



28 April 2022

(22-3383)

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General Council

Original: English

LDC VIEWS ON WTO REFORM DISCUSSIONS AND PROPOSALS

COMMUNICATION FROM CHAD ON BEHALF OF THE LDC GROUP

Revision

The following communication, dated 28 April 2022, is being circulated at the request of the delegation of Chad on behalf of the LDC Group.

Introduction

1. This revision consolidates the LDC submission in 2019 of JOB/GC/223 and JOB/GC/223/Corr.1 and adds updated observations due to new developments and the pandemic that hit the world in 2020 and thereafter.
2. The effects of the lockdowns and recovery process linger today. All Members of the WTO have deliberated to bring their economies and peoples back on track. As Members prepare for MC12, the LDC Group requests that this revised submission be taken into account under any element regarding WTO Reform including for the twelfth WTO Ministerial Conference (MC12) and work ahead.
3. After 2019, notwithstanding the Appellate Body crisis, some Members have continued to avail themselves of the WTO dispute settlement mechanism and have agreed to alternative methods to address the appeals tier. Other Members have suggested that alternative mechanisms to reform the appeals function should be re-examined. While it is generally assumed that LDC WTO Members are the least subject to dispute settlement, the LDC Group maintains its view, as participants in the system, on the need for a well-functioning WTO in all of its pillars including to restore the expectations on the dispute settlement mechanism – namely a two-tiered structure for the resolution of disputes. These elements are part of the balance of rights and obligations of all Members found in the Marrakesh Agreement.
4. To better organize the recent debate raised by Members on WTO Reform since 2021 and deliberation post-MC12, the LDC Group prefers that all discussions should take place under the auspices of the General Council in its dedicated sessions led by the General Council Chair. In approaching the WTO Reform discussions, LDC Members will continue working with the GC Chair.
5. LDC Members emphasize the importance of the following principles regarding discussions and proposals. WTO reform should:
 - i. Take full account of the widespread capacity constraints of LDC Members, in the levels of obligations and implementation expected of them;
 - ii. Ensure inclusive negotiating processes and consensus-based decision-making; and that whatever the negotiating format, all WTO Members have the right to access promptly all documents examined during the negotiations;
 - iii. Ensure that proposed reform measures, including those related to the provision of technical assistance to LDCs, help effectively and sustainably address their structural capacity constraints in order to enable them to meet their commitments;

- iv. Guarantee the preservation and improvement of the benefits granted to LDCs in terms of the legal and procedural flexibilities contained in WTO agreements and decisions;
- v. Observe Article XI.2 of the Marrakesh Agreement that LDCs "will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities";
- vi. Ensure that relevant discussions in WTO Councils and Committees contribute to strengthening the monitoring, and implementation, of all decisions taken in favor of LDCs, and to achieve more results that positively impact their economies;
- vii. Consider the capacity limitations of LDCs and allow them to continue with LDC-specific flexibilities for an additional period of time for smooth transition after graduation from the LDC category, in line with the relevant provisions of the resolutions adopted by the UN General Assembly;
- viii. Extend sufficient flexibility to the acceded LDC Members in taking needful policy decisions, as and when required; and
- ix. Explore additional flexibilities and complementary resources within the framework of special and differential treatment.

Appellate Body Reform

6. The LDC Group views a functioning dispute settlement system, including fair and effective appellate review, as essential to the role of the WTO.

7. Members are urged to:

- i. Resolve the impasse on the Appellate Body through the nomination of its members at the earliest time possible;
- ii. Avoid creating rules and procedures that impose administrative burdens and additional complexity that would disproportionately affect potential LDC parties or third parties in disputes in any further discussions on Appellate Body reform; and
- iii. At the request of an LDC Member involved in a WTO dispute, and pursuant to Article 27.2 of the DSU, ensure that the Secretariat is able to provide legal advice and assistance to that LDC Member during each stage of a dispute settlement proceeding, including additional flexibilities and resources for LDCs.

Notification and Transparency

8. The LDC Group recognizes that effective transparency and notification requirements are part of the backbone of the WTO, and that all WTO Members, including developed Members, need to improve their implementation of these requirements. In this respect, developed country Members should be prepared to lead by example.

9. It is important to avoid the imposition of new obligations that exacerbate challenges already faced by LDCs.¹ Notification difficulties of LDCs are due to capacity constraints, many of which cannot be resolved simply through short-term Secretariat technical assistance and capacity building. In all circumstances, LDC Members must be provided technical and financial assistance to fulfill their notification and transparency obligations. Conditions placed on making requests for help are also tantamount to new obligations and creating burdens.

10. Tools and approaches introduced in a facilitative and positive manner should be explored. In this regard, existing difficulties in notification should be reviewed, and where required, the templates

¹ See Marrakesh Agreement (particularly Article XI.2) and the Uruguay Round Ministers' Decision on Measures in Favour of Least-Developed Countries (paragraph 1).

and procedures should be simplified. As part of positive facilitative approaches, the LDC Group welcomes the Secretariat's recent ongoing work on a "one-stop-shop" WTO Notification Portal. This portal was introduced in March in beta format at <https://notifications.wto.org/en> in order to receive comments and feedback from Members. The LDC Group is exploring feedback with the Secretariat to devise an LDC page within the WTO Notification Portal that could include a filter to LDC Members and provide information about relevant LDC flexibilities. The Group would like to also call on relevant WTO bodies to introduce electronic notification systems that could be integrated into the full functioning of the newly introduced WTO notification portal, now under construction. Nevertheless, these suggestions from the LDC Group should not be seen as a panacea to solve all of the difficulties faced by LDCs in notifications.

11. The Secretariat is urged to continue their laudable work to provide the necessary support to LDC Members to overcome any perceived shortcomings in implementation in capital. Such support might include enhanced technical assistance to developing countries and LDCs. A support plan may be developed to create a national framework that will enable LDC Members to respond effectively and in a timely manner to notification and transparency obligations.

12. In addition, the LDC Group does not support the imposition of punitive measures. Existing administrative measures, including ineligibility for technical assistance due to arrears in WTO membership fees, should be reviewed and re-examined.

Council and Committee Meetings

13. Since 2020, all meetings on negotiations and deliberations in the WTO were taken into account as LDCs faced the need to prioritise and look at other capacity options to keep up with meetings. It appeared that longstanding rules that had been established to avoid overlapping Council and negotiating meetings were abandoned until the learning curve improved. Hybrid meetings have provided options for Members in terms of participation, including broader capital-based participation. However, logistics including required internet connectivity and working ability from different time zones, have been challenging for the LDCs.

14. With the eventual introduction of virtual platforms, internally and by the WTO, to convene meetings, deliberations and engagement among Members could also gradually recommence. Members and the Secretariat adapted to this method during the epidemiological situation in the absence of the in-person meetings. The pandemic situation improved and hybrid formats for WTO meetings were put in place. However, the concerns LDCs and other developing countries have raised over many years regarding scheduling conflicts, overlapping Council and negotiating group meetings had escalated.

15. In order to facilitate the application of procedures in WTO Councils and Committees, the LDC Group supports the need to clarify in advance the definition and scope of the notion of "trade concerns." The clarification would touch on what concerns can be brought by one Member to the attention of another in those bodies.

16. The LDC Group accepts the potential benefits of improving the functioning of the WTO Councils and Committees through better and more structured meeting procedures. However, a challenge for LDCs are proposals for tightened deadlines, the structured written exchange between Members of information on trade-related measures, and related Chair consultative processes. These could impose a disproportionately greater burden on the LDC Members, given their lower capacity levels in capitals and Geneva.

17. The LDC Group has advocated for more improvements to alleviate the problem of overlaps and proliferation of meetings on a multitude of issues and appreciates the efforts of Chairs and the Secretariat in this regard. However, more effort is needed to avoid scheduling conflicts among various Councils and Committees, whether in-person, virtual or hybrid mode. In addition, the proliferation of open-ended meetings with no written records should be avoided, and annotated agendas circulated prior to meetings should also be considered.

18. Same day online summary notes and highlights of WTO regular meetings prepared by the relevant divisions are improvements and very helpful to LDCs. Factual meeting notes accessible to

LDC Group Members would be appreciated. It might also be useful to have a one-stop online access to such summary meeting notes for the LDC Group.

19. Given the language profile of many LDC Members, the Group also attaches great importance to the maintenance of full translation and interpretation services. The LDC Group welcomes the improvements made on the WTO provision of interpretation in the three official languages. Interpretation is critical to avoid discrimination among Members and hinderances to their equal participation in consultations and negotiations. For all meetings, this is also equally important to ensure LDC Members' access to all WTO documents in the three languages.

20. With respect to Ministerial Conferences, the LDC Group supports full transparency and inclusivity in decision-making in the preparation and organization of the conferences both in terms of process and substance. Multilateral approaches should be encouraged with respect to the negotiation of possible agreements.
