

# **UNESCAP-WTO Regional Workshop on Graduation for LDCs in Asia**

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## **LDC Graduation and matters related to WTO Agreements**

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# LDC Graduation – a milestone and a challenge

- Graduation from LDC status is a milestone in a country's development path
- However, graduation also comes with some challenges that need to be addressed
  - One of the key challenges being highlighted by LDCs is the loss of trade preferences
  - Challenges will also arise in view of compliance with WTO rules and disciplines, mostly as a developing country Member
  - There are also implications with regard to development assistance and concessionary financing

# Outline

- Participation in WTO
- Flexibilities in WTO Agreements
  - Export subsidies for non-agricultural products
  - Transition periods in TRIPS
  - Trade-related investment measures
  - Agriculture
- Trade negotiations
- Technical assistance
- Addressing graduation challenges at the WTO



# Participation in WTO

- Good news: graduation will only have little impact on participation in WTO
- No change in the concessions and commitments undertaken by the country at the WTO
- No change in the contribution to WTO as this is based on Members' trade share
- Little change in the technical assistance entitlements

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# LDC treatment at the WTO (I)

- LDCs enjoy special and differential treatment (S&D) which goes beyond the S&D accorded to developing Members
- Special treatment to LDCs include:
  - Preferential market access (e.g. DFQF)
  - Longer transition periods to implement WTO Agreements (e.g. TRIPS transition period)
  - Flexibilities regarding certain rules (e.g. exemption from the prohibition on export subsidies)
  - Flexibilities in trade negotiations
  - Priority in the delivery of technical assistance and other facilities (e.g. EIF, travel support)

# LDC treatment at the WTO (II)

- At present, there are no specific WTO provisions relating to LDC Graduation
- Graduation will have some implications on key S&D provisions for LDCs in the following Agreements:
  - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
  - Agreement on Subsidies and Countervailing Measures (SCM)
  - Agreement on Trade-related Investment Measures (TRIMs)
  - Agreement on Agriculture (AoA)



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# Export subsidies for non-agricultural products

- The Agreement on Subsidies and Countervailing Measures (SCM) prohibits the use of export subsidies
  - However, LDCs and Members with a GNI p.c. below US\$1,000 (in 1990 dollars) are exempted from this prohibition, i.e. have the flexibility to use export subsidies (Art. 27.2 and Annex VII)

## *Post-graduation*

- Flexibility to use export subsidies will no longer be available for graduated countries
- A proposal of the LDC Group is currently being considered by WTO Members (WT/GC/W/742) to exempt graduated LDCs from the prohibition of export subsidies if their GNI p.c. is less than US\$1,000 in constant 1990 dollars.

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# Transition Periods for LDCs in TRIPS

- General transition period valid until 1 July 2021
  - LDCs are exempted from implementing the TRIPS Agreement other than those containing the core non-discrimination principles (Articles 3, 4 and 5).
- Transition period concerning pharmaceutical products valid until 1 January 2033
  - LDCs are exempted from providing patent protection for pharmaceutical products

## *Post-graduation*

- Graduated countries will be required to provide IP protection as envisaged under the TRIPS Agreement
- For some graduating LDCs, the legislative changes required would depend on their accession commitments



# IP Protection foreseen by the TRIPS Agreement

Intellectual Property Rights	Subject	Minimum duration of protection under TRIPS
Copyrights and related rights	Literary and artistic works (including computer programs & databases)	Life of author + 50 years
Related rights	Performers, producers of sound recordings, broadcasting organizations	50 years (performers & producers) 20 years (broadcasting)
Trademarks	Signs that are capable of distinguishing goods and services	7 years, renewable indefinitely
Geographical indications	Geographic origin of a good, associated with a given quality, reputation or other characteristic	unlimited
Patents	Inventions (products or processes) in all fields of technology	20 years from filing date
Industrial designs	Independently created industrial designs that are new or original	10 years
Layout designs of integrated circuits	Design of electronic circuits (chips)	10 years from first commercial exploitation
Undisclosed information	Trade secrets, and undisclosed data submitted to government	No specific period

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# TRIMs

- The 2005 Hong Kong Ministerial Declaration allowed LDCs to introduce new TRIMs-inconsistent measures, as long as they notify these new measures within 6 months of their adoption. This is still in force, but any new TRIMs-inconsistent measures so notified, must be phased out by 2020.

## *Post graduation:*

- This transition period will expire at the end of 2020; and unless a new extension is negotiated, this would not be applicable to LDCs beyond this date.
- No LDC has notified any TRIMs-inconsistent measures (existing or new) under this Ministerial Declaration. No request for extension has been received.

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# Agriculture: AoA & Export Competition Decision

- LDCs are required to report to the WTO on their use of domestic support WTO every two years rather than annually. *Upon graduation, notifications have to be made every year to the WTO*
- LDCs and NFIDCs enjoy certain S&D treatment under export competition decision relating to terms and conditions for export financing support
- LDCs and NFIDCs are allowed to provide certain subsidies until the end of 2030, including marketing and transport costs.

## *Post Graduation:*

- Graduation from LDC status may affect the time-frame for providing certain export subsidies.
- Another area where graduating LDCs could possibly lose some advantage is with respect to maximum repayment term for acquisition of basic foodstuff (LDCs and NFIDCs enjoy maximum repayment term of 36 to 54 months.)

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# Trade negotiations

- LDC have benefitted from flexibilities in past trade negotiations
  - For instance, Members had exempted LDCs from reduction commitments in AG & NAMA negotiations under the Doha Round

## *Post-graduation*

- In ongoing fisheries negotiations, the LDCs are proposing that if an LDC graduates after the adoption of the Agreement, it would remain entitled to the transition periods for LDCs
- Developing countries are also not expected to undertake same level of commitments as developed Members

# Outline

- Preferential market access
  - Preferential market access in goods
  - Preferential treatment in services
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# Technical assistance for LDCs

- LDCs enjoy priority in the delivery of WTO technical assistance (e.g. specific trade courses, internship programmes, WTO Reference Centre programme, etc.)
- Enhanced Integrated Framework (EIF): Aid for Trade programme exclusively designed for LDCs

## *Post-graduation*

- WTO: Some loss of entitlements under WTO's technical assistance and training plan
- EIF: Possibility of additional support for up to 5 years for graduated LDCs



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# Addressing challenges from graduation at the WTO

- Specific “Waivers” have to be negotiated with and agreed to by Members
- Possibility to request “transition periods” to phase in obligations following graduation
- Specific attention can be sought in WTO Committees regarding difficulties encountered in the implementation of any agreement
- Submissions could be made in relevant Committees in the run up to MC12



Thank you!

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