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General Council

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**TRADE RELATED CHALLENGES OF THE LEAST DEVELOPED COUNTRIES AND WAY
FORWARD: PROPOSAL FOR WTO SMOOTH TRANSITION MEASURES IN
FAVOUR OF COUNTRIES GRADUATED FROM THE LDC CATEGORY**

COMMUNICATION FROM DJIBOUTI ON BEHALF OF THE LDC GROUP

Revision

The following communication, dated 5 December 2022, is being circulated at the request of the delegation of Djibouti on behalf of the LDC Group.

BACKGROUND

1. At the 2021 triennial review of the UN Committee on Development Policy (CDP), 16 LDCs officially met the two graduation criteria set by the United Nations to leave the least developed country (LDC) category, and another 10 met one graduation criterion. Out of these 26 countries, 19 are WTO Members and five are in the process of accession.
2. While leaving the LDC category represents a major achievement, countries still face significant trade and development challenges after graduation and risk falling back into the category. Leaving the LDC category also implies losing access to a wide range of International Support Measures (ISM) including trade-related ones, which have contributed to LDCs socio-economic development. As documented by the work of UNCTAD, this is particularly challenging because countries meeting the graduation criteria often do so without having significantly developed their productive capacities or made sufficient progress in the structural transformation of their economies.¹ The abrupt removal of ISM can therefore result in large negative impacts for countries after graduation from the LDC category. This is particularly true in the current context where LDCs have been hit hard by trade downturns triggered by the COVID-19 pandemic. The persistent food and energy crisis resulting from the global geopolitical situation have also reversed much of the development progress achieved so far by LDCs, further strengthening the rationale for effective support post-graduation.
3. In recognition of this need, the United Nations has adopted the principle of "smooth transition" whereby specific support measures for LDCs should be phased out progressively over a period of time after graduation to avoid disrupting development progress. Consistent with Paragraph 16 of General Assembly resolution A/RES/67/221 adopted on 21 December 2012 WTO Members should extend to graduated countries existing special flexibilities available to LDCs. In addition, the UNCTAD Fifteen Outcome Document, the Bridgetown Covenant (TD/541/Add.2, paragraph 48), calls for mitigating and support measures to ensure a smooth transition for LDCs after graduation. More recently, the WTO MC12 outcome document (WT/MIN(22)/24; WT/L/1135 paragraph 5) acknowledges the particular challenges that graduation presents for LDCs including the loss of trade-related ISM, and recognizes the role that certain measures in the WTO can play in facilitating a smooth and sustainable transition after graduation.

¹ See "Strategy for graduation with momentum: Bridging pre-graduation and post-graduation development processes in the least developed countries", Policy Brief No. 99, UNCTAD, April 2022, available at https://unctad.org/system/files/official-document/presspb2022d7_en.pdf.

SMOOTH TRANSITION MEASURES IN SUPPORT OF COUNTRIES LEAVING THE LDC CATEGORY

4. Against this background, the present revised submission proposes the contours of a comprehensive and effective set of smooth transition measures in the WTO to support Members when they leave the LDC category. In doing so it builds on previous General Council submissions circulated in November 2020 (WT/GC/W/807) and in October 2021 (WT/GC/W/829) as well as the LDC ministerial declarations on MC12 of October 2021 (WT/MIN(21)/2).

5. A first element of such measures should consist of extending and gradually phasing out unilateral trade preferences granted to LDCs over a period of six years (which corresponds to two triennial reviews by the UN CDP) or a period determined by the preference providing Member, after the entry into force of a decision of the UN General Assembly to exclude a country from the LDC category. Annex 1 to this submission provides a draft General Council decision to that effect.

6. A second element, as part of the WTO smooth transition measures, the LDC group further proposes the following principles in favour of Members after graduation from the LDC category:

- i. Exempting from action under the WTO dispute settlement mechanism, for an appropriate period of time, the LDC-specific special measures listed in the Appendix 1 of Annex 2 to this submission, when these are applied by or in favour of a Member after graduation from the LDC category.
- ii. Extending for an appropriate period of time, LDC-specific special flexibilities incorporated in future WTO Agreement, Understanding, Ministerial, General Council or other relevant Decisions in accordance with modalities to be defined in such instruments.
- iii. Providing continued access to all LDC-specific technical assistance and capacity building programs and facilities provided under the WTO system for an appropriate period of time.

7. The LDC group proposes to instruct the Sub-Committee for Least-Developed Countries to develop recommendations for support measures - based on the core set of principles listed in paragraph 6 - in favour of countries when they leave the LDC category, and to complete this work and report to the General Council no later than 30 June 2023 for appropriate action. Annex 2 to this submission provides a draft General Council decision to that effect.

ANNEX 1

**PROPOSAL FOR A GENERAL COUNCIL DECISION ON DUTY-FREE, QUOTA FREE (DFQF) EXTENSION
IN FAVOUR OF COUNTRIES GRADUATED FROM THE LDC CATEGORY**

Draft General Council Decision

The General Council,

Having regard to the provision for consensus decision-making in paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

Noting proposals submitted by the LDC Group at the General Council (WT/GC/W/807, WT/GC/W/829, and WT/GC/W/807/Rev.2);

Recalling the Programme of Action for Least Developed Countries (LDCs) for the Decade 2011–2020, adopted at the Fourth United Nations Conference on the Least Developed Countries, held in Istanbul, Turkey in 2011, in which Member States committed to assisting LDCs with an overarching goal of enabling half of the LDCs to meet the criteria for graduation by 2020;

Further recalling relevant UN General Assembly Resolutions, and paragraph 5 of the WTO MC12 Outcome Document adopted by Ministers on 17 June 2022 (WT/MIN(22)/24, WT/L/1135);

Therefore, recognizing the need to establish effective procedures supporting the smooth transition of LDCs towards their new status after graduation, through extending LDC-specific trade-related support measures over a reasonable period of time;

Decides as follows:

Unilateral trade preferences

1. We encourage Members granting unilateral trade preferences to least developed countries, through their preferential programmes that determine eligibility based on the listing by the UN of a country as a Least Developed Country, to have procedures in place to extend, or gradually phase out, such programmes over a period of six years, or a period determined by the preference providing Member, after the entry into force of a decision of the UN General Assembly to exclude a country from the LDC category.
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ANNEX 2

PROPOSAL FOR A GENERAL COUNCIL DECISION ON SMOOTH TRANSITION SUPPORT MEASURES IN FAVOUR OF COUNTRIES GRADUATED FROM THE LDC CATEGORY

Draft General Council Decision

The General Council,

Having regard to the provision for consensus decision-making in paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (WTO);

Noting proposals submitted by the LDC Group at the General Council (WT/GC/W/807, WT/GC/W/829, and WT/GC/W/807/Rev.2);

Recalling the Programme of Action for Least Developed Countries (LDCs) for the Decade 2011–2020, adopted at the Fourth United Nations Conference on the Least Developed Countries, held in Istanbul, Turkey in 2011, in which Member States committed to assisting LDCs with an overarching goal of enabling half of the LDCs to meet the criteria for graduation by 2020;

Further recalling relevant UN General Assembly Resolutions and paragraph 5 of the WTO MC12 Outcome Document adopted by Ministers on 17 June 2022 (WT/MIN(22)/24, WT/L/1135);

Therefore, recognizing the need to establish effective procedures supporting the smooth transition of LDCs towards their new status after graduation, through extending LDC-specific trade-related support measures over a reasonable period of time;

Decides as follows:

Support measures in favour of WTO Members after leaving the LDC Category

1. We instruct the Sub-Committee for Least-Developed Countries to develop recommendations for support measures in favour of a Member after the entry into force of a decision from the UN General Assembly to exclude that Member from the LDC category and report to the General Council no later than 30 June 2023.
2. The support measures referred to in paragraph 1 shall include the following elements:
 - i. Provisions for continued access to LDC-specific technical assistance and capacity building programmes and facilities provided under the WTO system for an appropriate period of time,
 - ii. A proposed list of LDC-specific support measures based on the provisions of WTO Agreements and Decisions and modalities contained in Appendix I to this decision, and
 - iii. Any other relevant measures, as appropriate.
3. Measures identified in paragraph 2(ii) shall be exempt from actions under the WTO dispute settlement mechanism for a period of time to be agreed by Members, when applied by, or in favour of, a Member after the entry into force of a decision from the UN General Assembly to exclude that Member from the LDC category.

APPENDIX 1**LIST OF SPECIAL LDC PROVISIONS IN WTO AGREEMENTS AND DECISIONS TO BE INCLUDED FOR SMOOTH TRANSITION****A. LDC-SPECIFIC PROVISIONS IN WTO AGREEMENTS**

Provision	Description	Treatment under WTO smooth transition
Agreement on Subsidies and Countervailing Measures (SCM)		
Article 27.2(a)	LDCs exemption from prohibition of export subsidies.	As requested in the LDC Group's submission WT/GC/W/742 – G/C/W/752
Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)		
Article 66.1 Extension of the Transition Period for LDC Members (IP/C/88)	Implementation of the TRIPS other than Articles 3, 4 and 5, extended until 1 July 2034, or until the date when they cease to be an LDC, whichever date is earlier.	Transition period shall be extended for a period of [X years] after graduation from the LDC category or until the end of the final extension period granted to LDCs, whichever date is earlier.
Article 66.2	Developed countries to provide Transfer of Technologies (ToT) incentives in favour of LDCs.	Provision of ToT incentives shall be extended for a period of [X years] after graduation from the LDC category.
Trade Facilitation Agreement		
Article 17	Early warning Mechanism – Extension of implementation dates for provisions in categories B and C	Flexibilities provided for LDCs shall be extended for a period of [X years] after graduation from the LDC category.
Article 19.2	Shifting between categories B and C	Flexibilities provided for LDCs shall be extended for a period of [X years] after graduation from the LDC category.
Article 20.2 – 3	Grace Period for Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes	Flexibilities provided for LDCs shall be extended for a period of [X years] after graduation from the LDC category.
Dispute Settlement Understanding		
Article 24	Special Procedures Involving Least-Developed Country Members	Special procedure provided for LDCs shall continue to apply for a period of [X years] after graduation from the LDC category.
Agreement on Fisheries Subsidies		
Article 8, footnote 13	Notification of additional information under Articles 8.1 every four years	Notification schedule shall continue to apply for a period of [X years] after graduation from the LDC category.

B. SPECIFIC DECISIONS TAKEN IN FAVOUR OF LDCs

LDC-Specific Decision	Description	Treatment under WTO smooth transition
LDC waivers including transition periods and trade preferences		
Enabling Clause L/4903 of 28 November 1979, para. 2(d), 6 and 8	Allows WTO Members to grant LDC specific treatment	The right to grant specific treatment under the enabling clause shall be extended to countries after graduation from the LDC category.
Preferential Tariff Treatment for Least-Developed Countries – Decision on Waiver (WT/L/304, WT/L/759, and G/C/W/764)	Allows developing countries to grant trade preferences to LDCs until 30 June 2029	Provisions of the waiver shall continue to apply for a period of [X years] after graduation from the LDC category or until the end of the waiver validity, whichever date is earlier.
Decision in Favour of LDC. Annex F Hong Kong Ministerial Decision, Duty-Free and Quota-Free Market Access for LDCs, Bali and Nairobi Ministerial Decisions on Rules of Origin for LDCs (WT/L/919, WT/MIN(15)/47 and WT/L/917)	Provision of DFQF market access for LDCs and more flexible rules of origin	DFQF market access and more flexible rules of origin shall continue to apply for a period of [X years] after graduation from the LDC category.
LDC modalities & services waiver (TN/S/13, WT/L/847, WT/MIN(15)/48 - WT/L/982, WT/MIN(13)/43 - WT/L/918)	The decision extends the LDC Services Waiver until 2030	Provisions of the waiver shall continue to apply for a period of [X years] after graduation from the LDC category or until the end of the waiver validity, whichever date is earlier.
Cotton Ministerial Decision WT/MIN(15)/46 - WT/L/981	DFQF for cotton and related products produced and exported by LDCs	DFQF for cotton and related products shall be extended for a period of [X years] after graduation from the LDC category.
LDC obligations under Article 70.8 and Article 70.9 of the TRIPS Agreement with respect to Pharmaceutical Products (WT/L/971) of 2 December 2015	Exempts LDC members from the application of mailbox requirements and exclusive marketing rights until 1 January 2033 or until such a date on which they cease to be a LDC member, whichever is earlier	Exemption shall be extended for a period of [X years] after graduation from the LDC category or until the end of the final extension period granted to LDCs, whichever date is earlier.
Extension of the LDC Transition Period under Article 66.1 of the TRIPS Agreement for certain obligations with respect to Pharmaceutical Products (IP/C/73)	Exempts LDC members from the implementation or application of Sections 5 and 7 of Part II of the TRIPS Agreement or enforcements of rights provided under these sections, with respect to Pharmaceutical Products, extended until 1 January 2033, or until the date when they cease to be an LDC, whichever date is earlier	Transition period shall be extended for a period of [X years] after graduation from the LDC category or until the end of the final extension period granted to LDCs, whichever date is earlier.

LDC-Specific Decision	Description	Treatment under WTO smooth transition
Export Competition Ministerial Decision WT/MIN/(15)/45 - WT/L/980	Flexibilities under Article 9.4 of the Agreement on Agriculture dealing with export subsidies extended until 2030	Flexibilities shall be extended for a period of [X years] after graduation from the LDC category or until the final extension period granted to LDCs, whichever date is earlier.
Notification obligations		
Domestic support notification (G/AG/2)	LDCs to notify every two years	Notification schedule shall continue to apply for a period of [X years] after graduation from the LDC category.