

GLOBAL AND REGIONAL ORDER

GRADUATING LDCS IN AN EVOLVING WTO

Options and Strategies

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Least developed countries (LDCs) face new challenges in view of the emerging global trading scenario including the demise of Doha Development Agenda, looming trade war and development unfriendly initiatives in relation to WTO governance.



A number of LDCs will soon leave the group and will be required to deal with new trade-related challenges.



The graduating LDCs need adequate support measures to ensure a smooth and sustainable transition.

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in Cooperation with



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1

INTRODUCTION

Without doubt, the fate of the World Trade Organization (WTO), the global institution mandated to set rules and disciplines for the multilateral trading system, stands at a crossroads. Never since its establishment in 1995 has the organisation faced such an existential threat as at the present time. The promise of the Doha Development Round or Doha Development Agenda (DDA), agreed in 2001 at the fourth Ministerial Conference (MC4) in Doha, has been belied. The principle of a consensus-based, single-undertaking approach to decision-making in the WTO has come under scrutiny. Other developments have occurred that have seriously weakened the effectiveness of the multilateral trading system: mega regional trading arrangements (mega-RTAs) are setting their own rules that go beyond WTO disciplines; plurilateral forms of negotiations, that do not include all WTO members, within and outside the ambit of the WTO platforms, have been gaining ascendancy; the recent Ministerial meetings of the WTO have revealed major fissures among key WTO members, in terms of both approach and priorities; the ongoing trade war set in motion by unilateral trade-restrictive measures by the United States, with the anticipated retaliatory measures by affected countries, has put into question the very founding principles of the WTO. Given this backdrop of disquieting developments, the question of how the least developed countries (LDCs) such as Bangladesh should craft their strategies to secure their trade-related interests has assumed heightened importance.

The underlying argument that informs this paper is that a rule-based and predictable multilateral trading system, attuned to the special and differential needs of its relatively weak members, can best serve the interests of the LDCs. The degree of openness of LDC economies (defined by the share of exports and imports in GDP) has seen a steady rise over recent years. LDCs are now integrated with the global economy as never before. In spite of many concerns, LDC economies have, in general, benefitted from the rule-based global trading system and the international support mechanisms and special and differential (S&D) provisions in place in the WTO in the form of preferential market access, derogation from various obligations, aid for trade and technical support (UNCTAD 2010). A weakened WTO, or at worst, an absence of it, will be harmful from the perspective of LDC interests.

The challenge for Bangladesh at the current juncture, as a member of the WTO, is that it must be prepared to face new challenges in addition to traditional ones. The traditional LDC-centric stance pursued by Bangladesh in the WTO, until now, will need to be revisited and recalibrated in view of the country's imminent graduation from LDC status (by 2024). Graduation will entail significant changes in the terms under which it carries out trade. How the international trading system can help graduating countries such as Bangladesh to move towards a graduation that is smooth, supports the current momentum of development and is sustainable is, thus, a question of practical importance and significance to Bangladesh. Equally important is the question of how the multilateral trading system can assist the LDCs to achieve the sustainable development goals (SDGs) of the UN's 2030 Agenda for Sustainable Development. Goal 17.11 commits the international community to support the efforts of LDCs to attain the SDGs through supportive trade measures.

As a matter of fact, Bangladesh is not alone in facing the challenge of graduation. United Nations Department of Economic and Social Affairs (UN DESA) projections are that the number of LDCs will come down from the current 47 to 41 by 2021 and 35 by 2024. There will indeed be an »africanisation of the LDCs« (Bhattacharya et al. 2018). Of the remaining 35 LDCs, 31 will belong to Africa. For Bangladesh and other graduating LDC members, their upcoming graduation will have important implications for their interests and priorities in the context of the WTO.

Table 1:
List of Graduating LDCs

LDCs scheduled for graduation	Committee for Development Policy (CDP) decision on eligibility for graduation (year)	Expected graduation from the LDC group (year)
Angola	2012	2021
Bangladesh	2018	2024
Bhutan	2015	2023
Kiribati	2012	2021*
Lao PDR	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

Note: Five countries had graduated from the LDC group by 2018: Botswana (1994); Cape Verde (2007); Maldives (2011); Samoa (2014) and Equatorial Guinea (2017).

* At its 2018 meeting, the Economic and Social Council (ECOSOC) decided to defer the recommendation on LDC graduation for Kiribati and Tuvalu to »no later than 2021« on grounds of extreme vulnerability.

Source: Compiled from CDP (2018); ECOSOC (2018).

Against this backdrop, a serious rethinking on what graduation will entail for the LDCs is urgently needed. The importance of the approach and strategies graduating LDCs such as Bangladesh will need to pursue in the WTO cannot be over-emphasised. In this context, the present paper examines five areas, viewed through the lens of the interests of graduating LDCs. Following this introduction, Section 2 deals with some of the newly emerging concerns which will have to inform the stance of the graduating LDCs. Section 3 discusses the priorities for the graduating LDCs in the context of the Doha Round agenda (DDA) of the WTO, conceding, however, that the future of the DDA is rather bleak. Section 4 considers a possible stance of LDCs and graduating LDCs taking account of the new issues that emerged from the WTO MC11 in Buenos Aires. Section 5 captures some of the debates concerning WTO reforms and what this means for the LDCs. Section 6 articulates a set of strategies that graduating LDCs, such as Bangladesh, in particular, should pursue to secure their offensive and defensive interests in the WTO, keeping in mind their multiple identities and the discussion in the present paper. Section 7 concludes with final observations.

2

NEW DEVELOPMENTS AND THEIR IMPLICATIONS FOR THE LDCS

A number of disquieting developments on the global scene and in the WTO will have important implications as far as the trade-related interests of LDCs and graduating LDCs are concerned. LDCs such as Bangladesh will be required to examine and assess the significance of these developments for their trade interests.

DECISIONS AT MC10 AND MC11 AND THE GROWING FISSURES

The tell-tale signs of a WTO that is under threat have been evident for quite some time. This situation became particularly exposed in the course of deliberations during the tenth Ministerial Conference of the WTO (MC10) in Nairobi and MC11 in Buenos Aires. While MC9 in Bali had raised some hope for the LDCs, with the Bali Ministerial decision, including the adoption of the Bali package¹, and the conclusion of the trade facilitation agreement, MC10 failed to come up with any tangible results. Indeed, for the first time the principle of »single undertaking« in the WTO (»nothing is agreed unless everything is agreed«) was put into question when the Ministerial Declaration conceded that there was a divergence of opinion with regard to the DDA itself: »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« (WT/Min(15)/Dec 2015). The MC11 went a step further in this negative direction – the Ministerial Conference failed to issue an agreed Ministerial declaration. Instead, a number of new issues were introduced for inclusion in the post-WTO MC11 Work Plan. The upshot of this discussion is that LDCs will need to be cognisant of the emerging reality, in which powerful WTO members are asking for a rethinking of the agendas for discussion at the WTO and a revisit of systemic issues in the WTO, including its decision making process.

¹ The Bali package for the LDCs, adopted at MC9 in Bali, Indonesia in 2013, included decisions with regard to providing meaningful market access to the LDCs under the MC6 decision in Hong Kong, preferential Rules of Origin (RoO) for the LDCs, operationalisation of the services waiver for the LDCs, a monitoring mechanism to assess implementation of the S&D provisions for the LDCs and additional financial and technical support for trade-related capacity building of the LDCs.

POST-CRISIS PROTECTIONIST MEASURES

Despite the rules and disciplines mandated by the WTO, when faced with the consequences of the economic and financial crises of 2007-08, powerful WTO members have sought to bypass those. As the WTO (2016a) report indicates, in the years following the crises, there has been a significant increase in the number of trade-restrictive measures and the coverage of trade under those measures. This has undermined the authority of the WTO as the global rules-setting body. Whilst it is true that members have had recourse to the WTO dispute settlement mechanism to settle trade-related disputes, the Dispute Settlement Body (DSB) itself is becoming dysfunctional (discussed further in section 5). The undermining of the DSB's role raises concerns as to how members will seek redress when there is a dispute to settle within the architecture of the WTO. LDCs and graduating LDCs have a strong interest in a well-functioning DSB since the institution plays an important role in enforcing a rule-based global trading system.

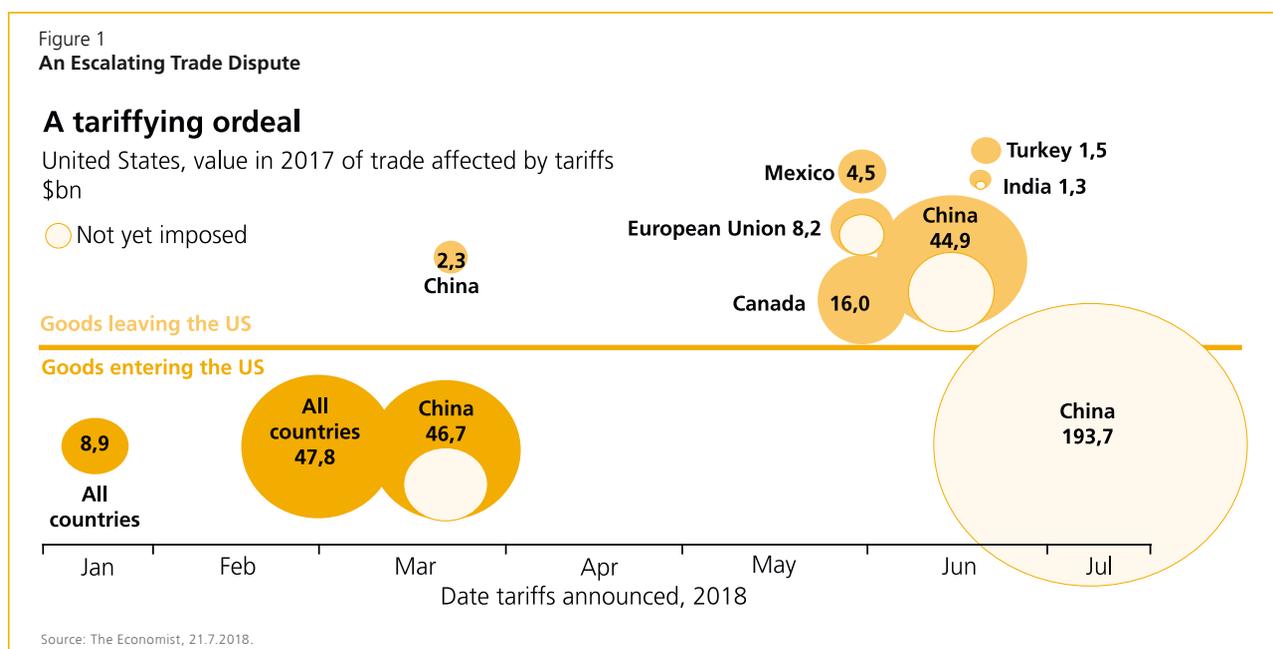
THE FALLOUTS OF THE ONGOING TRADE WAR

The ongoing trade war, with an aggressive United States and a retaliatory China, has seriously undermined the authority of the WTO further. There is a likelihood that the ongoing trade war could degenerate into a full-scale trade war. This may become reality if a greater number of countries and products are included within the ambit of the ongoing protectionist measures and counter-measures. A full-blown trade war would seriously undermine the rule-based multilateral trading system as represented by the WTO. As a result, the power of the WTO as an institution would be seriously weakened². On 6.7.2018, the United States imposed 25 per cent tariffs on 34 billion US dollars worth of Chinese imports. Another 16 billion US dollars worth of imports was added subsequently. In retaliation, China imposed additional tariffs on 545 US products, ranging from 5 to 10 per cent. Affected by the US tariffs, the EU imposed additional tariffs on 3.2 billion US dollars worth of US goods and India increased tariffs on 29 items of import from the United States. Figure 1 captures how

² President Trump has already threatened that he may consider withdrawing from the WTO.

the trade war evolved in the early months of 2018. It has now escalated further. From 24.9.2018 the United States imposed a 10 per cent additional tariff (increasing to 25 per cent from the start of 2019) on new products imported from China worth 200 billion US dollars, this time involving consumer goods. China retaliated with tariffs on 60 billion US dollars worth of imports from the United States. The US President has threatened to impose tariffs on an additional 267 billion US dollars worth of imports from China; this would then cover virtually all Chinese goods³. The proposed Fair and Reciprocal Tariff Act would give the US President power to raise tariffs without congressional consent and to sidestep international rules including an abandonment of the fundamental principles of the WTO.

multilateral trading regime. Protectionist policies will have a negative impact on the global economy, global trade and investment flows. Projections show that a global trade slowdown will have an adverse impact on the ongoing post-financial crisis recovery in the key economies (Joshi 2018; The Daily Star 2018). Raihan (2018) estimates that Bangladesh's exports could suffer as a result⁵. LDCs and developing countries will also face deteriorating terms of trade (Nicita et al. 2018).⁶ A slowdown in economic growth is also likely to have a negative impact on the appetite of the developed economies to allocate resources for trade-related aid and technical support and preferential market access for the LDCs and graduating LDCs. As can already be seen,

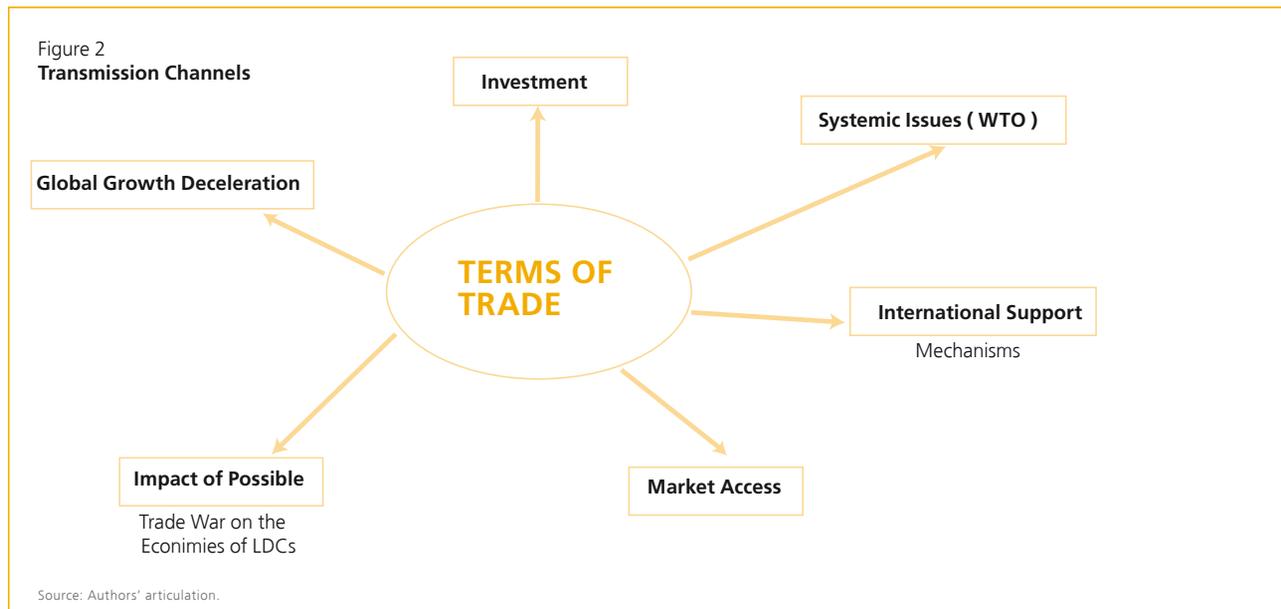


LDCs will have to be aware of the US move and the consequent counter-moves. At the same time they will need to take into account the US concerns in this context. The ongoing developments will have important implications for the future of the WTO. The proposed WTO reforms will need to be considered, keeping in mind these developments⁴. At the same time, LDCs will also need to recognise the possible ramifications of an all-out trade war for their trade-related interests. Estimates by the United Nations Conference on Trade and Development (UNCTAD) indicate that low income countries and LDCs such as Bangladesh and Ethiopia will be among the hardest hit. Indeed, as Figure 2 indicates, LDCs will be impacted by a full-scale trade war in a variety of ways, particularly through the transmission channels of market access, global growth, investment flows, terms of trade and the implications for the systemic issues of the

protectionist measures and retaliatory measures are seriously undermining the role of the WTO. Questions are being raised as regards systemic and decision making elements of the WTO, for example, the one country, one vote system and the principle of single undertaking which have, until now, served the WTO well. As a result of the current trade war, the WTO could emerge seriously weakened.

3 China's export of goods to the United States is estimated to be 505 billion US dollars (2017 figures).
4 The United States has justified its steps on the grounds that Chinese companies benefit unduly from explicit and implicit subsidies, China violates intellectual property rights obligations and that Chinese enterprises with overcapacity are dumping products on the US market. The general US position is that China has not fulfilled its obligation to transform into a market economy to which it committed as part of its WTO accession in 2001.

5 Although the magnitude of the projected fall is not significant (0.2 per cent of total exports), the author cautions that this could rise significantly with an escalation of the trade dispute.
6 Terms of trade of a country measure the relative change in prices of a country's exports and imports. If, when compared to a particular year (called the reference year), import prices of a country rise at a faster pace when compared to export prices, terms of trade are said to have deteriorated.



LDCs have never been a homogenous group. Depending on the structure of their economy, relative competitive strength, supply-side capacities and market access priorities, their offensive and defensive interests in the WTO have tended to vary.⁷ A new and important dimension has now been added. As was noted earlier, 12 LDCs, predominantly from the Asia-Pacific region, are scheduled for graduation over the next three to six years. Given that over the period since the category was established in 1971 only five LDCs have graduated, this number is quite significant. The graduating LDCs include a number of large LDCs (in terms of their share in population, GDP, imports and exports of LDCs as a group), such as Bangladesh and Angola. Hence, in the context of post-MC11 trade negotiations and the post-MC11 work plan of the WTO, the LDCs will have multiple identities. Whilst the rest of the LDCs will prioritise issues concerning their core interest as LDCs, the graduating LDCs such as Angola and Bangladesh will have to take account of current issues of interest to the LDCs and also issues that are important to them from the perspective of graduating LDCs and as (future) developing countries. These LDCs will be interested not only to make use of the S&D provisions in place for the LDCs but will also be keen to have additional supportive measures to help them ensure a sustainable graduation. As will be set out in more detail later, support for graduating LDCs would entail a strengthening of the support measures for graduated LDCs and negotiating a continuation of some of the international support measures (ISMs) in place for the LDCs for a specific period even after LDCs have finally graduated out of the LDC group, and also additional support measures to help the

cause of sustainable graduation. These graduating LDCs will also need to be aware of their compliance requirements and obligations as future developing countries (Table 2). In taking part in future negotiations, graduating LDCs will need to consider what the results of the particular negotiating agenda and the negotiated outcomes would imply for developing country members of the WTO.

⁷ Offensive interests of a country refer to market access conditions facing exportables in the importing countries. Elements such as DF-QF market access, technical and financial support that helps raise the competitive strength of LDC products, flexibilities as regards export incentives and subsidies are relevant here. On the other hand, defensive interests are served by enabling mechanisms that help protect the interests of domestic producers, exporters and consumers in the LDCs. These include flexibilities in the areas of intellectual property rights (IPR), protection of domestic markets through a supportive tariff regime, incentives and subsidies to domestic producers to remain competitive in relation to imported goods, etc. These interests will vary depending on the structure of production, exports and imports of the LDCs.

Table 2:
Overview of Selected S&D Treatment for LDCs and Graduated LDCs

S&D 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 1.7.2021	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 1.1.2033	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 the WTO	LDCs benefit from specific courses designed for their needs	No significant change in the entitlements under the WTO 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: WTO Website.

CHANGING STRUCTURE OF GLOBAL TRADE

Whilst traditionally LDCs have focused on market access for goods, the fact of the matter is that, in recent years, it is the services trade which has been the fastest growing segment of global trade. Indeed, services trade currently accounts for 70 per cent of global GDP, 60 per cent of global employment and 46 per cent of global exports measured in value-added terms. This rise is taking place against the backdrop of a large part of services becoming »tradable«. Data shows that the share of services export by developing countries rose from 24 per cent in 2005 to 31 per cent in 2015; the corresponding shares of the LDCs rose from 0.4 per cent to 0.8 per cent over the same period (UNCTAD 2017). The other change that is taking place is the »servicification« of manufactured trade. Logistics, ICT, financial services, etc. are becoming integral to trade in goods and have important ramifications for the competitiveness of traded goods. Thanks to the increasing role of production networks and global value chains, different components of the same product are having to cross borders several times. E-commerce, logistics and services of various types (including financial and banking services) have emerged as important components of global trade. Indeed, services are being increasingly embedded in trade in manufactured goods, and trade in goods and services is becoming closely entwined. Thus, issues such as trade-related disciplines in e-commerce, cross-border trade in e-goods, trade facilitation in services and intellectual property rights are set to dominate future trade agendas. These structural changes in global trade have important implications in terms of the priorities that graduating LDCs will have in the context of future negotiations in the WTO. Thus, negotiations with respect

to trade in services and related market access will demand priority attention from the LDCs in general and graduating LDCs in particular.

THE RISE OF MEGAREGIONALS AND PLURILATERALS

The WTO allows the setting up of regional trading arrangements (RTAs) of various kinds, usually free trade areas or customs unions.⁸ However, what is new is the rise of mega-trading blocs such as the Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP), the Regional Comprehensive Economic Partnership (RCEP) in Asia (still under negotiation), as well as the Transatlantic Trade and Investment Partnership (TTIP), even though TTIP-negotiations have not continued since the Trump administration took office. These mega-RTAs are setting their own rules of trade, often by putting in disciplines in the areas of intellectual property rights (IPR), labour rights, investment flows and procurement that go beyond the WTO disciplines. On the other hand, many WTO members are pursuing plurilateral discussions concerning a number of key sectors.⁹ Examples of

8 Article 24 of the WTO's General Agreement on Tariffs and Trade allows RTAs as long as (a) liberalisation is deeper; (b) tariffs and other trade restrictions to outside parties are »on the whole« not higher or more restrictive than before the formation of the RTA; and (c) »substantially all the trade« is liberalised within the RTA. Over the years, more than 450 RTAs have been notified to the WTO of which close to 300 are currently operational. Many more are in the process of notification.

9 In certain cases and sectors, plurilateral agreements are allowed within the WTO whereby a few countries have the option of

such plurilaterals are services (Trade in Services Agreement (TiSA), where negotiations are currently on hold) and - of late - e-commerce, where negotiating parties account for a significant share, in other words a critical mass, in the respective global trade. LDCs, and likewise the majority of developing countries, remain outside of these negotiations although their trade will likely be (negatively) impacted since they are not party to the rule-making discussions and because of the (adverse) market access conditions they will face as non-members of such standard-setting megaregional and plurilateral agreements. Graduating LDCs will need to seriously examine how their trade-related interests will be impacted by the mega-RTAs and plurilateral negotiations. They will need to assess various options, including exploring whether plurilateral members are ready to extend similar market access to the LDCs,¹⁰ multilateralisation of the plurilaterals¹¹ or joining the mega-RTAs.¹²

negotiating an agreement as regards trade liberalisation concerning a certain area. These are distinct from multilateral agreements where all WTO members are party to what is being agreed. An example is the Agreement on Government Procurement (GPA), a plurilateral agreement within the framework of the WTO. However, the concern here is that new plurilateral negotiations are taking place outside of the ambit of the WTO. The likelihood of these being multilateralised within the WTO framework is also rather bleak. Hence the apprehension that, in comparison with the members of such plurilaterals, LDCs will face market access difficulties with respect to the sector concerned.

- 10 This would mean negotiating with the plurilateral members so that the preferential market access accorded to each other by the members are also accorded to the LDCs as a support measure to weaker economies.
- 11 Bringing the plurilaterals within the ambit of the WTO.
- 12 However, the option of joining the mega-RTAs is not an easy one. This would mean complying with the various disciplines (IPR, harmonisation of standards, labour rights, etc.) which membership of the plurilateral agreements entails. If the plurilateral is open, meaning that it covers an overwhelming share of trade (80–90 per cent, referred to as critical mass), then most favoured nation (MFN) tariff rates tend to apply i.e. non-members are provided with market access on similar terms (e.g. under the Information Technology Agreement). In this case, LDCs do not have to lobby for market access since they can enjoy the benefits automatically (in other words, they can free-ride).

3

SALVAGING THE DOHA ROUND AND SECURING THE PRIORITIES

The WTO's Doha agenda promised to meaningfully embed the development dimensions in the various negotiating agendas. The agenda talked of undertaking a number of measures in support of developing countries in general, and the LDCs in particular. This was reflected through the ambitious duty-free and quota-free (DF-QF) market access initiatives in favour of the LDCs, the Doha declaration on the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Public Health¹³, deferment of and derogation from obligations, promise of higher aid for trade, adequate financial and technical support towards trade-related capacity building and various initiatives to address implementation-related challenges in view of the S&D measures. Regrettably, the subsequent Ministerial Conferences failed to live up to, and follow on from, the aspirations of the Doha Round. Concrete steps taken to realise the Doha Development Round ambitions have been few and far between. The decision on DF-QF market access taken at MC6 in Hong Kong has not met the expectations of the LDCs;¹⁴ the Services Waiver Decision of 2008 is yet to result in definitive offers on the part of developed countries towards meaningful market access for services and service exporters from the LDCs.¹⁵ As part of the LDC package agreed at the Bali MC9, a decision was taken to put in place a monitoring mechanism to oversee implementation of the S&D provisions in support of the LDCs. However, no concrete step has yet been taken to ensure implementation of the decision.

As was noted earlier, in a rare departure from the single undertaking principle, the MC10 decision included a statement to the effect that »some members did not reaffirm the Doha mandate«. Whilst members belonging

to the G-90 group¹⁶ in the WTO are demanding full compliance with the Doha mandate and pursuing proposals that they consider to be important from the perspective of diversification, industrialisation and structural transformation of their economies, some of the developed WTO members take the view that some of the proposals are a departure from the WTO's basic rules and disciplines. They have proposed that the issues of concern to developing countries be addressed on a case-by-case basis. This approach has been strongly opposed by developing countries on justified grounds.¹⁷ On the other hand, it is also becoming increasingly evident that the current architecture of decision making in the WTO may not work and a new framework will have to replace this. Hence, LDCs will need to decide on their priorities and how some of the elements of the Doha Round could be salvaged. On the other hand, graduating LDCs will have to keep in mind that they have to be actively involved in the sectoral negotiations keeping in perspective their interests as future developing countries. As developing countries, the graduated LDCs will have to comply with many WTO rules and disciplines from which LDCs enjoy exemption (through preferential market access, derogation from rules, protracted implementation period, etc.). On the other hand, there are also flexibilities in the WTO which are provided to developing countries, although the magnitude of the support is not as significant as that enjoyed by the LDCs. For example,

¹³ This allowed the pharmaceutical sector in the LDCs to produce and export without recourse to patent and licence obligations. Allowed initially for fifteen years, this has now been extended for another seventeen years (until December 2032).

¹⁴ The Hong Kong decision leaves open the option of granting DF-QF market access for 97 per cent of tariff lines for exports to developed countries that originate from LDCs.

¹⁵ The implementation of the Services Waiver Decision has now been extended until 2026. However, having regard to the Request List of the LDCs, the Offer List of developed countries does not meet the expectations and needs of the LDCs.

¹⁶ The Group of 90, commonly known as G-90, is the largest grouping in the WTO (the overwhelming majority of countries in this group are members of the WTO). G-90 includes countries belonging to the African, Caribbean and Pacific Group (ACP), the African Union, and the group of LDCs. G-90 is a countervailing force within the WTO (particularly in relation to the EU and the United States) one of whose key objectives is to pursue the cause of market access in agricultural goods and the de-subsidisation of agricultural production, enjoying high subsidies in some of the developed WTO members. The purpose is to facilitate market access (i.e. export) of agricultural products from the developing countries.

¹⁷ The Doha Round was initiated on the basis of a common standpoint that trade should serve as a critically important tool for the development of developing countries. There was a general broad-based understanding in Doha that trade-related rules, disciplines and ISMs should be designed such as to support the cause of development in the developing countries. Given its appreciation of the development dimensions of global trade, the Doha Round of the WTO thus came to be known as the Doha Development Round or Doha Development Agenda (DDA). To deny developing countries the flexibilities and to consider issue-by-issue implications on a country-by-country basis would be a clear departure from the vision of the DDA articulated above.

developing members of the WTO also enjoy ISMs in various forms, as presented in Table 3. These include reduced tariffs and subsidies, and incentives which these countries are allowed to give to their producers and exporters. In certain cases they are allowed more time to implement the WTO agreements. Thus, in participating in discussions and negotiations in the WTO, graduating LDCs will need to examine the agendas and proposals also through the lens of developing countries and be alert to safeguarding their interests as future developing countries. In these circumstances, the following areas are considered to be of priority interest to the graduating LDCs in the context of the Doha agenda, keeping in mind their multiple identities.

Table 3
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
General Agreement on Tariffs and Trade 1994	8	13
Understanding on Balance of Payments of GATT 1994		
Agreement on Agriculture	1	
Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures		2
Agreement on Technical Barriers to Trade		8
Agreement on Trade-Related Investment Measures (TRIMs)		
Agreement on Implementation of Article VI of GATT 1994		1
Agreement on Implementation of Article VII of GATT 1994		1
Agreement on Import Licensing Procedures		3
Agreement on Subsidies and Countervailing Measures (SCM)		2
Agreement on Safeguards		1
General Agreement on Trade in Services (GATS)	3	4
Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)		
Understanding on Rules and Procedures Governing the Settlement of Disputes		7
Agreement on Government Procurement (GPA)		3
TOTAL	12	45

* There are nine provisions which 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.

Source: WTO Website.

DF-QF MARKET ACCESS

DF-QF market access for goods originating from the LDCs traditionally has been an area of heightened interest to the LDCs in the context of the Doha Round. A significant share of LDCs' negotiating and analytical skills have been deployed to articulate how best the interests of the LDCs could be serviced in this context. Whilst implementation of the Doha mandate in this connection was followed through the MC6 decision in Hong Kong and in the course of subsequent ministerial meetings of the WTO,¹⁸ the fact remains that a truly meaningful DF-QF market access decision in favour of

¹⁸ »Meaningful« and »enhanced« market access were some of the formulations used to ensure that implementation of the Hong Kong decision led to increased exports from the LDCs.

the LDCs has not been possible. The division within the group of LDCs (African versus Asia-Pacific LDCs) has been a major stumbling block in this connection.¹⁹ Moreover, implementation of any decision in this regard is subject to

¹⁹ The African LDCs receive DF-QF market access in the United States under the Africa Growth and Opportunity Act (AGOA). However, exporters from Asia-Pacific (A-P) LDCs have to enter the US market by paying duties (for items, such as clothing, which are not covered by the US GSP scheme). Thus, whilst A-P LDCs are very keen to have a decision on DF-QF market access in the WTO that include clothing (in the case of LDCs such as Bangladesh, Nepal and Cambodia clothing constitutes the major share of exports), this is not a priority for African LDCs since they enjoy similar treatment under the AGOA. Rather, some of the clothing exporting African LDCs are apprehensive that if A-P exporters such as Bangladesh and Cambodia receive DF-QF entry to the US market, their own export will face heightened competition. Hence, the conflict of interests between the two groups as regards a DF-QF decision in the WTO.

Flexibility of commitments, of action, and use of policy instruments	Transition periods	Technical assistance	Provisions relating to least-developed country Members	Total by Agreement
4				25
1		1		2
9	1		3	13
	2	2		6
1	1	8	1	19
1	2		1	3
				1
2	4	1		8
	1			4
10	7			16
1				2
4		2	2	13
	2	1	3	6
1		1	2	11
6	1	2		10
40	20	17	14	148/139*

completion of the Doha Round (which itself has come under question as was noted above). A significant share of LDC exports has been enjoying DF-QF market access in the majority of developed country markets under the non-reciprocal Generalised System of Preferences (GSP) schemes (notified to the WTO).²⁰ As part of the GSP schemes, the provider WTO members allow beneficiary countries to enjoy market access at lower rates (or duty-free) and not at average applied tariffs.²¹ However, preferential margins have been on the decline in recent years since MFN rates are reducing as part of the autonomous trade liberalisation by providing countries and also as part of their WTO commitments.

Consequently, the margin of preference enjoyed by the LDCs arising from DF-QF market access has also been falling in tandem. On the other hand, trade in services is gaining increasing importance for the LDCs, particularly for the graduating LDCs. Thus, while as a strategic demand, LDCs should keep the issue of DF-QF market access for goods alive, the time has perhaps come to move on to other issues which call for priority attention (see in particular sections 4 and 6). This is perhaps more compelling in the case of graduating LDCs since even if a decision on DF-QF market access is reached in the near future there will be hardly any time left for them to enjoy its benefits.

²⁰ With trade liberalisation, preferential margins have been on the decline.

²¹ Generally known as most favoured nation – MFN – tariffs. UNCTAD (2016) deals with the issue of preference erosion in more detail.

RULES OF ORIGIN

From the perspective of market access, one area where LDCs should remain engaged relates to rules of origin (RoO). Here good progress has been made in view of the Nairobi Decision on preferential RoO.²² The WTO Committee on RoO (CRO) has adopted a new template for the notification of preferential RoO, with a significant number of members already issuing notifications based on the template. The CRO is mandated to undertake an annual review of the Nairobi decision. It has already initiated work on examining preference utilisation rate and to better understand the underlying factors contributing to the utilisation of the preference schemes. For many LDCs, having RoO that are LDC-friendly remains an important issue in terms of utilising the preferential market access they enjoy as part of the various GSP schemes. This is also important for graduating LDCs. Graduating LDCs could request the application of preferential RoO for the LDCs in cases where developed countries agree to extend preferential market access to these LDCs during a transition period.

MONITORING THE IMPLEMENTATION OF S&D PROVISIONS

It was agreed as part of the Bali LDC package that a mechanism would be put in place to monitor the implementation of the WTO S&D provisions in favour of the LDCs. The results of the monitoring exercise were to be regularly reported to the Committee on Trade and Development (CTD). No concrete decision has yet been taken as to how the decision is to be implemented. Indeed, no follow-up work has been carried out over the last two years on the terms of reference of a study, also known as a »clinical examination«, proposed by the LDCs. The clinical examination was supposed to identify, in a concrete manner, why LDCs are not able to take full advantage of the WTO S&D provisions. This would then be followed by specific proposals to address the attendant difficulties, laying the ground for concrete actions. This would have created a justification for follow-up actions to resolve, or at least to ameliorate, the concerns that the LDCs have as regards the implementation of the various S&D provisions. Graduating LDCs should remain proactively engaged in this exercise in particular because in the event that S&D provisions are extended to the graduating LDCs, through transition periods, it is in their interest to ensure that such mechanisms serve their trade and market access interests.

²² The Nairobi MC10 decision on RoO requires the preference-providing WTO members to put in place LDC-friendly RoO so that LDCs are actually able to attain preferential market access. Thus, the decision calls for reducing domestic value addition thresholds for preferential market access, bringing down processing requirements and ensuring that relevant documentation requirements do not put an onerous burden on LDC exporters.

SERVICES WAIVER DECISION FAVOURING THE LDCs

In the face of a growing servicification of trade and because many services are embedded in the trade in goods, LDCs have a strong interest in the WTO discussions on services trade. Not only in the case of Mode 4 trade in services (involving the movement of natural persons) where the interests of the LDCs such as Bangladesh are well known, but also with respect to the other three modes,²³ LDCs have current and future interests in specific areas, as reflected by their Request List. An examination of the 24 notifications submitted by the developed countries in response, as stated in their Offer Lists, reveals, however, that not much has been on offer in terms of specific preferences of the LDCs. This has been the case in spite of the decisions of the three WTO Ministerial Conferences (MC8, MC9 and MC10) following the 2008 services waiver decision. As yet, LDCs have not taken any steps to review the notifications in order to identify concrete measures to secure their market access interests in services. LDCs should take urgent initiative in this regard and keep up the pressure for a review of offers by the developed countries. LDCs may consider proposing an exemption from the economic needs test, introduction of LDC-specific quotas (e.g. for professionals) and sector-specific offers. They should also seek a waiver from most favoured nation (MFN) obligations in services. Indeed, at the March 2018 meeting of the CTD, the LDC group urged the WTO members to come up with targeted measures in support of the services waiver decision. It is highly likely that many of the graduating LDCs will leave the LDC group before any decision is taken in this regard. Accordingly, graduating LDCs have a strong interest in a transition period during which they will be eligible to benefit from the services waiver if and when the services waiver decision is implemented.

REMAINING ENGAGED IN THE DISCUSSIONS ON THE DDA

The growing divergence of views between the G-90 WTO members and some of the developed members of the WTO concerning the Doha mandate and future of the WTO was noted above. It is highly unlikely that the broad mandate of the Doha Round will be followed through in future WTO negotiations. The conflicting perspectives of WTO members as regards the Doha Round agenda, the growing demand for a new architecture of decision making and the calls for reforms of the WTO reinforce such a likelihood. The wording of the MC10 decision brought out this division quite explicitly. Nonetheless, many LDC issues and priorities are being addressed in the regular work of the WTO as well as in the

²³ The four modes of global trade in services are: Mode 1: Cross-border trade (e.g. telemedicine); Mode 2: Consumption abroad (e.g. tourism); Mode 3: Commercial presence (e.g. services provided by foreign banks in host countries); and Mode 4: Presence of natural persons (e.g. foreign nationals providing services in another country through physical presence; this covers the case of migrant workers working in host countries and sending remittances).

ongoing negotiations. As it is, a number of decisions on issues of importance to the LDCs have been taken in various Ministerial Conferences.²⁴ LDCs stand to benefit significantly if such decisions are followed through and implemented. The task of following up on these decisions is vested with the WTO bodies concerned and LDCs should remain actively engaged in relevant WTO platforms to ensure their implementation. Graduating LDCs have an interest in speedy implementation of these decisions as the window of opportunity for them to benefit is closing very fast. Along with this, they must also be actively engaged in negotiations on issues that concern their interests as future developing members of the WTO. As may be seen from Table 3, there are 139 provisions in the various WTO Agreements which are targeted specifically to developing country members (these relate to enhancing trade opportunities, flexibility of commitments, safeguarding interests of domestic producers, transition periods and technical and financial assistance). As future developing countries, graduating LDCs should actively support the current developing countries in discussions on implementation of these provisions. In the context of the ongoing negotiations, graduating LDCs must be alert to the issues that concern developing country interests, be it safeguarding the interests of domestic exporters, producers and consumers or addressing their market access interests in developed countries, or in terms of taking obligations and commitments concerning the opening up of their own markets, reducing import tariffs, curtailing subsidies that developing countries are allowed to provide, etc.

²⁴ There are 148 S&D provisions in the WTO for developing countries and the LDCs. Of these, 14 are specifically targeted for the LDCs. Some of the important provisions concerning the LDCs include implementation of the DF-QF market access decision of the Hong Kong WTO Ministerial Conference in a commercially meaningful way, financial and technical support to help implement the WTO Trade Facilitation Agreement (TFA), more allocation of financial assistance for trade-related capacity building of the LDCs under the Enhanced Integrated Framework (EIF) of the WTO, more conducive RoO for exports of LDCs, the Doha Declaration on the TRIPS Agreement and Public Health as part of which LDC producers of pharmaceutical products are exempted from patenting and licensing requirements, etc. Further, the LDCs are to be provided with adequate technical and financial support to enable them to build up the trade-related supply-side and other capacities in order to be able to take advantage of the WTO S&D provisions.

4

MC11: NEW ISSUES AND CONCERNS OF THE LDCs

As was noted, WTO members taking part in MC11 in Buenos Aires failed to come to an agreement on the Ministerial declaration. Ministers were not able to make any tangible progress as regards the core areas of the Doha mandate relating to market access for the LDCs, agriculture, public stockholding for food security, domestic support and implementation of the S&D provisions. The United States made it clear early on that for any progress to be made in these areas, first the members will have to ensure more transparency as regards current policies. It 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 discussion on these issues, it referred to paragraphs 30 and 31 of the MC10 declaration which were cited earlier in this paper. The United States contested the

statement in paragraph 31, according to which »there remains a strong commitment of all members to advance negotiations on the remaining Doha issues«, citing paragraph 30 which mentioned that »other members do not reaffirm the Doha mandate« (WTO 2015). Members, in various combinations, came up with joint statements on a number of issues which they considered important from the perspective of future negotiations and the post-MC11 Work Plan. These related to fisheries subsidies, e-commerce, investment facilitation and micro, small and medium enterprises. While in the course of MC11 itself many LDCs were unsure how to react to these, a large number subsequently expressed a desire to remain engaged in relevant discussions.

Table 4
New Issues and the LDCs

MC11 issues	Objectives	LDC stance	Number of countries signing the joint statement	LDCs signing the statement
Work Programme on E-commerce	Several members are keen to start discussion 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 initially the majority of the LDCs were not in favour of opening new discussions on this built-in agenda, many have changed their stance and are now willing to be engaged. At the March 2018 Trade Negotiations Committee meeting, the LDCs stated that they were interested in taking part in the discussions, but wanted more clarity on outcomes.	71 (accounting for 77% of trade)	Cambodia Lao PDR* Myanmar*
Informal Working Group on Micro and Small and Medium Enterprises (MSMEs)	The objective of the work on MSME is to address obstacles related to foreign trade operations that impose a significant burden on the functioning of MSMEs interested to participate in international trade. Issues include reducing the cost of doing business, trade facilitation, trade logistics and trade finance.	Many LDCs have shown an interest in participating in the discussion 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.	87 (accounting for 78% of world exports)	Afghanistan Myanmar*
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	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	70 (accounting for 73% of trade and	Togo Lao PDR* Myanmar*

	facilitate foreign direct investment (FDI) through improvements in transparency and predictability of investment measures, administrative procedures and dispute prevention.	that »these discussions shall not address market access, investment protection and Investor-State Dispute Settlement«.	66% of inward FDI)	Togo Lao PDR* Myanmar*
Negotiating Group on Fisheries Subsidies	A large number of members are keen to have an agreement in this area to reduce illegal, unreported and unregulated (IUU) fishing, bring down overcapacity and put disciplines on fisheries subsidies that result in overfishing.	LDCs and members of the ACP Group have indicated an interest to participate in the discussions on fisheries subsidies based on the Chairman's text. They are keen to contribute to an early completion of the discussions but emphasised the need to safeguard their defensive interests through S&D provisions. The group has also proposed a transition period for graduating LDCs.	This is a built-in agenda in the WTO with all members being party to the discussions. LDCs and developing countries have a keen interest in including strong S&D provisions in the various texts which are being discussed no in the WTO.	

* Graduating LDCs

Source: Compilation by authors based on WTO (2019)

As the information in Table 4 reveals, a large majority of WTO members are interested to discuss the new issues. The countries involved account for a very high share of the global trade concerned. Although several drafts were circulated for discussion and possible decision, ultimately, the members were able to issue only joint statements, in the absence of any consensus. Table 4 also indicates that a number of LDCs, including graduating LDCs, in spite of initial reservations, are interested to take part in the discussions on the new issues. Since in all likelihood these discussions will constitute an important part of future WTO negotiations, it will be prudent for graduating LDCs to identify their offensive and defensive interests in this connection and propose S&D measures to secure their interests.

E-COMMERCE

Against the backdrop of the global rise in internet access, 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 to 54.4 per cent in 2017.²⁵ This rapid progress has led to an impressive rise in e-commerce with worldwide sales standing at approximately 2.3 trillion US dollars and forecasted to rise to 4.8 trillion US dollars.²⁶

Several members have proposed additional rules on e-commerce, claiming that all countries would benefit from strong,

market-based rules in that area (Office of the US Trade Representative 2017). Measures proposed in the non-paper by the United States are: (a) getting rid of localisation barriers; (b) barring forced technology transfer; (c) protecting critical source code; (d) ensuring technology choice; (e) securing non-discrimination principles and (f) prohibiting digital customs duties (WTO 2016b). Similar proposals have been presented also by Japan (WTO 2017d) and the EU. Negotiations in these areas, however, would go beyond the mandate of the 1998 Work Programme on e-commerce. On this ground, discussion on the areas concerned has been opposed by many LDCs and developing countries including India. The Centre for WTO Studies has analysed the possible effects of the measures proposed in the non-paper by the United States and found that for evolving digital economies, such as India, the proposed measures may not yield positive impacts for service providers and e-commerce players. Rather they will disallow the flexibilities that these countries currently enjoy and shrink their policy space to regulate their markets (Gupta 2017). At the March 2018 meeting of the Trade Negotiations Committee, LDCs such as Uganda questioned the merit of the initiative on the ground that there was no mandate to negotiate the plurilateral issues multilaterally.²⁷ However, although indicating their interest to take part in the discussions, LDCs have, at the same time, emphasised the need for more clarity on the outcome.

²⁵ Internet World Stats (<https://www.internetworldstats.com/emarketing.htm>) reports a penetration rate of 54.4 per cent in 2017 which is beyond the 46.8 per cent predicted in advance by Statista (<https://www.statista.com/statistics/325706/global-internet-user-penetration/>).

²⁶ <https://www.statista.com/statistics/379046/worldwide-retail-e-commerce-sales/>

²⁷ The argument here is that WTO members should discuss only those issues that are mandated for discussion in the WTO platforms. In accordance with a WTO decision, a Work Programme was put in place in 1998 to discuss e-commerce related issues. It is maintained that issues beyond what was mandated for discussion under this work programme should first be agreed by all the WTO members and only then can these issues become part of the WTO work agenda. However, a large number of WTO members have indicated their willingness to discuss informal negotiations on e-commerce issues. They also agree that these discussions should take into consideration concerns of the developing countries and the LDCs. Currently, some WTO members have agreed to have discussions on the five areas mentioned in the text.

In this connection, the E-commerce Readiness Assessment by the UNCTAD, which analysed the strengths and weaknesses of the LDCs in respect of the ICT framework and e-commerce, is a tool which LDCs and graduating LDCs may find useful. The tool can help LDCs to identify where their domestic capacity building efforts should be targeted. The tool may also help LDCs to identify their technical and financial assistance needs and to propose where discretion in applying policy space will be required. At the same time, it will assist them in articulating their offensive and defensive interests in coming e-commerce talks.

INVESTMENT FACILITATION

The framework suggested for the Informal Dialogue on Investment Facilitation for Development involved the following elements: (i) improving the 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 (v) addressing the needs of developing members. Because contentious issues such as market access, investment protection and investor-state dispute settlement have been excluded from the remit of discussions, more members including LDCs have expressed an interest to join the table. Recent media reports indicate that India, which opposed negotiation on investment facilitation at both MC11 and the Hamburg G20 meeting, may reconsider its stance (Mishra 2018).

In this context the LDCs have an interest in the following matters: (a) safeguarding the interests of developing and LDC members through S&D provisions, including flexibilities commensurate with their state of capacity and development; (b) asking for technical assistance and capacity building support towards investment promotion; (c) seeking priority consideration of their special economic situation, particularly from the perspective of the 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.

MSMES

In the case of investment facilitation and micro, small and medium enterprises (MSMEs), the signatories to the joint statement declared their intention to set up an informal working group, open to others, if they were willing, to discuss obstacles to foreign direct investment that particularly undermines the interests of the MSMEs. Proposed measures include: (i) improving the access of MSMEs to information on trade requirements, regulations and markets; (ii)

identification of measures to reduce trade costs for MSMEs; (iii) promotion of access to trade finance; (iv) support for technical assistance and capacity building initiatives. The group issued a ministerial statement to pursue the targets of the draft decision articulated at the Informal Working Group on MSMEs. In the end, 87 members pledged their support to discuss the issues concerned in anticipation of MC12. LDCs, in preparation for future discussions and negotiations, need to do the following: (a) conduct research as regards the state of domestic MSMEs; (b) take stock of national policies particularly with respect to issues related to trade facilitation and e-commerce, allowing for measures to be identified to address specific challenges and for proposing possible S&D provisions; (c) request aid and technical assistance to strengthen domestic capacities; and (d) ensure that the proposed measures do not narrow down the policy space that the LDCs have in pursuing strategic trade and investment policies.

FISHERIES SUBSIDIES

In the case of fisheries subsidies, prohibitions were proposed with respect to illegal, unreported and unregulated (IUU) fishing and overcapacity. The importance of greater transparency in these areas was emphasised. Although no consensus could be reached on binding disciplines, there was wide agreement to continue the negotiations in Geneva and adopt an agreement by MC12. The Negotiating Group on subsidies has narrowed down the differences and proposed several measures to take care of the concerns of the LDCs. 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 and the text of important provisions remains to be finalised. As such, there are several issues which Bangladesh and other LDCs with a relatively underdeveloped fishing sector should consider: (a) the agreement must not restrict the ability of LDCs to support subsistence and artisanal fishing practices; (b) LDCs should not be restricted in terms of exploiting commercially viable fish stock in international waters; (c) with regard to the assessment, monitoring, reporting and research on fish stocks and the fishing sector, LDCs should be provided with additional time following the enforcement of the agreement to build the necessary infrastructure, and technical assistance should be provided to this end; (d) developing countries should propose a provision to restrict subsidies and other forms of government support to fishing operations on the high seas, as these encroach on their exclusive economic zones (EEZs); and (e) subsidies for fishing activities which improve capacity and exploit underexploited fish stocks and subsidies geared to improving the safety and administration of the fishing sector should be exempted from the provisions of the proposed agreement.

STANCE OF LDCS AS REGARDS NEW ISSUES

The majority of the LDCs expressed reservations in initiating discussions on the new issues when these were first mooted at MC11. These emanated primarily from four concerns: (a) the new issues were floated as a diversion from the built-in negotiating agendas of the DDA; (b) the issues went beyond the agreed WTO work mandate; (c) there was a possibility that decisions originating from discussions carried out in a plurilateral format could be imposed on them; and (d) there might not be adequate S&D provisions to address the issues of interest to the LDCs. However, gradually, many LDCs have come to recognise that issues of their interest and concern could be left out of the discussions and decisions if they choose not to remain engaged. This change in perception was underwritten by a number of factors: (a) a large number of WTO members, accounting for the overwhelming share of global trade, expressed an interest in participating in the discussions; (b) if the LDCs remain involved then they will be able to influence the rules and disciplines that are agreed; and (c) by remaining involved in the discussions, LDCs will be able to ensure that provisions for S&D treatment 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 in various platforms (WTO negotiating committees, plurilateral discussions and informal meetings). The rationale for 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. They have an interest in having S&D provisions for graduating LDCs similar to those provided by the EU and mentioned in the enhanced integrated framework (EIF). More such offers will indeed incentivise LDCs to go for graduation and help the cause of their smooth graduation.

5

WTO REFORM PROPOSALS: WHY LDCs SHOULD BE CONCERNED

Issues of reforming the WTO have been on the discussion table for some time now. Two of the core systemic issues in the WTO have been put into question: the principle of single undertaking and consensus-based decision making in the WTO. The reasons are several. First, the failure to come up with a consensus-based Ministerial decision at MC11 and the generally slow pace of progress in the negotiations have called into question the mode of decision-making in the WTO. Second, plurilateral negotiations and the rise of mega-RTAs are undermining the importance and efficacy of the WTO as the multilateral institution mandated to set global trading rules. Third, the ongoing trade war between the United States and China, in violation of the WTO rules, and the consequent retaliatory measures have brought to the fore the underlying tensions between developed countries and emerging economies. Whilst their perspectives are different, the opposing sides are at present increasingly coming to the conclusion that reforms of the WTO can no longer be delayed. Indeed, the recent G-20 Ministerial meeting²⁸ »recognised the urgent need to discuss current events in international trade and ways to improve the WTO to face current and future challenges«. Fourth, there is an increasing recognition that reforms are also needed if the global trade talks are to be brought back to the WTO. As was noted, the majority of the mega-RTAs and plurilaterals (e.g. TTIP, CPTPP and TiSA) include major emerging economies and trading power houses (e.g. India, China and Brazil). Fifth, the WTO establishment itself, as represented by the Director-General, has come to accept that the time has perhaps come to discuss »ways of improving the WTO to ensure that it meets current and future challenges and to come forward with ideas to this end« (WTO 2018b). Indeed, the Director-General has conceded that the WTO is in »the most serious situation it had ever faced«. As a matter of fact, the United States, China and the EU are currently carrying out informal talks as regards reforming the WTO.

LDCs have good reasons to follow the talks on WTO reforms very closely. The reforms are being discussed, albeit not under any formal structure, exclusively by developed countries. LDCs do not have the opportunity to participate in those discussions.

There is no mechanism for the LDCs to voice their points of views in these discussions. If one carefully reads the text, one will not fail to note that the Charlevoix Communiqué of the G7 meeting does not explicitly endorse the multilateral trading system as the primary mode of international trade agreements. Rather, it endorses the resurgence of bilateral and plurilateral agreements and merely urges that such agreements be consistent with multilateral agreements.²⁹ What is of concern here, as was stated earlier, is that such agreements are not going to have S&D provisions for LDCs and developing countries who are not party to the agreements.

Plurilaterals do not need the approval of all WTO members, leaving scope for including provisions that are unlikely to be endorsed by many WTO members including the LDCs. The apprehension is that if plurilaterals are the mode for trade discussions and decisions, it will be the powerful trading countries and blocs and not all WTO members who will play the deciding role in the WTO's rule making. As is known, the WTO does allow plurilateral negotiations. However, at present, even when some countries choose to hold talks on a specific issue, they must do it within the WTO and all members have to approve the agreement. What some countries are proposing, instead, is that, to speed up decisions, members should be allowed to hold plurilateral discussions. The agreements can then be multilateralised in the WTO, with obligations and benefits extending to all WTO members.³⁰

However, as Jones (2014) points out, »modern trade negotiations are as much about setting a new regulatory agenda as they are about reducing tariffs. The risk for small countries is that in a world of globalised production, all states would be forced to conform to regulatory standards set by clubs of big market players«. Thus, LDCs which have not been part of the rule-setting in the plurilaterals will be compelled to take on onerous obligations and comply with stringent rules. This could seriously undermine their trade and development interests. This situation is more acute for the graduating LDCs

²⁸ Held in Mar del Plata in Argentina on 14.9.2018.

²⁹ In Paragraph 4 of the Charlevoix Communiqué, signatories emphasised the importance of bilateral, regional and plurilateral agreements being open, transparent, inclusive and WTO-consistent.

³⁰ Often referred to as the multilateralisation of plurilaterals.

since once they join the ranks of developing countries they will not be able to enjoy most of the derogations that non-graduating LDCs enjoy.

The threat of moving away from the current consensus-based decision making in the WTO is also an issue to be concerned about. As Jones (2014) argues, until now, the threat of a veto was one of the very few tools in the arsenal of smaller economies to influence WTO decisions. In the absence of this, the decision making process may become similar to that in organisations such as the World Bank and the International Monetary Fund where voting power is weighted according to economic power. Some have argued for transparent guidelines for exercising the veto power, as a compromise option. LDCs should remain alert to implications of the changes that are being proposed and should argue in favour of the current consensus-based decision making. Otherwise, there is a possibility that powerful trading blocs and countries will dominate trade negotiations more than they already can at present. Some members have also questioned the WTO Ministerial Conference principle of single undertaking (nothing is agreed unless everything is agreed). LDCs are apprehensive that any deviation from this principle will likely lead to issue-by-issue decision making in the WTO which will undermine the overall balance of decisions taken under the single undertaking principle, and may not safeguard the interests of developing countries and the LDCs.

LDCs have also reasons to be concerned about reforms to the WTO dispute settlement body (DSB). Until now, the dispute settlement mechanism of the WTO has served the interests of members well, by providing an opportunity to settle trade disputes within a legal and time bound framework. However, at present, the DSB is facing an existential crisis because of the decision by the United States not to support appointments to the WTO's appellate body (AB). The United States has questioned the AB's practice of extending an individual adjudicator's mandate³¹ and also its alleged judicial activism. Currently, there are only three members on the AB, two of whom are due to retire before MC12. Since the AB needs at least three members to work, the decision on appointment cannot be deferred until MC12, as has been proposed by the United States.³² The US assertion that it loses cases in the DSB because the rules are stacked against it is, however, not supported by evidence.³³ Members should do their best to convince the United States to change its current stance. Necessary changes in the way the DSB works, including initiatives to speed up the work of the panels, may be undertaken to assuage US apprehension.

³¹ The DSB is only notified of this.

³² At present, only 3 members of the AB remain, following the expiry of Shree Baboo Chekitan Servansing's term in September 2018. The terms of Tom Graham and Ujal Singh Bhatia will expire in December 2019, before the next WTO Ministerial Conference. Thus, by the time of MC12, the AB will retain only one member, Hong Zhao, whose term will end in 2020.

³³ Evidence shows that in recent times the United States has won more than 85 per cent of its cases in the DSB.

In this context Foltea (2018) has come up with a number of proposals as regards reforming the DSB and its decision making process which merit consideration by WTO members. (i) Holding a one-off majority vote in the DSB, which will pass so long as no member formally objects to the proposed decision.³⁴ However, this may lead to a power clash with the United States. (ii) Creation of a negotiating group outside the WTO, with the participation of a coalition of willing states, to reform the procedure of appellate review and, if needed, the DSB procedure itself. This measure will be lengthy and would require wide support. (iii) Amendment of the AB Working Procedures so that new appeals are not allowed. This will enable the dispute settlement system to proceed without hindrance. This would, however, at least temporarily, remove the right of WTO members to appeal. (iv) Appeal arbitration may be a more appealing option than the more rigorous option of voting. This measure would preserve the right to appeal, albeit not in its present form. It would help avoid overloading the AB, allow proceedings to be serviced by the AB secretary and would act as a buffer, allowing WTO members to pursue more substantial and permanent solutions.

The upshot of the above discussion is that in the coming days there will be serious attempts to reform the WTO which could have important implications in a number of areas, including how the agendas are set in the WTO, the role of plurilateral negotiations and how plurilateral decisions could be multilateralised, the voting system in the WTO and the principle of single undertaking. LDCs and developing members of the WTO should take collective initiatives to ensure that these discussions do not remain the exclusive domain of only a few members. As future developing countries, the graduating LDCs have, without doubt, high stakes in the discussions on the WTO reforms. Developing countries and the LDCs have a strong interest in continuing with the single undertaking approach to WTO decision making. Their interests would also not be served by trade-weighted veto power, doing away with the current practice of consensus-based decision making. Likewise, they are opposed to any measure that could undermine the enforcement of the various S&D measures. Broadly speaking, they have a strong interest in seeing the WTO (and not the plurilaterals and mega-regionals) as the platform that sets the rules of the game in global trade. On the other hand, they will need to be aware of the concerns that are being raised by some of the developed country members such as the United States. Those relate to the need for China to adopt market-oriented reforms, calls for changes in the decision making practices of the DSB, the need for more transparency as regards trade-related policies pursued by WTO members, etc. It is also likely that in future negotiations there will be added pressure on developing countries to take on more obligations and commitments. As future developing countries, graduating LDCs will need to be aware of these concerns and developments while being engaged in discussions on WTO reforms.

³⁴ The DSB takes decision by consensus.

6

STRATEGIES FOR GRADUATING LDCs IN THE RUN-UP TO MC12

It has now been decided that the upcoming WTO Ministerial Conference (MC12) will take place in Astana, Kazakhstan in March 2020. Following MC11, discussions on trade issues have been taking place in various WTO bodies including the General Council, the Committee on Trade and Development and in various negotiating committees. Discussions are also taking place on the various joint statement issues and in plurilateral platforms. In light of the discussion in the preceding sections, this section proposes a number of strategies to address the concerns and secure the interests of graduating LDCs, such as Bangladesh.

Keep focused on the agendas from the perspective of graduating LDCs:

A significant number of WTO members will be finally graduating from the LDC group over the next few years, with Bangladesh being a key candidate amongst those. Graduating LDCs such as Bangladesh will need to take part in the negotiations keeping their multiple identities in focus: (a) as LDCs (until they finally graduate); (b) as graduating LDCs (scheduled for graduation within a certain period) and (c) as future developing countries. This trinity of identities should inform the stance the graduating LDCs take as regards the issues under discussion in the WTO. They will need to work to ensure that trade-related deliverables for the LDCs envisioned under the DDA, the International Plan of Actions and SDG 17 are delivered. On the other hand, they must articulate their demands as graduating LDCs so that the global trading system facilitates their graduation – ensuring it is smooth, with momentum, and sustainable. In this connection, graduating LDCs should be able to garner the support of both the LDCs and the developed countries. Today's LDCs are tomorrow's graduating LDCs and hence any additional support to graduating LDCs also serves the medium-term interests of the LDCs. Additionally, the support concerned will not be at the cost of the current LDCs (although this may create some competition, for example, for the limited Aid for Trade funds). Developed countries in the WTO have a keen interest to demonstrate that S&D measures in support of the LDCs, towards whose implementation they have contributed significantly, have worked

and helped the LDCs to graduate. Thus, as a group, developed countries are likely to be supportive of the additional measures requested by the graduating LDCs to encourage a smooth and sustainable graduation.

ASSESS THE IMPLICATIONS OF LOSING S&D PROVISIONS:

Once graduated, the graduating LDCs will have to forego the WTO S&D provisions put in place specifically for the LDCs. At the same time, as future developing countries they must keep in mind the obligations they will need to undertake. As LDCs, they benefit from S&D provisions provided to all the developing members countries and from provisions specific to the LDCs.³⁵ For the graduating LDCs, graduation will entail a loss of LDC-specific benefits. Thus, for example, graduation from the LDC group will entail a significant loss of preferences for the LDCs. UNCTAD projections (2016) indicate an average preference erosion of 7 per cent in terms of tariffs. Estimates carried out at the Centre for Policy Dialogue indicate that average tariff rates facing Bangladesh will rise by about 6 per cent and there may be a loss in terms of exports to the tune of 2.3 billion US dollars (Rahman et al. 2017).

Press for compliance with the UN resolution on smooth graduation:

In a resolution of December 2004, the UN General Assembly (UN 2005) called upon members to act in support of a smooth graduation for the LDCs. For example, the EU has already offered a three-year extension of its »Everything But Arms« (EBA) scheme to the LDCs following their graduation. Graduating LDCs should seek to negotiate similar transition periods for DF-QF market access with other preference-granting members. A joint move by

³⁵ These S&D provisions can be classified into five types: (i) provisions aimed at increasing the trade opportunities of developing Members and LDCs; (ii) provisions under which WTO Members should safeguard the interests of developing Members and LDCs; (iii) flexibility of commitments, of action, and use of policy instruments; (iv) transition periods; (v) technical assistance.

the group of LDCs which are scheduled for graduation may be taken in this regard. Graduated LDCs will not be eligible for preferential treatment in services when (and if) this comes into force under the services waiver initiative of the WTO for the LDCs. However, graduating LDCs can seek a transition period for preferential treatment under this initiative, calling for a special waiver to be agreed to by members. In the case of the TRIPS Agreement, the LDCs are exempted from implementing its provisions until July 2021 and this may be extended further; LDCs also enjoy exemption from the protection of pharmaceuticals and test data until January 2033. Graduated LDCs will not be eligible for this preferential treatment. Graduating LDCs should therefore table a proposal in the TRIPS Council seeking an extension, on both counts, as a support measure towards sustainable LDC graduation. Bangladesh has a strong and competitive pharmaceutical sector. Indeed, among the graduating LDCs, it is Bangladesh which will stand to benefit the most if graduating LDCs are allowed to continue to benefit from the exemptions until the end of the extension periods. Graduating LDCs should table proposals for delayed implementation or an extension of the transition period as necessary to secure their interests and to facilitate sustainable graduation.

PREPARE ADEQUATELY AS FUTURE DEVELOPING COUNTRIES:

In the course of negotiations, graduating LDCs should be alert to the obligations and commitments that are asked from the developing countries. This is of more practical significance for new negotiations (as distinct from settled obligations as part of the built-in agendas). There are several S&D provisions in the WTO in support of the (non-LDC) developing countries which they will need to closely examine and determine how best to take advantage of those. The group of graduating LDCs may take on the task of designing a package, by articulating concrete demands. The group can then seek support in appropriate WTO fora in the form of transition periods, aid for trade, technical support, derogations and waivers, as necessary.

Ask for a redesign of aid for trade to support LDC graduation:

Graduating LDCs should call for a serious revisit of the Aid for Trade (AfT) work programme in view of the graduation of such a large number of the LDCs (Bhattacharya et al. 2018). Continuation of the AfT support, for a period following graduation, to facilitate a sustainable graduation of the LDCs may be proposed in this context. Attention should be paid to the Enhanced Integrated Framework (EIF), a dedicated window of support to assist specifically the LDCs, which has provisions allowing EIF support to be extended, for up to five years following graduation, to

facilitate a smooth graduation of the LDCs³⁶. Graduating LDCs should seize on this opportunity.³⁷

TAKE ADVANTAGE OF S&D PROVISIONS FOR DEVELOPING MEMBERS:

Some LDCs, even after graduation, will fall into the group of small economies, for which there is a dedicated Work Programme to help address global integration. There are various S&D provisions in support of small and vulnerable economies that go beyond those available to the developing country members. Graduating LDCs eligible for such preferential treatment should take advantage of this.

PUSH FOR MEASURES IN RTAs TO SUPPORT GRADUATING MEMBERS:

The idea can also be floated in the WTO whereby developed and developing WTO members, which belong to RTAs that include graduating LDCs, allow a transition period to graduating LDCs to help them continue to enjoy preferential treatment. In this way, developing countries also can contribute towards a sustainable graduation of the graduating LDCs.

CALL FOR CHANGED ELIGIBILITY RULES FOR GSP PLUS:

To address the challenges of preference erosion, graduating LDCs may seek to enter preferential schemes such as the EU's »GSP plus« scheme which provides developing country members with DF-QF market access for a large number of items. Countries have to fulfil certain eligibility criteria including ratification of 27 international conventions on labour rights, environmental protection and good governance, including the eight ILO core labour standards. In addition, GSP plus requires the export share of a potential beneficiary developing country not to exceed a certain percentage (of total GSP eligible imports by the EU). Currently this share stands at 6.5 per cent. However, since Bangladesh's export is likely to exceed this threshold, it should request the EU to revise the share upward to be eligible for the scheme once the country graduates (and

³⁶ Four graduated LDCs (Cabo Verde, Equatorial Guinea, Maldives and Samoa) have received this support from the EIF

³⁷ Graduating LDCs should take appropriate measures to realise this assistance, particularly since eligibility is time bound with a specific window of opportunity for the LDCs. In the period between an LDC gaining eligibility for graduation and final graduation, the CDP is mandated to conduct a vulnerability profile of the graduating LDC. Graduating LDCs are also expected to articulate how they would like to be supported to address their vulnerabilities, including through trade-related measures. Thus, there is a mechanism in place to help LDCs towards a smooth graduation and they should take advantage of this.

subsequent to the expiry of the three-year transition period allowed by the EU). Graduating LDCs should also seek to have the same RoO as enjoyed under the »Everything But Arms« (EBA) scheme.

BUILD NEW COALITIONS:

Until now, the LDCs which are currently scheduled for graduation have moved as part of the LDC group in the WTO, and also as part of other groupings such as G-77 and G-90. With graduation, the needs and priorities of graduating LDCs will shift in a very tangible way. In view of this, graduating LDCs can form a group of their own, and decide to move strategically by building coalitions with other developing countries to safeguard their specific interests in the negotiations. The variable geometry of such coalitions should be geared to lend credibility and weight to their demands in view of LDC graduation. In particular, the future of the graduating LDCs as developing countries will dictate the rationale of such coalitions, since in future negotiations (following graduation) these countries will have to keep in mind the need to safeguard their interests and be aware of the obligations and commitments that they have to take as developing countries. Thus, in the variable geometry of coalitions their natural partners will be developing country members in the WTO. However, there will be divergences of interest even in this case depending on the specific issues and this should also dictate the rationale of particular coalition building.

REFORMULATE THEIR NEGOTIATING STANCE IN VIEW OF WHAT IS LEFT OF THE DDA AND IN LIGHT OF DEMANDS RESULTING FROM NEW ISSUES:

Priorities of the LDCs, in view of the Doha agenda, have been discussed in the preceding sections. Nonetheless, it is now obvious that the high ambitions of the Doha Round are a lost cause. However, some of the built-in agendas of the Doha Development Round continue to be discussed in relevant fora and negotiating committees. Graduating LDCs will be required to reconsider their stance as regards the »differentiation« of developing countries on a sector-by-sector basis (Bhattacharya et al. 2018). In view of discussions on sectoral issues such as agriculture, graduating LDCs will need to align their approach to the needs of their farm sectors in all three pillars: domestic support, market access and export subsidies. They will need to articulate the special safeguard measures needed to protect their small-scale farmers. On the other hand, in all likelihood, a large part of future discussions and negotiations in the WTO will concern the new issues. Some of the priorities in this context have been articulated in the preceding sections. Graduating LDCs will need to be strategically and substantively engaged in these negotiations in an informed way. Necessary data and evidence will have to be generated and a strong case will need to be built as to

how their economies may be affected if S&D measures are not embedded in any decision on the new issues. Graduating LDCs should also remain engaged in the plurilateral negotiations, particularly by trying to embed S&D provisions in the decisions concerning market access and rules and disciplines in order to secure their interests as graduating LDCs and future developing countries. When issues of multilateralising the plurilaterals arise, they will need to ensure that the flexibilities for graduating LDCs are appropriately reflected in the relevant WTO agreements.

BUILD STRENGTHENED NEGOTIATING CAPACITY TO PLAY THE ROLE OF A (FUTURE) DEVELOPING COUNTRY:

Until now, the LDCs in the WTO played, to a large extent, a passive role in the context of negotiations on a significant number of areas. LDC-specific S&D measures have taken care of their offensive and defensive interests in these discussions. However, in the context of the newly emerging scenario, graduating LDCs will be required to be involved in the negotiations in a more proactive manner, by keeping in mind the multiple identities identified in the present paper. Issue-specific moves with the WTO members concerned will be needed. Thus, coalitions of the willing and negotiating alliances could include members belonging to various interest groups since coalitions would vary depending on the issues involved and graduating LDCs will have to work having an awareness of the diversity of interests. All these aspects call for a significant strengthening of the negotiating skills of the graduating LDCs. They will have to pay greater attention to the adage that, »in the WTO, countries get not what they deserve, but what they negotiate«. Significant enhancement of their domestic capacity in the area of generating trade-related data and evidence, enhancement of analytical capacity to identify offensive and defensive interests in new settings and capacity building to deal with complex issues in the negotiations, both in the context of the built-in agendas and the new issues, will be required. Policymakers in Bangladesh and also in other graduating LDCs ought to give priority attention to address these emerging needs.

7

CONCLUDING REMARKS

In the preceding sections an attempt has been made to anticipate the direction in which future WTO discussions and negotiations could move, and identify the priorities of the graduating LDCs such as Bangladesh in this context. Proposals have been put forward as regards the strategies that graduating LDCs will need to pursue to secure their interests in the WTO, taking into account their multiple identities: as LDCs (during the run up to final graduation), as graduating LDCs (that need support towards sustainable graduation) and as future developing members of the WTO. It was argued that, in anticipation of their graduation, LDCs should design a package of demands for which they should seek support from the WTO members. The paper identifies some core elements that the proposals could include. In that vein, the paper has identified a number of priority areas in the DDA where discussions are taking place at present. It has also underscored the need for the graduating LDCs to remain engaged, in an informed way, in the discussion on the new issues, with a focus on embedding S&D provisions in the discussions. The need to revisit the AfT work programme and the working of the EIF through the lens of a graduating LDC has also been emphasised. The paper has given importance to the need for coalition building in view of the newly emerging interests of graduating LDCs having regard to their future as developing countries. It has stressed the need for building the needed domestic capacities to undertake the complex ongoing and future negotiations. Reforming the WTO is gaining increasing support from powerful members. Not only the United States, Canada and Germany, now even China has joined in this call. However, what this will entail still remains largely unclear, even after some high-level meetings have taken place. Canada called a meeting in Ottawa on 24.-25.10.2018 to discuss possible reforms of the WTO. When the G-20 leaders met in Argentina on 30.11.2018 and 1.12.2018 WTO reforms were also high on the discussion agenda. The need to remain alert to the implications of upcoming discussions on WTO reforms has been stressed throughout the paper.

The graduating LDCs are entering into a challenging terrain in the WTO, not only because of the imminent change in their status, with the consequent shift in their interests and priorities, but also because of the ongoing trade war which is threatening the future of the multilateral trading system itself. In the run up to the MC12 in Astana in June 2020, Bangladesh and other graduating LDCs will

need to pursue a highly proactive stance in the WTO if their concerns are to be adequately addressed, and their interests are to be appropriately safeguarded and secured.

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GRADUATING LDCs IN AN EVOLVING WTO

Options and Strategies



A significant number of countries will be graduating from the group of the LDCs over the next few years. This comes at a time when the spectre of a trade war looms large in the horizon, the WTO centred multilateral trading system is facing existential crises, the Doha Development Round is de facto dead and the LDCs are being confronted with formidable challenges in bringing about structural transformation of their economies to ensure smooth and sustainable development.

In view of the above, the study identifies the distinctive features of the evolving global trading scenario, examines the implications of the recent movements in the WTO – both systemic and sector-specific, and tracks the new issues which are being debated in the WTO



including those related to e-commerce and micro and small and medium enterprises. The study takes a deep dive into the implications of these for the interests of the graduating LDCs. The study underscores the costs of graduation in terms of loss of trade references and dilution of special and differential treatment for the LDCs. It makes a strong plea keeping in the perspective the future of the graduating countries as developing countries and in favour of designing a package of international support measures for the graduating LDCs during the transition phase.

Finally, the recommendations put forward by the study includes retention of market access provisions, negotiating stances to be pursued by the LDCs in



the WTO, enhancing negotiating capacities of the LDCs, salvaging critical elements of the DDR, strategies for coalition building in the WTO in support of LDC interests, and the domestic measures to be undertaken by the graduating LDCs to diversify supply-side capacities and improving export competitiveness.

Further information on the topic can be found here:

www.fes-geneva.org.