provided by WTO.	LDCs benefit from specific courses designed for their needs.	No significant change in the entitlements under WTO's TA and Training Plan.
TA provided by the Enhanced Integrated Framework (EIF).	The EIF programme exclusively assists LDCs in using trade as an engine for growth and sustainable development.	Possibility of additional support for up to five years for graduated countries.

Source: Compiled from WTO website.

Loss of the ISMs on the part of graduating LDCs will manifest itself through various channels.³⁵ The magnitude will depend on a number of factors – the structure of the economy, export and market structure, the extent to which the particular graduating LDC

³⁵ Of the 139 S&DT provisions under the various WTO Agreements, fourteen are specifically aimed at the LDCs.

had been able to draw benefits from the S&DT provisions for the LDCs, the support those LDCs received from aid for trade for LDCs, whether the particular LDC is a member of bilateral or regional arrangements, and more particularly of BFTAs and regional FTAs. Some of the key channels through which the negative impacts will be felt the most, consequent to graduation, are noted below. LDCs, and particularly the graduating LDCs, could build a case in favour of their interest, to argue the case of graduating LDCs, based on the following considerations.

(a) Preference erosion

For the majority of the graduating LDCs, the most important adverse implications will be through loss of the preferences. Graduated LDCs will lose preferences that are in place exclusively for LDCs and will be eligible only for those preferences that are applicable to developing members. The extent of such preference erosion will, however, vary across the graduating LDCs. Factors that will define the magnitude of the impact will include:

- (i) Export structure;
- (ii) MFN tariff rates in place in key export markets;
- (iii) Tariffs faced as an LDC;
- (iv) The tariffs in place for developing countries under various standard GSP schemes (the difference between the (ii) and (iii) being the range of preference erosion);
- (v) Membership in the RTAs and the range of difference between the preferences accorded to developing country members and those accorded to the LDCs (if any);
- (vi) Export structure in view of items in the sensitive/excluded list in the RTAs of which a particular graduating LDC is a member; and
- (vii) Benefits drawn from market access under the various unilateral schemes operated by developing countries.³⁶

³⁶ The range of preference in terms of tariffs is the difference between (ii) and (iii). The range of preference erosion will be the difference between (iv) and (ii) in consideration of preferential access provided to developing countries.

The most significant preference scheme, and consequently the most significant magnitude of preference erosion, is related to the EBA initiative of the European Union.³⁷ Since the MFN tariff rates on some of the items imported from the LDCs (e.g., apparel) are significantly high in the European Union (e.g., averaging about 12 per cent for apparel), loss of preferences in this market will have important implications for the LDCs. The loss will be high because the range of preferences provided under European Union's standard GSP scheme for developing countries is relatively low (e.g., for apparel the standard GSP tariff is about 9.6 per cent, which would mean a preferential tariff to the tune of 15 per cent of the MFN tariff rate compared with 100 per cent duty reduction for the LDCs). Thus, for the graduating LDCs, which are highly dependent on the European Union for their apparel exports, the preference erosion is formidable.³⁸ Bangladesh is a case in point. About 55 per cent of its apparel exports (which account for about 84 per cent of its global exports) is destined for the European Union market. As table 2 below shows, for Bangladesh the depth of preference erosion in the European Union will be significant (the consequent loss in terms of export earnings has been estimated to be in the range of 7-8 per cent of total export earnings accrued from the European Union market).³⁹ The relatively more stringent RoO applicable under the European Union's Standard GSP Scheme for the developing countries must also be noted in this connection. For some other items the margin of preference erosion will not be as high. However, there will still be some degree of preference, except when the MFN tariff rate is zero.

On the other hand, for graduating LDCs such as Bhutan and Nepal whose export market structure is different, the story is not the same; these graduating LDCs have bilateral FTAs with India, which accounts for the overwhelming share in the exports of both those countries. The depth of preference erosion for these countries will be limited since they will continue to enjoy preferential access to the key market even after LDC graduation. The same is the case for the Lao People's Democratic Republic, Cambodia and Myanmar

³⁷ The everything but arms (EVA) initiative of the European Union allows the LDCs to have DF-QF market access in the markets of the European Union member countries for all products (excepting arms) originating from all LDCs.

³⁸ In this case the preference erosion owing to LDC graduation is 9.6 per cent (the difference between the previous rate of zero per cent and the applicable rate as a developing country, which is 9.6 per cent).

³⁹ This was estimated to be in the range of US\$ 2 billion, i.e., about 7-8 per cent of Bangladesh's exports to the European Union.

which are members of the Association of Southeast Asian Nations Free Trade Agreement (ASEAN-FTA).

In the various RTAs where there is a dual track for preferential treatment, for LDCs and non-LDCs (such as in South Asian Free Trade Area - SAFTA graduation will mean that the graduating LDCs will not be eligible for deeper market access, since the preferential treatment for non-LDCs is less generous and the sensitive lists of partner countries tend to be much larger.⁴⁰ Thus, while the range of preference erosion will vary across the graduating LDCs, this remains a major concern for most graduating LDCs.

(b) Loss of S&D treatment

LDCs enjoy wide-ranging preferential treatment under the various special and differential provisions stipulated in the different WTO Agreements. These number 148, including 14 provided exclusively to the LDCs. These provisions are aimed at: (i) increasing trade opportunities; (ii) safeguarding the interests of LDCs; (iii) providing flexibilities in view of commitments, actions and use of policy instruments; (iv) allowing transition period in implementing WTO Agreements; and (v) providing trade-related technical assistance.

While LDCs will continue to enjoy benefits accrued from S&DT provisions as applicable for the developing countries, they will lose the ones provided exclusively for LDCs. For example, the transition period for the TRIPS implementation is 2021 or when an LDC graduates, whichever is earlier.⁴¹ Once they graduate, graduating LDCs will also no longer be eligible for the TRIPS transition period for the pharmaceutical sector (until 1 January 2033).

Graduating LDCs such as Bangladesh have benefitted significantly from the flexibility accorded under this decision, in the form of derogation from patents and licence-related compliance requirements. Indeed, thanks to this facility the pharmaceuticals sector has emerged as an important industry in Bangladesh, that caters to 95 per cent of domestic

⁴⁰ Sensitive lists in RTAs and BFTAs include items that remain outside of the ambit of preferential market access.

⁴¹ This will entail the end of the transition period for implementation of the TRIPS Agreement as per the two WTO Council Decisions (IP/C/64 and IP/C/73) as well as the LDC-specific support as per Article 66.2 (Technology Transfer). This would mean that for LDCs that will graduate before 2021 (e.g., Vanuatu, which is set to graduate in 2020) this flexibility will cease to be applicable in 2020. For Bangladesh, which is expected to graduate in 2024, this flexibility will cease to be applicable in 2021.

needs for drugs. The country also earns a significant amount of foreign exchange through exports of medicinal items. Consequently, graduation will likely have significant adverse implications for this sector when the flexibility will no longer be available. It should also be noted in this connection that those LDCs that are importing pharmaceutical items from Bangladesh have benefitted from the lower costs of medicines thanks to the attendant flexibilities.⁴² The same is the case with some of the other S&DT provisions under, for example, the Agreement on Agriculture. In the case of market access, at least a part of the loss of preferences is compensated through initiatives such as the standard GSP schemes operated by the developing countries. In the case of many other LDC-specific S&DT provisions, this opportunity is not available.⁴³ From a broader perspective, the loss of S&DT provisions will have adverse implications for graduating LDCs in the areas of employment, competitiveness, export earnings, the share in global exports and overall macroeconomic performance. As a result, the LDCs will likely face formidable challenges in moving towards sustainable graduation.

(c) Dual graduation

It should be noted that many of the graduating LDCs are undertaking a parallel, second graduation journey – the transition from a lower income country (LIC) to a lower middle-income country (LMIC) status (Rahman and Bari, 2019). This will mean that they are no longer eligible for the highly concessional loans (for example, loans at 0.75 per cent interest rate from the World Bank’s soft lending window, the IDA, with longer loan repayment and grace periods) and are now considered as blend countries (a mix of concessional and non-concessional loans). Indeed, many graduating LDCs will be graduating from the blend category to non-concessional status by the time they graduate out of the LDC group.⁴⁴

In view of the above, there is an urgent need to put forward the specific case of graduating LDCs at MC12, as an important item on the MC12 agenda. As was pointed out above, garnering support for graduating LDCs should be seen as a common LDC cause, since all LDCs are either today’s or tomorrow’s graduating LDCs. MC12 should be seen as an

⁴² For example, Myanmar benefits from imports of low-cost medicines from Bangladesh. Many other such examples could be cited.

⁴³ The loss of LDC-specific flexible RoO is a case in point.

⁴⁴ Thus, middle-income graduation will significantly raise the debt burden of some of these LMIC-graduating LDCs. Some LDCs could even fall into what is termed as the middle-income trap.

opportunity to argue in favour of a package of support for this particular group of LDCs, in order to help them in their efforts to ensure smooth transition, graduation with momentum and sustainable graduation. This could then also serve as an input for the design of the Programme of Actions at LDC V in Qatar in 2021. Some of the elements of the proposed LDC package are considered below.

(d) Seek support in line with United Nations Decisions favouring the LDCs

As is well-known, until now only five LDCs have graduated out of the group.⁴⁵ Even in view of this very small number, the international community had come up with a number of support measures for graduating LDCs during past years. Thus, in order to help the LDCs to address the challenges of graduation, the United Nations General Assembly passed a resolution in 2005 asking the United Nations members to come up with initiatives in support of the graduating LDCs (UNGA, 2005). The resolution invited “development and trading partners to consider extending to the graduated country trade preferences previously made available as a result of LDC status, or reducing them in a phased manner in order to avoid their abrupt reduction”.⁴⁶ This was followed by other United Nations resolutions (UNGA, 2012; UNGA, 2018).

It is against the backdrop of these resolutions that the European Union came up with the decision to extend the EBA initiative for the LDCs for an additional three years following their graduation. Subsequently, a similar initiative was also taken by the Enhanced Integrated Framework (EIF) of WTO, which provides trade-related support exclusively to the LDCs to extend aid for trade-related support for graduated LDCs for an additional five years. The Technology Bank for the LDCs, established following LDC IV in Istanbul, also offers support to graduating LDCs for an additional five years. In more recent times, the report of the United Nations Secretary-General, titled *Implementation, effectiveness and added value of smooth transition measures and graduation support*, stated that “while the graduated countries have the primary responsibility to continue on a path of sustainable development, strengthened global partnerships are crucial, and development

⁴⁵ Only five LDCs have graduated since the group was identified as a special substrata among the developing countries in 1971 – Botswana (1994), (Cape Verde (2007), Maldives (2011), Samoa (2014) and Equatorial Guinea (2017).

⁴⁶ Resolution 67/221 of UNGA was adopted on 21 December 2005. The resolution also urged “all development partners to support implementation of the transition strategy and to avoid any abrupt reduction in either ODA or technical assistance provided to graduated country” (United Nations Document 59/209 adopted on 28 February 2005).

partners have a critical role to play in supporting sustainable graduation and smooth transition' (United Nations, 2018b).

LDCs should forcefully argue their case in favour of the graduating LDCs by referring to the above initiatives and United Nations Resolutions. Measures already taken in favour of the graduating LDCs by some of the members and relevant organizations should serve as reference points for extending the benefits provided under the various S&DT provisions for an additional 3-5 years.

(e) Extension of support accorded under market access initiatives

To help adjust preference erosion, LDCs may request the provider countries that offer LDC-specific market access to extend the benefits for a specified, time-bound period, following their graduation. Preference schemes for LDCs operated by the European Union, the United States as well as Australia, Canada and other developed countries are of crucial importance for market access and export performance by the LDCs. The example of the extension provided by the European Union under the EBA can be cited by LDCs in seeking similar market access commitments on the part of other preference-giving countries. Such extension may also be sought from developing countries that offer preferential access to the LDCs.⁴⁷ Schemes run by Brazil, China and India may be cited in this connection.⁴⁸ Developed and developing countries providing preferential market access to the LDCs in the various RTAs may also be requested to continue the provision of such benefits for a stipulated period, following the graduation of their LDC members.

Tables 2 and 3 detail the findings about the depth of preference erosion and some of the initiatives that graduating LDCs could ask for in this regard. The examples of two graduating LDCs – Bangladesh in South Asia and the Lao People's Democratic Republic in East Asia – are presented in the two tables to highlight the concerns and what could be done in this regard.

⁴⁷ The 2018 Resolution of the United Nations General Assembly also mentions support through South-South and triangular cooperation.

⁴⁸ Indeed, China has continued to provide LDC-specific preferential access to Samoa even after it had graduated in 2014. Samoa has successfully negotiated a three-year transition period with China for noni-juice and other agro-processed products.

Table 2. Preference erosion and suggested steps: Bangladesh

Beneficiary of key market access opportunities	Market access implications of graduation	Suggested steps
EBA	<p>Bangladesh has reaped significant benefits from preferential market access under the EBA since more than half of its global exports are destined for the European Union market. More than 60 per cent of its apparel exports are destined for the European Union market. Upon graduation, Bangladesh will be eligible for preferential access under the European Union standard GSP scheme. The MFN tariff on apparel in the European Union is about 12 per cent, on average. Bangladesh, as an LDC, enjoys duty-free market access. It will enjoy the facility for three additional years following graduation thanks to extension of benefits by the European Union for graduating LDCs. Beyond 2027, Bangladesh will be eligible for market access at 9.6 per cent duty under the standard GSP Scheme of the European Union. Thus, Bangladesh will face significant preference erosion, equivalent to 9.6 per cent, for exports of apparel. In fiscal 2018-2019 terms (exports of US\$ 21.07 billion) duty to be paid in the absence of the EBA will be about US\$ 2.02 billion. In the case of frozen food, jute and leather exports, some items are either MFN zero, or GSP zero; thus, there is no change in the terms of market access. For a few other items exported to the European Union, Bangladesh will experience preference erosion in the range of 3 per cent to 5.5. per cent.</p>	<p>Bangladesh could consider exploring the GSP Plus window of the European Union, which allows DF access for a large number of items exported from an eligible developing country. However, the current threshold of 6.5 per cent of GSP eligible imports to the European Union from a single beneficiary country will need to be raised for Bangladesh to be able to apply for this status. Eligibility for GSP Plus will also require ratification of all 27 core ILO labour Conventions and their stringent enforcement. Bangladesh will also need to negotiate terms of market access with the post-BREXIT United Kingdom (so that it is allowed market access under European Union parity terms).</p>
SAFTA	<p>As a member of SAFTA, Bangladesh's exports enter duty-free in regional markets, with the exception of several products on the sensitive list.</p>	<p>It is in Bangladesh's interest to negotiate the reduction of a number of items on the sensitive list.</p>
Indian Initiative	<p>India provides DF, Bangladeshi products will need to enter India by taking recourse to SAAFTA preferential tariffs applicable for developing countries. Preference erosion in the case of an export item will be the difference between two rates. Market access for items on the SAFTA sensitive list will also become an issue once Bangladesh graduates.</p>	<p>It will be in Bangladesh's interest to negotiate a time-bound extension of the current preferential access offered by India for SAFTA LDCs. This is not an issue for Bhutan and Nepal as they have preferential access under a bilateral arrangement, Bangladesh could request this as part of India's commitment to support Bangladesh's sustainable graduation.</p>

BIMSTEC-FTA	If concluded before graduation, the RTA will provide Bangladesh with preferential market access under BIMSTEC-FTA's LDC track (except for items on the sensitive list). The RTA will allow preferential market access to two ASEAN members (Thailand and Myanmar), which could prove to be important from the perspective of market diversification. Following LDC graduation, there will be preference erosion since Bangladesh will be eligible for access under the developing member track.	Bangladesh's interest lies in expeditious conclusion of BIMSTEC-FTA negotiations, so that it has the time to benefit as an LDC. To the extent that Bangladesh's items of export interest are not on the sensitive list of partner countries, Bangladesh will stand to benefit. However, upon graduation there will be some preference erosion (the difference between the preferences enjoyed by LDC and non-LDC members of the grouping).
Other Initiatives	Bangladesh has bilateral commodity-specific market access agreements with a number of countries for various items of trade (e.g., Nepal, Bhutan, China and Thailand), which will likely remain in force beyond graduation through bilateral agreements.	Bangladesh should explore the possibility of enjoying LDC-specific market access offered by providers from the south such as China, following LDC graduation, as a support measure towards its sustainable graduation. Indeed, China has continued to provide LDC-specific benefits to Samoa even after the latter nation graduated in 2014. Bangladesh will need to earnestly pursue the bilateral route in order to address the post-graduation market access scenario. It will need to negotiate bilateral FTAs as part of the post-graduation trade strategy. It will have to significantly strengthen its trade-related negotiating capacity and adequately prepare for a reciprocal preferential regime in the future.

Table 3. Preference erosion and suggested steps: The Lao People’s Democratic Republic

Beneficiary of key market access opportunities	Market access implications of graduation	Suggested steps
ASEAN-FTA	<p>Since almost half of the Lao People’s Democratic Republic’s exports (47.2 per cent) go to Thailand, the ASEAN FTA is of heightened interest to the former country. Membership of ASEAN FTA allows preferential (mostly DF); this, in turn, allows market access for almost all exports of the Lao People’s Democratic Republic to the ASEAN market. The Lao People’s Democratic Republic had signed an earlier PTA with Thailand (June 1991); however, since CEPT came into effect as part of the ASEAN-FTA and the tariff liberalization of 2018, market access through the ASEAN route has been the preferred channel for the Lao People’s Democratic Republic. Thus, LDC graduation is unlikely to have significant preference erosion as the Lao People’s Democratic Republic will continue to enjoy preferential market access in the ASEAN market. Indeed, the Lao People’s Democratic Republic also enjoys preferential access to the markets in the six countries with which ASEAN has bilateral FTAs. Indeed, with the recent signing of RCEP, the Lao People’s Democratic Republic will have more predictability in this regard.</p>	<p>The Lao People’s Democratic Republic will continue to receive duty-free market access in ASEAN (including the crucial market of Thailand) following its graduation in 2024. With the signing of the RCEP, its horizon of preferential market access is expected to broaden.</p>
Lao-China	<p>Preferential market access to China is of high importance for the Lao People’s Democratic Republic, since more than one-third (36.4 per cent) of its exports are destined for the Chinese market. The Lao People’s Democratic Republic draws benefits in its trade with China through the window of ASEAN Plus BFTA and the market access initiatives of China for the LDCs.</p>	<p>Upon graduation, the Lao People’s Democratic Republic will continue to benefit from ASEAN’s BFTA with China. To the extent that it draws benefit, thanks to deeper cuts allowed under China’s LDC scheme, there is likely to be some erosion in preference following the Lao People’s Democratic Republic LDC graduation. In such cases, the Lao People’s Democratic Republic can seek continuation of LDC preference from China that are similar to the one China has offered to Samoa.</p>
European Union-EBA	<p>While overall, the European Union market is not a significant distinction for the Lao People’s Democratic Republic, for its exports of apparel (6,203 suits), Germany, Denmark, Sweden and the United Kingdom are important markets. The country has been benefitting from the DF-QF market access for these items offered under the EBA, which will no longer be available once it graduates out of the LDC group. Apparel items currently exported to the European Union will enter by taking advantage of the standard GSP for developing countries. This will lead to a significant range of preference erosion, but the loss will be limited since the European Union is not a major market.</p>	<p>The European Union may not be an important market at present for the Lao People’s Democratic Republic. However, if it is to strengthen its global integration, the Lao People’s Democratic Republic will need to diversify its export base. In that case, the European Union could become an important destination in future. Keeping this in mind, negotiating GSP Plus remains an option for the Lao People’s Democratic Republic. However, this will require enforcement of core ILO labour standards and compliance with more stringent RoO requirements.</p>

(f) Flexible RoO

When graduated LDCs start to enjoy preferential market access under the new dispensation, now under the standard GSP schemes for the developing countries, they will have to deal with more stringent RoO. For example, under the EBA, the RoO for the LDCs require single transformation in the case of apparel exports. However, under the standard GSP, the RoO requirement for certain items require two-stage transformation. For agri-items, for example, the RoO (requiring value addition) call for higher domestic value addition under the standard GSP vis-à-vis the EBA. If the time horizon for LDC-specific GSP is not extended, LDCs may seek flexible RoO as a compensatory mechanism. In this regard the RoO decision in favour of the LDCs taken at MC10 in Nairobi could serve as a reference point for the graduating LDCs.

(g) Extension of time lines for S&DT provisions

For some LDCs, graduation will precede the time for which S&DT provisions for the LDCs are to remain effective. For example, although the S&DT for the pharmaceuticals sector provided under TRIPS as well as the Public Health Decision of WTO has been extended until January 2033, many LDCs will be graduating before this timeline. Graduating LDCs have argued that they should be eligible to enjoy the flexibilities that were offered to them as LDCs under the TRIPS decision. For example, they are asking that graduating LDCs be able to enjoy the benefits under the provision until the end period in case they graduate earlier than this time line.⁴⁹ It is interesting to note that Maldives had requested a five-year extension (2004-2009) of the transition period for implementation of the TRIPS Agreement when it was slated for graduation (WTO, 2004). The TRIPS Council had made the extension until 2007 (referring to the date of graduation, i.e., 20 December, 2007). This sets a precedent in terms of a separate individual request for the extension of the transition period (WTO, 2005b).⁵⁰

⁴⁹ Bangladesh has submitted a proposal to WTO to this effect.

⁵⁰ According to the WTO analytical index, "on 15 June 2005, i.e., prior to the adoption of the Decision to extend the general transition period for all least-developed country members, the Council for TRIPS adopted a Decision extending the Maldives' transition period under Article 66.1. The terms of the Decision provide that "the Maldives shall not be required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4 and 5, until 20 December 2007".

(h) Drawing benefits from ongoing negotiations

A number of initiatives in WTO in favour of LDCs have seen protracted negotiations, without any outcome. The LDC Services Waiver, first floated in 2008 and adopted in 2011, is a case in point. The waiver period was extended at MC10 in Nairobi until 31 December 2030. Indeed, many LDCs are likely to graduate without drawing any benefit from this decision. LDCs should take the opportunity provided by MC12 to propose that if and when a decision is agreed upon as regards this and in other similar cases, they should be eligible to enjoy the benefits accruing from such a decision for a stipulated period, if their graduation precedes the conclusion of the negotiations (and after graduation, depending on the time remaining).

(i) Additional aid and technology support towards post-graduation adjustments

LDCs should propose that additional financial and technical support be provided to graduating LDCs in order to help them build trade-related capacities that will enable them to mitigate the adverse implications of loss of ISMs and to make a successful transition. Graduating LDCs are to prepare a National Smooth Transition Strategy and successive United Nations Resolutions have urged development partners to come up with concrete measures to help implement the aforesaid strategies. The urgency also originates from the need to mitigate the implications of the second graduation – from LIC to LMIC status. Against this backdrop, a certain share of aid, aid-for-trade and aid-for-trade facilitation may be earmarked to help graduating LDCs address weakness identified through vulnerability assessment and implement the transition strategies.⁵¹

(j) Participate in negotiations by taking into cognizance the developing country perspective

LDCs and graduating LDCs will both need to remain actively engaged and involved in the discussions at MC12, by keeping in perspective issues of concern and interest to the developing countries. As noted above, graduating LDCs in particular, and LDCs in general should be cognizant of their future as developing country members of WTO. In view of this, they must take interest in the various negotiations and closely examine the different provisions related to obligations and commitments. They also should support issues

⁵¹ UN-DESA is mandated to prepare an ex-ante impact assessment and vulnerability profile of graduating LDCs and submit this to the CDP.

related to implementation of S&DT measures as applicable to the developing country members. LDCs should learn to examine issues of their future concern at MC12 in order to secure their interests as future developing country members of WTO.

(k) Support for acceding LDCs

Three of the twelve graduating LDCs (Bhutan, Sao Tome and Timor-Leste) are in the process of acceding to WTO membership. WTO has support measures in place to help LDCs in their accession negotiations. However, if the graduation precedes accession, these LDCs will not be eligible to enjoy this support. A proposal may be floated at MC12 so that acceding graduating LDCs continue to receive support if the graduation precedes accession to WTO.

(l) Addressing interpretative ambiguities to secure interests of graduating LDCs

Some of the S&DT provisions in WTO do not clearly specify eligibility to draw benefits as an LDC. The decision on subsidies and countervailing measures (SCMs), as part of the Agreement on Agriculture, is a case in point. The SCM decision stipulates that LDCs and other countries with GNI per capita below US\$ 1,000 (in constant 1990 United States dollars) are exempted from the prohibition of export subsidies. Since current GNI per capita of many graduating LDCs is below the 1990 threshold (in constant 1990 terms),⁵² LDCs should argue that graduated LDCs should be able to benefit from this derogation until the time when their respective GNI per capita does not exceed the stipulated threshold.

5. Concluding remarks

This report provides support for building the case for the LDCs to put forward their demands to the MC12. While there are strong reasons to be pessimistic in the context of the current developments in WTO, it has been argued that LDCs should not lose hope, and should prepare for the Ministerial Conference in good faith and earnestness. If anything, trade-related issues are becoming even more important for the increasingly globally

⁵² For example, Bangladesh's current (2019) GNI per capita is US\$ 1,910. However, in 1990 terms it will be lower than US\$ 1,000, which would make the country eligible to be a beneficiary of this S&DT provision.

integrated economies of the LDCs. A supportive multilateral trading regime could be instrumental in securing and safeguarding their interests in this regard.

It should also be kept in mind that while it will be the Trade Ministers of the member countries who will be articulating their country's position at MC12, important commitments on behalf of LDCs and international community were made at the LDC IV in 2011 and the SDGs in 2015. Both these have important implications for MC12. The Trade Ministers will need to be reminded that trade has been seen at both the aforesaid Summits as a key instrument for helping global integration of the LDC economies as well as implementation of the SDGs in the LDCs. A political momentum needs to be built as LDCs move towards MC12. The fact that a large number of LDCs are graduating from the LDC status adds both an urgency and an opportunity in this regard.

This report argues that support to LDCs should be seen as enlightened self-interest by the development partners. Predictable, time-bound support measures towards sustainable graduation of the LDCs will induce the emergence of a new scenario where LDC-specific support measures will be extended for a decreasing number of LDCs. Graduated LDCs will be participating as developing country members of WTO in a few years, and they will be contributing to the strengthening of a rule-based multilateral trading system from a new perspective. However, in the course of the current critically important transition phase from an LDC to a developing country, the graduating LDCs will need targeted support from multilateral and bilateral development partners. While graduating LDCs do their own homework in view of implementing their own national smooth transition strategy, they will need support from the global community in this regard.

LDCs will need to mobilize the support of the various broad-based groups in the WTO (e.g., G-90 and ACP, which include both LDC and non-LDC members) if they are to be able to create the critical mass in favour of issues of interest to LDCs and graduating LDCs at MC12. As the various initiatives undertaken in support of graduating LDCs testify, WTO as an institution and many developed countries on their own are agreeable to extending help in support of sustainable graduation of the LDCs. The strategy at MC12 should be four-fold: (i) mobilizing support in favour of graduating LDCs on the grounds that their graduation is in the interest of all WTO members; (ii) mobilizing issue-specific support through targeted coalition-building; (iii) mobilizing support for graduating LDCs in a

special situation such as the acceding LDCs; and (iv) participating in the discussion by keeping the post-LDC future as developing countries in the perspective.

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Annexes

Annex 1

List of graduating LDCs

LDCs slated for graduation	CDP decision as regards eligibility for graduation (year)	Expected timeline for graduating out of LDC group (year)
Angola	2012	2021
Bangladesh	2018	2024
Bhutan	2015	2023
Kiribati	2012	2021*
Lao People's Democratic Republic	2018	2024
Myanmar	2018	2024
Nepal	2015	2024
Sao Tome and Principe	2015	2024
Solomon Islands	2015	2024
Timor Leste	2015	2024
Tuvalu	2006	2021*
Vanuatu	2006	2020

Sources: Compiled from CDP, 2018 and ECOSOC, 2018.

Note: The five countries which have graduated from the LDC group (up until 2018) are: Botswana (1994); Cape Verde (2007); Maldives (2011); Samoa (2014) and Equatorial Guinea (2017).

* In the ECOSOC meeting of 2018 it was decided that recommendations as regards LDC graduation for Kiribati and Tuvalu will be deferred to "no later than 2021" on the grounds of extreme vulnerability.

Annex 2

Special and differential treatment provisions by type and agreement

Agreement	Provisions aimed at increasing the trade opportunities of developing country members	Provisions that require WTO members to safeguard the interests of developing country members	Flexibility of commitments, of action, and use of policy instruments	Transitional time-periods	Technical assistance	Provisions relating to least-developed country members	Total by Agreement
General Agreement on Tariffs and Trade, 1994	8	13	4				25
Understanding on Balance of Payments of GATT, 1994			1		1		2
Agreement on Agriculture	1		9	1		3	13
Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures		2		2	2		6
Agreement on Technical Barriers to Trade		8	1	1	8	1	19
Agreement on Trade-Related Investment Measures (TRIMs)			1	2		1	3
Agreement on Implementation of Article VI of GATT 1994		1					1
Agreement on Implementation of Article VII of GATT 1994		1	2	4	1		8
Agreement on Import Licensing Procedures		3		1			4
Agreement on Subsidies and Countervailing Measures (SCM)		2	10	7			16
Agreement on Safeguards		1	1				2
General Agreement on Trade in Services (GATS)	3	4	4		2	2	13
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)				2	1	3	6
Understanding on Rules and Procedures Governing the Settlement of Disputes		7	1		1	2	11
Agreement on Government Procurement (GPA)		3	6		1	2	10
TOTAL	12	45	40	20	17	14	148/139*

Source: WTO website.

* There are nine provisions that are classified in more than one category. The total of 139 counts these provisions only once, while the total of 148 is the total of all such listed provisions.

Annex 3

New issues and the LDCs

MC11 issues	Objectives	LDC stance	Number of countries signing the joint statement	Current number of participating members	Participating LDCs
Work Programme on e-commerce	Several members are keen to start discussions to liberalise e-commerce (e.g., removing localisation barriers, barring forced technology transfer) and putting in place necessary regulations (e.g., protecting critical source code)	Although at the beginning, the majority of the LDCs were not in favour of opening new discussion on this built-in agenda, some have changed their stance and are now willing to become engaged. At the TNC meeting held in March 2018, the LDCs stated that they were interested in taking part in the discussions, but they wanted greater clarity of the outcomes.	71 (Accounts for 77 per cent of trade)	79	Lao People's Democratic Republic* Myanmar* Cambodia Benin
Informal Working Group on Micro, Small and Medium-sized Enterprises (MSMEs)	The objective of the work on MSMEs was to address obstacles related to foreign trade operations that impose significant burden on functioning of MSMEs which were interested in participating in international trade. These included reducing the cost of doing business, trade facilitation, trade logistics and trade finance.	A number of LDCs have shown interest in participating in the discussions since the working group will also discuss issues related to technical assistance and capacity-building initiatives to address trade needs and challenges faced by MSMEs in LDCs.	88 (Accounts for 78 per cent of world exports)	90	Myanmar* Lao People's Democratic Republic* Afghanistan

Joint Statement on Investment Facilitation	The statement builds on the high-level forum on trade and investment held in Ahuja (Nigeria) in November 2017, and aspires to develop a multilateral framework on investment facilitation. The objective of the framework is to facilitate FDI through improvements in transparency, and predictability of investment measures, administrative procedures and dispute prevention.	LDCs are rather sceptical as regards this initiative as this brings back one of the four (so-called) Singapore issues to the discussion table. However, to assuage the concerns of LDCs and developing countries, the joint statement specifically mentions that 'these discussions shall not address market access, investment protection and Investor State Dispute Settlement'.	70 (Accounts for 73% of trade and 66% of inward FDI)	100	Lao People's Democratic Republic* Myanmar* Vanuatu* Afghanistan Burundi The Gambia Liberia Central African Republic Chad Guinea-Bissau Mauritania Sierra Leone Yemen Zambia Djibouti Benin Cambodia Guinea Togo
Negotiating Group on Fisheries Subsidies	A large number of members are keen to have an agreement in this area to reduce IUU fishing, bring down overcapacity and put disciplines on fisheries subsidies that result in overfishing.	LDCs, as also members of the ACP Group, have indicated interest in participating in the discussions on fisheries subsidies based on the Chairman's text. They are keen to contribute to an early completion of the discussion but emphasised the need to safeguard their defensive interests through S&DT provisions. The group has also proposed a transition period for graduating LDCs.	All WTO members are particularly in this built-in agenda item		

Source: Compilation by authors based on WTO, 2018, Kanth, 2018b and Raja, 2018.

* Graduating LDCs.