

POCKET EDITION

Trade impacts of LDC graduation

Matters related to the
WTO agreements

About the EIF

The Enhanced Integrated Framework (EIF) is the only multilateral partnership dedicated exclusively to assisting least-developed countries in their use of trade as an engine for growth, sustainable development and poverty reduction. The EIF partnership of 51 countries, 24 donors and eight partner agencies works closely with governments, development organizations, civil society and academia.

About the WTO

The World Trade Organization (WTO) is the international body dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible, with a level playing field for all its members.

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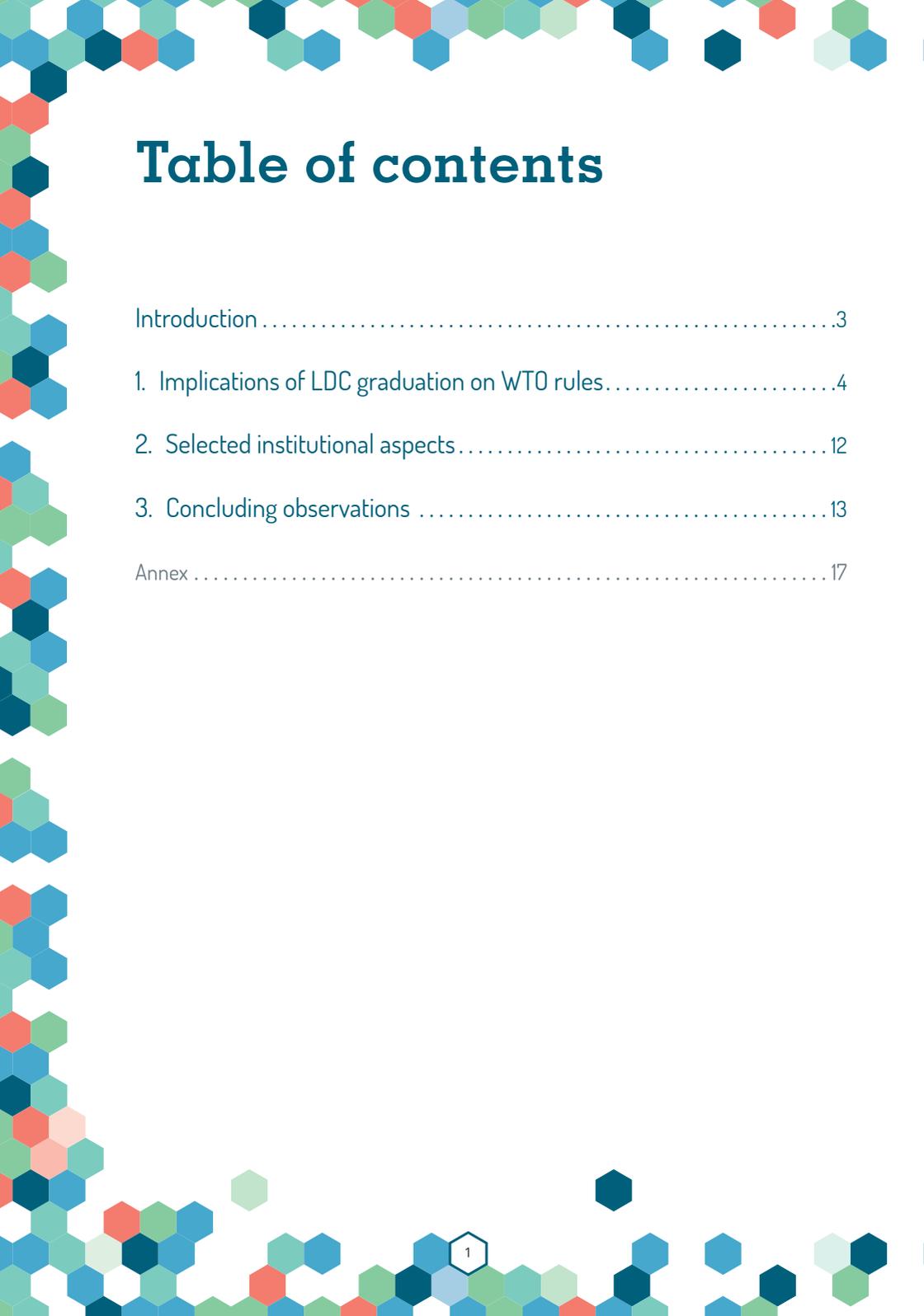


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Introduction

WTO members offer special treatment to least-developed countries (LDCs). They benefit from greater market access opportunities, flexibilities in implementing WTO rules and assistance aimed at strengthening their capacity to trade. Over the years, WTO members have taken important decisions to further support LDC integration into global trade, including duty-free and quota-free (DFQF) market access for LDC products, preferential rules of origin guidelines, and decisions to facilitate the services trade from LDCs (i.e. the LDC Services Waiver).

Once a member graduates from LDC status, the benefits associated with that status are no longer applicable. At the request of the LDC Group, the WTO Secretariat assessed possible trade impacts of LDC graduation. The main findings of this work were published in *Trade Impacts of LDC Graduation in 2020*, which highlighted that graduating LDCs have diverse economic profiles and the impact of graduation will vary for each LDC, depending on factors such as export structure, use of preferential treatment and their terms of entry into the WTO.

This pocket edition summarizes the impacts of LDC graduation on matters related to the WTO agreements. It

reviews the most pertinent LDC-specific provisions in WTO agreements and the extent to which graduation could have an impact on the participation of graduating LDCs in the WTO. Certain agreements that contained longer transition periods for LDCs have already expired; hence those agreements are no longer relevant for graduation assessment. There are other agreements that contain references to LDCs, but those provisions did not lead to substantial benefits and hence have not been covered in this analysis.

There are three broad areas requiring careful monitoring: trade-related aspects of intellectual property, the use of non-agricultural export subsidies and agriculture policies on export competition. The extent of the impact on LDCs will vary, depending on the use of these flexibilities and domestic policies in place.

This succinct agreement-specific assessment aims to support policy makers in LDCs take informed decisions and to help international organizations involved in the preparation of smooth transition strategies. Section 1 examines the implications of LDC graduation on WTO rules. Section 2 examines selected institutional aspects. Section 3 provides some concluding observations.



1

Implications of LDC graduation on WTO rules

Agriculture

The Agreement on Agriculture (AoA) provides a framework for reductions in agricultural support and protection by establishing binding commitments in three main pillars: market access; domestic support; and export competition. LDCs were not required to undertake reduction commitments under all three pillars. As a result, many LDCs, including graduating LDCs, bound their agricultural tariff lines at ceiling levels.

LDCs also enjoy some flexibility in terms of frequency of notifications in the area of domestic support (namely, Table DS:1 notifications).¹ LDCs are required to report to the WTO every two years on their use of domestic support. Developing country members are required to submit their domestic support notifications annually. Graduation from LDC status would therefore require a change in the periodicity of domestic support notifications.

The 2015 Ministerial Decision on Export Competition set a path for the elimination of agricultural export subsidy entitlements.²

LDCs and net-food importing developing countries (NFIDCs) listed in WTO document G/AG/5/Rev.10 received a more favourable treatment than other developing countries in three main areas.³ First, LDCs and NFIDCs can provide certain export subsidies until 2030, whereas other developing countries must end these subsidies by 2023. Second, they benefit from a longer repayment term for the acquisition of basic foodstuffs, with a maximum repayment term between 36 and 54 months, instead of the generally applicable period of 18 months. Third, they, along with certain developing country members, can benefit from the monetization of international food aid to redress short or long-term food deficit requirements or to address insufficient agricultural production situations that can give rise to chronic hunger and malnutrition.

The Committee on Agriculture maintains the list of WTO NFIDCs.⁴ Any developing country member that is a net importer of basic foodstuffs can request, substantiated by the relevant statistical data, to be included in the list. Hence, graduating

LDCs have the option to be included in the WTO NFIDC List as per the agreed procedure.⁵ For example, Maldives, upon graduation, was included in the WTO NFIDC List in 2011.

Impact on graduating LDCs

The implications of graduation are rather limited. A graduated LDC would continue to participate in the WTO with the original flexibility it received during the establishment of its bound duties. However, graduated LDCs must adhere to increased obligations with regard to notification requirements in the area of domestic support. The impact of the implementation of the Decision on Export Competition is also likely to be limited (see Table 1).

Subsidies and countervailing measures

The Agreement on Subsidies and Countervailing Measures (SCM Agreement) disciplines the use of subsidies, as well as the use of

countervailing duties imposed to offset the injury from subsidized imports. There are two types of prohibited subsidies: local content and export subsidies.⁶

Both LDCs and developing country members benefited from a transition period with respect to local content subsidies (i.e. subsidies that are contingent upon the use of domestic over imported goods). This transition period for developing country members and LDCs expired in 1999 and 2002, respectively.

The SCM Agreement also prohibits the use of export subsidies for non-agricultural products.⁷ LDC members are exempt from the prohibition of export subsidies (Article 27.2 and Annex VII(a)). In addition to LDCs, developing country members that are listed in Annex VII(b) are also exempt from this prohibition until their gross national income (GNI) per capita reaches US\$ 1,000 in constant 1990 dollars.

Annex VII(b) contains a list of developing country members defined at the

Table 1: LDC graduation and time frames under the Decision on Export Competition

	LDCs and NFIDCs	Developing country members
Phasing out agricultural export subsidies (i.e. marketing costs and transport and freight charges in line with Article 9.4 of the AoA)	2030	2023
Maximum repayment term for imports benefiting from export financing support	36-54 months (longer in exceptional circumstances)	18 months

Source: *Export Competition, Ministerial Decision of 19 December 2015, WTO document WT/MIN(15)/45-WT/L/980, 21 December 2015.*

establishment of the WTO.⁸ This list is subject to an annual review. The 2001 Doha Ministerial Decision on Implementation-Related Issues and Concerns⁹ clarified that a developing country member would remain listed in Annex VII(b) until its GNI per capita reached US\$ 1,000 in constant 1990 dollars for three consecutive years, and that any developing country member that had been excluded from Annex VII(b) would be reincluded if its GNI per capita were to fall back below US\$ 1,000. Every year, the WTO Secretariat follows the calculation methodology referred to in the Decision to identify developing country members that fall under Annex VII(b) of the SCM Agreement.¹⁰

The LDC Group submitted a proposal to allow graduated LDCs with a GNI per capita below US\$ 1,000 (constant 1990 dollars) to remain eligible for providing non-agricultural export subsidies under Article 27.2(a) and Annex VII(b) to the SCM Agreement.¹¹ The proposal is under consideration by the relevant WTO bodies.

LDCs and other developing country members referred to in Annex VII will need to gradually phase out export subsidies provided to products over a period of eight years when such products have reached export competitiveness, based on self-notification or a computation by the WTO Secretariat at the request of any member. According to Article 27.6, a member has reached export competitiveness in a product if the member's share in world trade of that product is at least 3.25 per cent for two consecutive years.¹² So far, no LDC member has self-notified having

reached export competitiveness in any product, nor has the WTO Secretariat been requested to perform an export competitiveness computation regarding any LDC member. Thus, no LDC member has been required to phase out export subsidies with respect to any product.

There is no exception to the requirement under the SCM Agreement to notify all specific subsidies. Even if LDCs are exempt from the prohibition of export subsidies, if such subsidies are provided, they would need to be notified to the WTO. All specific subsidies need to be notified by every WTO member, and such notifications need to be updated every two years.¹³

Impact on graduating LDCs

Since the SCM Agreement contains no provision regarding LDC graduation, in the absence of a decision or clarification, graduated LDCs would cease to be covered by Annex VII. The impact of losing access to this flexibility will depend on whether a graduating LDC provides any export subsidies.

Trade-related aspects of intellectual property rights

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement): covers the main categories of intellectual property rights; incorporates certain other intellectual property treaties; sets minimum standards of protection, enforcement and administration; and provides for the application of the WTO dispute settlement mechanism.

It sets intellectual property standards into a broader public policy context, an understanding reinforced by the Doha Ministerial Declaration on the TRIPS Agreement and Public Health.¹⁴ The Preamble to the TRIPS Agreement contains special provisions for LDCs and recognizes “the special needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base”. LDC members benefit from a general transition period, a transition period with regard to pharmaceuticals, and provisions requiring developed countries to provide incentives to their enterprises and institutions to transfer technology to LDCs.

General transition period

LDCs receive special flexibility in the implementation of the TRIPS Agreement. The TRIPS Agreement originally provided LDCs with an 11-year transition period, allowing them to delay the implementation of the Agreement's provisions – other than those containing the core non-discrimination principles – until 2005. The transition period was extended three times (2005, 2013, 2021), with the latest extension valid until 1 July 2034 or the date on which a member ceases to be an LDC, whichever is earlier.

Transition period concerning patent protection for pharmaceutical products

In addition to the general transition period, LDCs have benefited from a specific transition period for pharmaceutical products. The Doha Ministerial Declaration

on the TRIPS Agreement and Public Health exempted LDCs from protecting patents and undisclosed information for pharmaceutical products until 1 January 2016. This transition period was further extended until 1 January 2033, or until the date on which a member ceases to be an LDC, whichever is earlier. This extension was complemented by a waiver of the General Council exempting LDCs from the application of mailbox requirements and exclusive marketing rights for the same time period.

Access to medicines

The TRIPS Amendment provides a permanent legal cover for using compulsory licensing exclusively for export to create additional legal pathways for access to medicines in countries with limited or no manufacturing capacity in the pharmaceutical sector.

Under the TRIPS Amendment, LDCs have been given special consideration in terms of opportunities for regional exports and certain notification requirements. The TRIPS Amendment has ensured that a developing country member or an LDC that produces or imports pharmaceuticals under compulsory licences and that is party to a regional trade agreement (RTA) with half of the members being LDCs can export pharmaceuticals to other members of the RTA that share the same health problem any further notification under the system.

The use of the special system of compulsory licensing is subject to notification requirements. When notifying its need for a pharmaceutical,

an importing member is required to notify its intention to use the system and to confirm that it has insufficient or no manufacturing capacity in the pharmaceutical sector. LDCs are exempt from those requirements as they are deemed to be eligible importing members and to have insufficient manufacturing capacity in the pharmaceutical sector.

Technology transfer

The TRIPS Agreement also aims to foster technology transfer to LDCs to enable them to create a sound and viable technology base. Article 66.2 obliges developed country members to provide incentives to enterprises and institutions in their territories to promote technology transfer to LDCs. Developed country members are required to submit annual reports on actions taken or planned in pursuance of their commitments under Article 66.2.¹⁵ Since 2008, the WTO Secretariat has held annual workshops to enhance the benefits of the transparency mechanism concerning technology transfer measures under Article 66.2 and to promote coordination and dialogue between LDC beneficiaries and developed country reporting members.

Impact on graduating LDCs

LDCs have received a considerable degree of flexibility to implement the TRIPS Agreement, including through longer transition periods. Such transition periods will not be available after LDC graduation. At the same time, any possible impact would depend on the state of intellectual property legislation in each LDC. At the end of the transition period, graduating LDC members would

not normally be required to provide retrospective protection in the area of technology, as patent protection would generally only need to be extended to newly eligible subject matter. Table 4 in the Annex provides an overview of intellectual property protection foreseen by the TRIPS Agreement.

The transitional arrangements under the TRIPS Agreement have exempted LDCs from applying the provisions of the Agreement (except for most-favoured-nation (MFN) and National Treatment obligations). Hence, LDCs are also exempt from most TRIPS notification requirements. Following graduation, LDCs will be required to adhere to the transparency provisions, including the notifications of laws and regulations on intellectual property rights pertaining to TRIPS, as well as the notifications of contact points for the exchange of information on trade in infringing goods.¹⁶ They will also be invited to provide information with regard to their regime for the protection of geographical indications and the patentability of plants and animals in their territory.¹⁷ Laws and regulations notified will be reviewed by WTO members in the TRIPS Council. Some of the graduating LDCs have already made progress in notifying some of their intellectual property legislation.

The impact of graduation on the use of compulsory licensing for access to medicines will be limited. Graduated LDCs will remain entitled to use the system of special compulsory licensing to access medicines produced abroad. However, they would have to notify the intention to

use the system and, in their notifications concerning required pharmaceuticals, they would need to address the existence of insufficient or no manufacturing capacity.

A graduated LDC would no longer benefit from Article 66.2 on technology transfer. Given the available information about the impact of this provision, graduating LDCs would need to map out which incentives have proven to be the most useful and to engage bilaterally with developed country members.

Trade facilitation

The Agreement on Trade Facilitation (TFA) aims to expedite the movement, release and clearance of goods and to promote effective cooperation among members on trade facilitation. The TFA introduced a novel approach to special and differential (S&D) treatment, enabling developing country and LDC members to set the pace of its implementation

and to identify areas where additional assistance and capacity-building support would be required. Developing country and LDC members must notify their TFA provisions using three categories: A (implementation upon entry into force); B (implementation after a transition period); and C (implementation after a transition period and the provision of technical assistance).

LDCs have extra time compared to other developing country members to notify various categories of commitments. For instance, the definitive implementation date for LDCs to submit category C commitments is 22 August 2022. LDCs also benefit from longer grace periods for dispute settlement: six years for category A commitments and eight years for categories B and C. LDCs also receive greater flexibility in extending implementation dates of category B or C commitments under the Early Warning Mechanism (Table 2).

Table 2: Additional flexibilities under the TFA

Type	LDC members	Developing country members
Early warning (Article 17)	Automatic extension if the additional time requested does not exceed 3 years after the original date notified (notify 90 days prior to the designated implementation date)	Automatic extension if the additional time requested does not exceed 18 months after the original date notified (notify 120 days prior to the designated implementation date)
Shifting between B and C categories (Article 19)	Provide information on the type of support required Automatic extension for shifts from B to C if the additional time does not exceed 4 years beyond the original notification date	Provide information on the type of support required Use Article 17 provisions or seek examination of request for additional time, and technical assistance if needed, by the Committee

Source: See <https://www.tfafacility.org>.

Impact on graduating LDCs

The LDC-specific timeline for the notifications of definitive dates of implementation of category C commitments will end in August 2022. LDC graduation will have limited impact on this timeline, as most other graduating LDCs would leave the category after 2022. Access to the Early Warning Mechanism, as well as shifting between categories B and C, would remain available after graduation, albeit with less flexibility in terms of notification and reduced automatic extension.

Trade in services

The General Agreement on Trade in Services (GATS) is unique in its approach to development. Most of the flexibilities are built into the process of undertaking GATS commitments and the ability to maintain limitations tailored to individual development needs of WTO members.

GATS includes special provisions for LDCs with a view to increasing their participation in services trade. LDCs are entitled to liberalize at a more cautious pace than other members, which benefits graduating LDCs. In 2003, specific modalities for the treatment of LDCs were adopted during the Doha negotiations.¹⁸ In 2011, WTO members adopted the LDC Services Waiver, which allows members to provide preferential treatment to LDC services and service suppliers.¹⁹

The preferences can be accorded in terms of market access and other measures. This waiver is currently valid

until 2030 or until the date of graduation from LDC status, whichever is earlier.²⁰

Impact on graduating LDCs

Graduating LDCs will not have to undertake new GATS commitments following graduation. With respect to the notifications under the LDC Services Waiver, currently 25 members (counting the European Union as one) have notified measures. While these notifications cover a variety of sectors and modes of supply, most of these measures reflect the applied MFN regime.

In view of these factors, graduating LDCs are unlikely to lose much in services preferences. A growing body of research suggests that limited supply-side capacities constitute major constraints for LDCs to increase their participation in international services trade.

Dispute settlement

The Understanding on Rules and Procedures Governing the Settlement of Disputes, referred to as the Dispute Settlement Understanding (DSU), contains several S&D provisions. LDC members enjoy additional flexibilities under Article 24.1, which calls on members to exercise due restraint in bringing cases involving LDC members and in asking for compensation or seeking authorization to suspend the application of concessions or other obligations against an LDC member. Article 24.2 also foresees the use of good offices and conciliation or mediation of the Director-General or the Chair of the

Dispute Settlement Body (DSB), upon request by an LDC member, before the establishment of a panel.

Most LDCs have made very little use of the WTO dispute settlement system. At the same time, LDCs have not, for the most part, been subjected to the DSU. Bangladesh is the only LDC that has participated in the dispute settlement system as a complainant in *India – Anti-Dumping Measure on Batteries from Bangladesh*.²¹ As a result of consultations, the mutually agreed solution was notified to the DSB on 20 February 2006. Eight LDCs have participated as third parties.²²

Impact on graduating LDCs

Upon graduation, special procedures in favour of LDCs, as outlined in Article 24 of the DSU, will not be applicable. Since there has not been a panel with an LDC as complainant, the provision has had limited practical impact.

LDC graduation and notification obligations

Notifications have been a central feature of WTO. While WTO members must adhere to notification requirements, LDCs receive some flexibility in this area. For instance, LDCs are exempt from most notification requirements under the TRIPS Agreement while they continue to enjoy an extended transition period for its full implementation. Periodicity of notifications represents another flexibility available to LDCs. For instance, under the AoA, LDCs are required to submit domestic support notifications every two

years, while other developing country members must provide them annually. For the rest of the WTO agreements, largely there is no specific exemption provided to LDCs.

Therefore, graduation from LDC status will require a change in certain obligations: first, the submission of intellectual property laws and regulations on areas covered by the TRIPS Agreement; and second, the annual submission of domestic support tables basis, instead of biennially. These changes are likely to bring about greater technical and administrative coordination among the graduating governments.

As is the case with other LDCs, submission of notifications by graduating LDCs has been limited. Table 3 in the Annex provides an overview of the notification obligations in the WTO of relevance to LDCs. Most graduating LDCs need to devote more attention to their notification obligations following graduation – for which specific technical assistance can be provided by the WTO Secretariat.



2

Selected institutional aspects

WTO budget

The contributions of members to the WTO budget are based on their share in world trade and do not depend on LDC status.²³ Therefore, LDC graduation will have no impact on budget contributions.

Accessions

LDCs that are in the process of joining the WTO can benefit from specific LDC accession guidelines adopted by the General Council in 2002 and strengthened in 2012.²⁴ The 2002 guidelines included general guidance on market access, WTO rules, process and technical assistance. The 2012 guidelines established benchmarks on market access negotiations on goods and services and included provisions on S&D and transition periods, transparency and technical assistance.²⁵ These guidelines also encourage WTO members to exercise restraint in terms of market access concessions from acceding LDC governments.

Since 2012, six LDCs have successfully completed the accession process and joined the WTO. They include Samoa (2012), Vanuatu (2012), the Lao People's Democratic Republic (2013), Yemen (2014), Afghanistan (2016) and Liberia (2016). Samoa joined the WTO in 2012 as an LDC

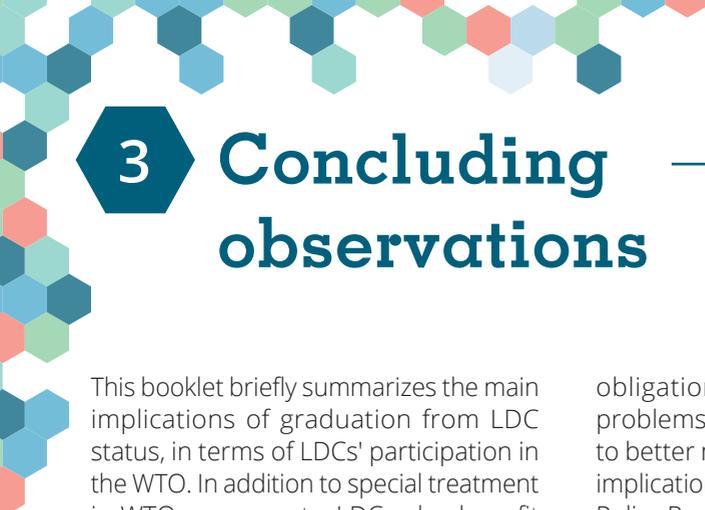
and graduated in 2014. Similarly, Vanuatu joined in 2012 and graduated in 2020.

Impact on graduating LDCs

Currently, eight LDCs are at the different stages of the WTO accession process: Bhutan, Comoros, Ethiopia, Sao Tomé and Príncipe, Somalia, South Sudan, Sudan and Timor-Leste. Among acceding governments, there are four graduating LDCs: Bhutan, Comoros, Sao Tomé and Príncipe, and Timor-Leste. Acceding LDCs could consider completing their accession negotiations before their respective graduation to fully benefit from LDC accession guidelines.

Travel support for participation in WTO Ministerial Conferences

The WTO has been helping LDC delegations to participate effectively in Ministerial Conferences. The trade minister and two high-level officials from each eligible LDC receive support to attend, including travel, accommodation and per diem allowances. Graduated LDCs will no longer be able to benefit from travel support provided to LDC members and observers for participation in Ministerial Conferences. Currently, there is no transition period in place for extending travel support to graduated countries.



3

Concluding observations

This booklet briefly summarizes the main implications of graduation from LDC status, in terms of LDCs' participation in the WTO. In addition to special treatment in WTO agreements, LDCs also benefit from important decisions taken by members especially in market access for goods and services. Graduation from LDC status results in reduced flexibility in the implementation of WTO agreements, as well as loss of access to LDC market access schemes.

Graduation will not bring about any changes to the concessions and commitments undertaken by the graduating LDCs while joining the WTO. It would also not require any change in their contributions to the WTO budget, since WTO members' contributions are based on their share in the world trade.

Graduating LDCs differ in terms of their utilization of flexibilities provided for by WTO agreements. Members' terms of entry into the WTO are similarly varied. Hence, trade-related impacts will differ among graduating LDCs depending on the domestic policies of each country.

The WTO rulebook has several tools to help to mitigate possible challenges in implementing WTO rules, ranging from requesting a waiver from WTO

obligations and addressing specific problems in the relevant WTO bodies, to better monitoring graduation-related implications including through the Trade Policy Review Mechanism.

For example, the WTO rules allow for requesting waivers in case a member faces challenges while implementing WTO rules. Any request for a waiver has to indicate exceptional circumstances, the terms and conditions and the end date. Waivers granted for a period over one year are subject to an annual review. Requests for waivers from LDCs benefit from an expedited consideration by members.

Graduation from LDC status would require strengthening human and institutional capacity to better understand WTO rules, implement domestic reforms and ensure compliance with WTO notification requirements. Access to a wide range of WTO technical assistance will remain available after graduation. The latest WTO technical assistance plan for 2022-23 highlights active participation of LDCs in the technical assistance activities relating to LDC graduation, reflecting its growing importance.

The LDC Group has been exploring several graduation-related proposals in different WTO bodies, including at

the General Council. First, the LDC Group proposed establishing a smooth transition mechanism to extend and phase out LDC trade preferences and LDC-specific S&D provisions.²⁶ The LDC Group then made another submission encouraging preference-granting members to phase out LDC trade preferences over a certain time period.²⁷ In recent years, the topic of LDC graduation has become a priority for the LDC Group. For example, special consideration for LDC graduates is being

reflected in the WTO negotiations on fisheries subsidies.

Strengthening capacity to trade remains a priority for graduating LDCs. Design of such support should be reflective of trade priorities and the challenges graduating LDCs identified in their smooth transition strategies. It is essential for LDCs and the international community to ensure greater cooperation to better support every LDC with a view to achieving a sustainable graduation.

Endnotes

- 1 *Notification Requirements and Formats*, WTO document G/AG/2, 30 June 1995.
- 2 *Export Competition*, Ministerial Decision of 19 December 2015, WTO document WT/MIN(15)/45-WT/L/980, 21 December 2015.
- 3 Covered respectively by paragraphs 8, 17 and 27 of WTO document WT/MIN(15)/45-WT/L/980.
- 4 For the most recent list, see WTO *List of Net Food-Importing Developing Countries for the Purposes of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-Importing Developing Countries*, WTO document G/AG/5/Rev.11, 24 September 2020.
- 5 *Decision by the Committee on Agriculture at its Meeting on 21 November 1995 relating to the Establishment of a List of WTO Net Food-Importing Developing Countries for the Purposes of the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on the Least Developed and Net Food-Importing Developing Countries*, WTO document G/AG/3, 24 November 1995.
- 6 In 2017, the G90 submitted 10 Agreement-specific S&D proposals, including on the SCM Agreement (WT/MIN(17)/23/Rev.1). Under the proposal, certain subsidies of developing country members would be treated as non-actionable under Article 8 for a period of 10 years for LDCs and eight years for developing countries. In addition, with regard to certain subsidies of Annex VII to the SCM Agreement, members would be exempt from Article 3.1(b) for eight years if these subsidies contribute to achieving objectives of industrialization and structural transformation. Yet since the G90 proposal was not adopted, there is no implication for graduating LDCs.
- 7 The transition period and extensions thereof for developing country members have expired. The final extension for phasing out the export subsidies of 19 developing country members expired at the end of 2015 (G/SCM/W/546/Rev.12, Annex I).
- 8 Honduras was added to the list in 2001, as it had not been included in the list at the creation of the WTO even though its GNI per capita was less than US\$ 1,000. The omission of Honduras from Annex VII(b) was rectified on 21 January 2001 (WT/Let/371).
- 9 *Implementation-Related Issues and Concerns, Decision of 14 November 2001*, WTO document WT/MIN(01)/17, 20 November 2001.
- 10 The calculation methodology was set forth in "Chairman's Proposal of 17 October 2001 on Constant 1990 US Dollar Methodology" (G/SCM/38, Appendix 2). For the most recent annual update, refer to Subsidies, WTO document G/SCM/110/Add.18, 26 March 2021.
- 11 *LDC Trade Ministers' Meeting Buenos Aires, Argentina, 9 December 2017, LDC Ministerial Declaration*, WTO document WT/MIN(17)/40, 11 December 2017. *Communication from the Mission of the Central African Republic on behalf of the LDC Group with regard to Measures to Allow Graduated LDCs, with GNP Below US\$ 1000, Benefits Pursuant to Annex VII(B) of the Agreement on Subsidies and Countervailing Measures*, WTO document WT/GC/W/742-G/C/W/752, 19 April 2018.
- 12 Paragraph 10.5 of WTO document WT/MIN(01)/17 clarified that Articles 27.5 and 27.6 also apply to LDC members. Article 27.6 of the SCM Agreement provides two options for establishing export competitiveness: (i) notification by the developing country member having reached export competitiveness; and (ii) calculation by the WTO Secretariat at the request of any member. A section heading of the Harmonized System is used to define a "product".
- 13 Article 25.1 of the SCM Agreement provides that, without prejudice to the provisions of Article XVI:1 of GATT 1994, members shall make their subsidy notifications not later than 30 June of each year. However, based on a decision adopted by the Committee in May 2001, members submit subsidy notifications under Article 25.1 of the SCM Agreement every second year.

- 14 *Declaration on the TRIPS Agreement and Public Health, Adopted on 14 November 2001*, WTO document WT/MIN(01)/DEC/2, 20 November 2001.
- 15 *Implementation of Article 66.2 of the TRIPS Agreement*, WTO document IP/C/28, 20 February 2003.
- 16 TRIPS Council Decision IP/C/2 requires members, as soon as possible after the date of application of the provisions in the TRIPS Agreement on intellectual property enforcement, to notify a response to the questions in *Checklist of Issues on Enforcement*, WTO document IP/C/5, 30 November 1995.
- 17 The Council invited members to provide information on geographical indications (IP/C/13, IP/C/13/Add.1) and the patentability of plants and animals (IP/C/W/122, IP/C/W/126) pursuant to its review of Articles 24.2 and 27.3(b), respectively.
- 18 *Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services*, WTO document TN/S/13, 5 September 2003.
- 19 *Preferential Treatment to Services and Service Suppliers of Least Developed Countries*, WTO document WT/L/847, 19 December 2011.
- 20 *Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade, Ministerial Decision of 19 December 2015*, WTO document WT/MIN(15)/48-WT/L/982, 21 December 2015.
- 21 *India – Anti-Dumping Measure on Batteries from Bangladesh*, WTO document WT/DS306/3, 23 February 2006.
- 22 Bangladesh, Benin, Chad, Madagascar, Malawi, Senegal, Tanzania, Zambia.
- 23 *Financial Regulations of the World Trade Organization*, WTO document WT/L/156/Rev.3, 27 February 2015.
- 24 *Accession of Least-Developed Countries*, WTO documents WT/L/508 and WT/L/508Add.1, 20 January 2003 and 30 July 2012.
- 25 *Accession of Least-Developed Countries*, WTO document WT/L/846, 19 December 2011.
- 26 *Trade Related Challenges of the Least Developed Countries and Way Forward: A Draft for MC Decision*, WTO document WT/GC/W/807, 17 November 2020.
- 27 *A Smooth Transition Package in Favour of Members Graduating from the LDC Category*, WTO document WT/GC/W/829, 18 October 2021.

Annex

Table 1: LDC-specific provisions in WTO agreements

S&D provisions in WTO agreements

Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade (GATT) 1994

Paragraphs 8 and 9 Simplified consultation procedures may be used.

Agreement on Agriculture (AoA)

Article 15.2 LDCs are exempt from undertaking reduction commitments.

Article 16 Members to take action in line with the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on LDCs and NFIDCs.

Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

Article 10 Members are required to take particular account of LDCs in preparing and applying SPS measures.

Article 14 LDCs had the possibility of delaying, for up to five years, the implementation of provisions of the Agreement with respect to their SPS measures affecting imports. *The transition period expired on 1 January 2000.*

Agreement on Technical Barriers to Trade (TBT Agreement)

Article 11.8 In providing advice and technical assistance to other members in terms of Article 11.1 to 11.7, members shall give priority to the needs of the LDCs.

Article 12.7 Particular account to be taken of LDCs in the provision of technical assistance with respect to the preparation and application of technical regulations.

Article 12.8 TBT Committee is required to take into account special problems of LDCs in granting time-limited exceptions under the TBT Agreement.

Agreement on Trade-Related Investment Measures (TRIMs Agreement)

Article 5.2 LDCs had a seven-year transitional period to eliminate TRIMs that are inconsistent with the Agreement. The transition period expired on 1 January 2002. *The adoption of the Hong Kong Ministerial Declaration in 2005 (Annex F) allowed the introduction of new transition periods.*

Agreement on Import Licensing Procedures

Article 3.5(j) In allocating licences, special consideration is to be given to importers that import products from developing countries and in particular LDCs.

Agreement on Subsidies and Countervailing Measures (SCM Agreement)

Article 27.2(a) and Annex VII(a)	LDCs are exempt from prohibition of export subsidies.
Article 27.3	LDCs had an eight-year transition period regarding the prohibition of domestic content subsidies. <i>The transition period expired on 1 January 2003.</i>

General Agreement on Trade in Services (GATS)

Article IV:3	Special priority is given to LDCs in implementing Article IV (increasing participation of developing countries), and particular account is to be taken of the difficulties encountered by LDCs in accepting negotiated commitments, owing to their particular needs. Special consideration is given to LDCs with regard to encouraging foreign suppliers to assist in technology transfers, training and other activities for developing telecommunications.
Article XIX:3	Negotiating guidelines shall establish modalities for the special treatment for LDCs under the provisions of Article IV:3.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement)

Preamble	Preamble recognizes the special needs of LDCs with respect to maximum flexibility in the domestic implementation of laws and regulations, in order to enable them to create a sound and viable technological base.
Article 66.1	Following a general one-year transition period, LDCs can further delay for up to 10 years the implementation of most TRIPS obligations other than those containing the core non-discrimination principles. There is a possibility of extension following a duly motivated request. <i>The general transition period was initially due to expire on January 2006. Recognizing the special needs and requirements of LDCs, the TRIPS Council adopted a decision on 29 November 2005 that extended the transition period until 1 July 2013, followed by another on 11 June 2013 extending the transition period until 1 July 2021, and another on 29 June 2021 extending the transition period until 1 July 2034.</i>
Article 66.2	Members to provide incentives to encourage the transfer of technology to LDCs.
Article 31bis 3	If developing country or LDC members are a party to an RTA in which at least half of the members are LDCs, Article 31(f) shall not apply to the extent necessary to enable a pharmaceutical product produced or imported under a compulsory licence in that member to be exported to the markets of those other developing country or LDC parties to the RTA that share the health problem in question.

Annex, para. 1(b)	“Eligible importing Member’ means any least-developed country Member, and any other Member that has made a notification to the Council for TRIPS of its intention to use the system set out in Article 31 bis and this Annex (‘system’) as an importer, it being understood that a Member may notify at any time that it will use the system in whole or in a limited way, for example only in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use.”
Annex, para. 2(a)(ii)	Exempts LDCs from providing notification confirming that the eligible importing Member has established that it has insufficient or no manufacturing capacities in the pharmaceutical sector for the product(s) in question in one of the ways set out in the Appendix to this Annex.
Appendix	“Least-developed country Members are deemed to have insufficient or no manufacturing capacities in the pharmaceutical sector.”

Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)

Article 24.1	Particular consideration should be given to the special situation of LDCs in all stages of a dispute involving an LDC. Members should exercise due restraint in raising matters involving an LDC.
Article 24.2	LDCs may request use of the offices of the Director-General or the Chair of the DSB.

Trade Policy Review Mechanism (TPRM)

Section C	Greater flexibility is given to LDCs concerning the frequency of their reviews. Particular attention given to LDCs in the provision of technical assistance by the WTO Secretariat.
Section D	At the request of developing country members, and in particular LDCs, the WTO Secretariat is required to make available technical assistance, taking into account particular difficulties of LDCs in compiling their reports.

Agreement on Trade Facilitation (TFA)

Section II (Articles 13-20)	The S&D provisions in the TFA allow each LDC to determine when it will implement each of the individual provisions (categories B and C) as well as those provisions for which it will need technical assistance and support for capacity building (category C). In addition, S&D in the TFA includes an Early Warning Mechanism regarding the extension of implementation dates of provisions in categories B and C (Article 17), the possibility to set up an expert group that examines and provides recommendations as to why a member is unable to implement a particular provision (Article 18), the shifting of provisions between categories B and C (Article 19) and grace periods of six to eight years with respect to dispute settlement (Article 20).
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Table 2: Overview of decisions taken in favour of LDCs

28 November 1979	Decision of the Contracting Parties on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries: "The Enabling Clause" (L/4903)
The decision allowed the granting of preferences to developing countries, additional preferences to LDCs, the conclusion of preferential trade agreements among developing countries, and it introduced the possibility of graduation.	
15 December 1993	Measures in Favour of LDCs
The decision has served as a reference for subsequent instruments and decisions with respect to market access, flexibilities in the implementation of WTO rules and technical assistance for LDCs.	
15 June 1999	Preferential Tariff Treatment for Least-Developed Countries, Decision on Waiver (WT/L/304)
The waiver allowed developing countries to provide preferential tariff treatment to products of LDCs until 30 June 2009. The waiver was extended until 30 June 2019 by Decision WT/L/759.	
12 February 2002	WTO Work Programme for the LDCs (WT/COMTD/LDC/11)
The Work Programme focused on seven systemic issues for LDCs, including market access issues, technical assistance and capacity-building initiatives and accessions.	
27 June 2002	Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for Least-Developed Country Members for Certain Obligations with Respect to Pharmaceutical Products (IP/C/25)
The decision extended the transition period for the implementation of Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceutical products until 1 January 2016. LDCs will not have to protect pharmaceutical patents and test data until 1 January 2016.	
8 July 2002	Least-Developed Country Members - Obligations under Article 70.9 of TRIPS Agreement with Respect to Pharmaceutical Products (WT/L/478)
The decision waived obligations of LDCs under Article 70.9 the TRIPS Agreement with respect to pharmaceutical products until 1 January 2016. LDCs were exempt from providing exclusive marketing rights to pharmaceuticals that were subject of a patent application until 1 January 2016.	
10 December 2002	Accession of Least-Developed Countries (WT/L/508)
The decision contained guidelines to facilitate and accelerate the accession of LDCs through simplified and streamlined accession procedures. The accession guidelines covered the areas of market access, WTO rules, process, and trade-related technical assistance and capacity building.	
19 February 2003	Implementation of Article 66.2 of the TRIPS Agreement (IP/C/28)
The decision established a mechanism to monitor the implementation of the obligations of developed countries under Article 66.2 to provide incentives for technology transfer to LDCs.	

3 September 2003	Modalities for the Special Treatment for Least-Developed Country Members in the Negotiations on Trade in Services (TN/S/13)
The modalities provided LDCs with maximum flexibility in undertaking commitments in the negotiations, and asked members to give priority to providing effective market access to sectors and modes of supply of export interest to LDCs.	
1 August 2004	Special treatment of LDCs in the context of the framework modalities of the July package (WT/L/579)
The decision on the Doha Work Programme provided LDCs with S&D in different negotiating areas. For instance, it exempted LDCs from making reduction commitments in both non-agricultural market access and agriculture negotiations, and called upon members to provide DFQF market access to LDC products.	
29 November 2005	Extension of the Transition Period under Article 66.1 of the TRIPS Agreement for LDC Members (IP/C/40)
The decision allowed LDCs to delay the implementation of the TRIPS Agreement other than the core non-discrimination provisions (Articles 3, 4 and 5) until 1 July 2013. The transition period was further extended to 2021 by Decision IP/C/64.	
18 December 2005	Annex F (Special and Differential Treatment) of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC)
<p>23) Understanding in Respect of Waivers of Obligations under GATT 1994: Requests for waivers by LDCs shall be given positive consideration and a decision taken within 60 days.</p> <p>36) Decision on Measures in Favour of Least-Developed Countries: Developed countries shall, and developing countries declaring themselves in a position to do so should, provide DFQF market access on a lasting basis, for all products originating from LDCs by 2008 or no later than the start of the implementation period. Members facing difficulties in doing so shall provide DFQF market access for at least 97 per cent of products originating from LDCs. Developing countries are accorded flexibility with respect to the phase-in and coverage of their DFQF commitments.</p> <p>38) Decision on Measures in Favour of Least-Developed Countries: Reaffirmation that LDCs are only required to undertake commitments and concessions to the extent consistent with their development, financial or trade needs, or their administrative or institutional capacities.</p> <p>84) Agreement on Trade-Related Investment Measures: LDCs are allowed to maintain or introduce measures that deviate from their obligations under the TRIMs Agreement for a specified transition period. Any measures incompatible with the TRIMs Agreement and adopted under this decision shall be phased out by 2020.</p> <p>88) Decision on Measures in Favour of Least-Developed Countries – Paragraph 1: WTO to coordinate efforts with donors and relevant agencies to significantly increase aid for trade related technical assistance and capacity building, including to help LDCs implement their obligations or commitments in the WTO.</p>	

27 May 2009	Preferential Tariff Treatment for Least-Developed Countries, Decision on Extension of Waiver (WT/L/759)
The decision extended the waiver contained in decision WT/L/304 allowing developing countries to provide preferential tariff treatment to LDC products until 30 June 2019.	
17 December 2011	Preferential Treatment to Services and Service Suppliers of Least-Developed Countries (WT/L/847)
The services waiver decision allowed members to provide preferential treatment to services and service suppliers of LDCs with respect to market access (Article XVI) and, subject to approval by the Council for Trade in Services, any other measures.	
17 December 2011	Accession of Least-Developed Countries (WT/L/846)
The decision directed the Sub-Committee on LDCs to develop recommendations to further strengthen, streamline and operationalize the 2002 accession guidelines (WT/L/508).	
25 July 2012	Accession of Least-Developed Countries (WT/L/508/Add.1)
The 2012 accession guidelines included provisions to strengthen, streamline and operationalize the 2002 accession guidelines. The guidelines established benchmarks on market access negotiations on goods and services, and provision with respect to special and differential treatment (including transition periods), transparency and technical assistance.	
11 June 2013	Extension of the Transition Period under Article 66.1 for Least Developed Country Members, Decision of the Council for TRIPS of 11 June 2013 (IP/C/64)
The decision constituted the second extension of the transition period under Article 66.1 of the TRIPS Agreement (first extension: IP/C/40). The decision allowed LDCs to delay the implementation of the TRIPS Agreement other than the core non discrimination provisions (Articles 3, 4 and 5) until 1 July 2021.	
28 June 2013	WTO Work Programme for the LDCs (WT/COMTD/LDC/11/Rev.1)
As the LDC Work Programme of 2002 (WT/COMTD/LDC/11), the revised Work Programme focused on seven systemic issues for LDCs, including market access issues, technical assistance and capacity-building initiatives and accessions. The revision included, <i>inter alia</i> , the incorporation of the United Nations Istanbul Programme of Action for LDCs for the decade 2011 2020.	
7 December 2013	Preferential Rules of Origin for Least-Developed Countries (WT/MIN(13)/42-WT/L/917)
The decision provided for multilateral guidelines for preferential rules of origin to help LDCs better use preferences accorded to them. The decision encouraged members to draw upon elements of the guidelines when they develop the rules of origin of their preferential market access schemes for LDCs.	

7 December 2013	Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries (WT/MIN(13)/43-WT/L/918)
The decision outlined the process for the operationalization of the services waiver (WT/L/847). It also recognized the need to strengthen LDCs' domestic service capacity to make use of existing opportunities and any preferences in the future.	
7 December 2013	Duty-Free and Quota-Free (DFQF) Market Access for Least-Developed Countries (WT/MIN(13)/44-WT/L/919)
According to the decision, developed country members that do not yet provide DFQF market access for at least 97 per cent of products originating from LDCs shall seek to improve their existing DFQF coverage prior to the Tenth Ministerial Conference. Developing country members, declaring themselves in a position to do so, shall seek to provide DFQF market access for products originating from LDCs, or to seek to improve their existing DFQF schemes prior to the Tenth Ministerial Conference.	
6 November 2015	Extension of the Transition Period Under Article 66.1 of the TRIPS Agreement for Least Developed Country Members for Certain Obligations with Respect to Pharmaceutical Products (IP/C/73)
The decision of the TRIPS Council extended the transition to implement of Sections 5 and 7 of Part II of the TRIPS Agreement with respect to pharmaceuticals until 1 January 2033 or until the date on which an LDC ceases to be an LDC member, whichever is earlier.	
2 December 2015	Least Developed Country Members – Obligations under Article 70.8 and Article 70.9 of the TRIPS Agreement with Respect to Pharmaceutical Products (WT/L/971)
The decision of the General Council exempts LDC members from the application of mailbox requirements and exclusive marketing rights for the same time period until 1 January 2033 or until the date on which they cease to be an LDC member, whichever is earlier.	
21 December 2015	Preferential Rules of Origin for Least Developed Countries (WT/MIN(15)/47-WT/L/917/Add.1)
The decision provided guidance for rules of origin with regard to the assessment of substantial transformation, cumulation possibilities and documentary requirements.	
21 December 2015	Implementation of Preferential Treatment in Favour of Services and Service Suppliers of Least Developed Countries and Increasing LDC Participation in Services Trade (WT/MIN(15)/48-WT/L/982)
The decision extended the LDC Services Waiver until 2030 and instructed the Council for Trade in Services to monitor the operation of preferences notified to the WTO.	
6 March 2017	Decision on Template for the Notification of Preferential Rules of Origin for Least Developed Countries (G/RO/84)
The decision provided a template for notifications of preferential rules of origin.	

14 June 2019	Preferential Tariff Treatment for Least Developed Countries (WT/L/1069)
The waiver contained in the decision of 15 June 1999 (WT/L/304) is extended until 30 June 2029.	
29 June 2021	Extension of the Transition Period under Article 66.1 for Least Developed Country Members, Decision of the Council for TRIPS of 29 June 2021 (IP/C/88)
The decision constituted the third extension of the transition period under Article 66.1 of the TRIPS Agreement (first extension: IP/C/40; second extension: IP/C/64). The decision allowed LDCs to delay the implementation of the TRIPS Agreement other than the core non-discrimination provisions (Articles 3, 4 and 5) until 1 July 2034.	

Table 3: Notification obligations in the WTO of relevance to LDCs

Notification obligation	Article	Periodicity
1. Agreement on Agriculture		
Domestic Support (Table DS:1)	Art. 18.2	Currently biennially/ upon graduation annually
Export Subsidies: Budgetary Outlays and Quantity Reduction Commitments (Table ES:1)	Art. 18.2	Annually
2. Quantitative Restrictions		
Decision on Notification Procedures for QR	G/L/59/Rev.1	Every two years
3. TRIPS Agreement		
Laws and Regulations	Art. 63.2	One-time initial notification, and updates as necessary
Information on domestic intellectual property enforcement law and practices	Art. 63.2 and TRIPS Council Decisions IP/C/2 and IP/C/5	One-time initial notification, and updates as necessary
Contact points	Art. 69	One-time initial notification, and updates as necessary
4. GATS		
Laws and Regulations	Art. III.3	Once

5. Trade Remedies

Anti-dumping: Laws and Regulations (G/ADP/N/1)	Art. 18:5	Once
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SCM Agreement: Laws and Regulations	Art. 32.6	Once
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Safeguards: Laws, Regulations and Administrative Procedures	Art. 12.6	Once
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6. Customs Issues

Customs Valuation: Laws and Regulations	Art. 22.1	Once
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Import Licensing: Legislation and products, new legislation and annual questionnaire	Art. 1.4(a)/8.2(b)	Ad hoc
	Art. 5	Once
	Art. 7.3	Annually

Rules of Origin		Once
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A) Non-preferential rules	Art. 5.1	Ad hoc
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B) Preferential rules	Annex II (4)	Ad hoc
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7. TRIMs

Trade-related investment measures	Art. 5.1	Annex F
	Art. 6.2	Annex F

8. Integrated Database*

Tariff data at the tariff line level	Annual (by 30 March)
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Import data at the tariff line level	Annual (by 30 October)
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* The latest year available.

Table 4. Overview of intellectual property protection foreseen by the TRIPS Agreement

Intellectual property rights	Subject	Minimum duration of protection under TRIPS
Copyright	Literary and artistic works (including computer programs and databases)	Life of author + 50 years
Related rights	Performers, producers of sound recordings and broadcasting organizations	50 years (performers and producers) 20 years (broadcasting)
Trademarks	Signs that are capable of distinguishing goods and services	7 years, renewable indefinitely
Geographical indications	Indications that identify the geographic origin of a good, where a given quality, reputation or other characteristic of the good is essentially attributable to its origin	Unlimited, as long as conditions are met
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 filing date or first commercial exploitation
Undisclosed information	Trade secrets, and undisclosed data submitted to government	Unlimited, as long as conditions are met

Source: WTO (2020), *Trade Impacts of LDC Graduation*.

Abbreviations

AoA	Agreement on Agriculture	MFN	most favoured-nation
DFQF	duty-free and quota-free	NFIDC	net-food importing developing country
DSB	Dispute Settlement Body	RTA	regional trade agreement
DSU	Dispute Settlement Understanding	S&D	special and differential
GATT	General Agreement on Tariffs and Trade	SCM Agreement	Agreement on Subsidies and Countervailing Measures
GATS	General Agreement on Trade in Services	TFA	Agreement on Trade Facilitation
GNI	gross national income	TRIPS Agreement	Agreement on Trade-Related Aspects of Intellectual Property Rights
LDC	least-developed country		

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This pocket edition summarizes the implications of LDC graduation on matters related to WTO rules. It reviews the most pertinent provisions in WTO agreements and how graduation can affect LDCs' participation in the WTO. It highlights that the impact of graduation will largely depend on the extent the graduating LDCs have been using the WTO flexibilities. The WTO processes allow to address some of the challenges that could result from graduation from LDC status. A range of technical assistance is also available to help graduating LDCs adjust to WTO rules.

