An Analysis of the WTO Accession Guidelines for Least Developed Countries

This information note provides a short analysis of the accession benchmarks for least developed countries (LDCs) adopted by the World Trade Organization (WTO) General Council at the end of July 2012 with the aim to strengthen, streamline and operationalize the 2002 LDC accession guidelines. It focuses on benchmarks established for goods as the most concrete and measurable outcome of the decision, as well as reviews aspects related to services, special and differential treatment, transparency, and technical assistance.

1. Least Developed Country Accession to the WTO

When the WTO was created in 1995, 30 LDCs joined the organisation. Most were already members of the General Agreement on Tariffs and Trade and entered the global trade body as part of the Uruguay Round deal. Since then, only five LDCs have joined the WTO: Cambodia and Nepal in 2004, Cape Verde in 2008, and Samoa and Vanuatu in 2012. Currently, 33 out of 48 LDCs are members of the WTO, with ten more negotiating to accede. The remaining five have not yet requested to become members (table 1). Among the acceding LDCs, Laos and Yemen are in the final stages of the process.

Table 1: LDCs which are non members of the WTO

<table>
<thead>
<tr>
<th>LDC</th>
<th>Date of Working Party Establishment</th>
</tr>
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<tbody>
<tr>
<td>Afghanistan</td>
<td>Since 2004</td>
</tr>
<tr>
<td>Bhutan</td>
<td>Since 1999</td>
</tr>
<tr>
<td>Comoros</td>
<td>Since 2007</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>Since 2007</td>
</tr>
<tr>
<td>Eritrea</td>
<td>-</td>
</tr>
<tr>
<td>Ethiopia</td>
<td>Since 2003</td>
</tr>
<tr>
<td>Kiribati</td>
<td>-</td>
</tr>
<tr>
<td>Lao People’s Dem. Republic</td>
<td>Since 1997</td>
</tr>
<tr>
<td>Liberia</td>
<td>Since 2007</td>
</tr>
<tr>
<td>Sao Tome and Principe</td>
<td>Since 2005</td>
</tr>
<tr>
<td>Somalia</td>
<td>-</td>
</tr>
<tr>
<td>Sudan</td>
<td>Since 1994</td>
</tr>
<tr>
<td>Timor-Leste</td>
<td>-</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>-</td>
</tr>
<tr>
<td>Yemen</td>
<td>Since 2000</td>
</tr>
</tbody>
</table>

Source: www.wto.org

1 WT/COMTD/LDC/W/55/Rev.2
2 Angola, Benin, Chad, Haiti, Rwanda, and the Solomon Islands joined the WTO in 1996, followed by the Democratic Republic of the Congo in 1997. The other countries joined the WTO in 1995, the year of its creation. Maldives, formerly an LDC, is also a WTO member since 1995, but graduated out of the LDC category in 2011 (since it was an LDC at the moment of its accession, it will be considered in the analysis proposed in this paper).
3 Cape Verde graduated in 2007. Nevertheless, it negotiated its accession while it was still an LDC, and will be considered as one of the five recently acceded LDCs in this analysis.
Accession to the WTO is a complex process. It officially starts with a written request to become a WTO member in accordance with article XII; later the prospective member submits a memorandum describing those aspects of its trade and economic regime that have a bearing on WTO agreements. This document is then examined by a working party open to all current members.

In parallel, the acceding country holds bilateral meetings with interested individual WTO members. These talks cover specific market access concessions and commitments (in terms of tariff rates, binding coverage, and specific services commitments), and other related rules and regulations in goods and services, to be applied on an MFN basis. This process can take several years, and in practice any member can create delays if it is unhappy with the concessions and commitments made by the acceding country. For instance, Ukraine was the last member to finalise its bilateral talks with Laos, as it was pushing the Asian country to further lower tariffs in certain sectors. It continues to play a similar role in Yemen accession.

At the end of the negotiating process, the working party finalises the terms of accession which define the rights and obligations agreed upon by the acceding country. The final accession package is presented to either the WTO General Council or the Ministerial Conference, which then approve the new membership, usually by consensus. The process is completed when the acceding country ratifies the accession protocol.

In December 2002, the WTO General Council adopted guidelines for LDC accessions, stipulating that members are to exercise restraint in seeking market access concessions from acceding LDCs, while the latter are expected to offer reasonable concessions commensurate with their individual development, financial, and trade needs. The text further stated that “negotiations for the accession of LDCs to the WTO, [shall] be facilitated and accelerated through simplified and streamlined accession procedures, with a view to concluding these negotiations as quickly as possible.”

2. The Rationale for Strengthening the 2002 Guidelines

Despite the 2002 guidelines, LDCs have long complained that WTO members routinely ask them to take on commitments beyond their capacities during the bidding process. These commitments also tend to exceed those required from LDCs and other developing countries that joined the organisation in its early years. This reality is illustrated in Figure 1, which compares the level of commitments undertaken by the 30 original LDC members to the five LDCs that joined the WTO more recently, both for agricultural (Figure 1.a) and non-agricultural market access products (NAMA, Figure 1.b). On average, bound agricultural tariffs are 47.2 percentage points lower in the case of the five recently acceded countries, whereas for NAMA they are 21.4 percentage points lower.

Figure 1.a: Bound and applied tariffs for agricultural products in LDC members of the WTO

![Figure 1.a](image)


5 WT/L/508
Similar differences between original LDC members and recently acceded LDCs exist in the level of binding coverage, i.e. the percentage of tariff lines that members agree to bind at a certain level upon joining the organisation. While the WTO Agreement on Agriculture requires all members to bind all agricultural tariff lines, the level of binding coverage in industrial goods varies considerably among LDCs, as shown in Figure 2. Among recently acceded LDCs, Nepal has bound 99.3 per cent of its NAMA tariff lines, whereas the other four agreed to a 100 per cent binding coverage. In contrast, only eight of the original LDC members have bound all their industrial tariffs, with several LDCs leaving the vast majority of their NAMA lines unbound.

Figure 2: Binding coverage (percent) in NAMA for LDC WTO members

At the Eighth WTO Ministerial Conference in December 2011, trade ministers decided to “further strengthen, streamline, and operationalise the 2002 LDC accession guidelines,” with the inclusion of benchmarks, particularly in the area of goods, that take into account the level of commitments undertaken by existing LDC Members. Members were also urged to explore possible benchmarks in the area of services. After over six months of intense negotiations in the WTO LDC Sub-Committee under the chairmanship of Ambassador Steffen Smidt of Denmark, with countries such as Mauritius, Colombia, and Australia playing a facilitating role, the General Council formally approved new guidelines on 25 July 2012. The decision establishes benchmarks on goods and services, as well as elements on special and differential treatment, transition periods, transparency, and technical assistance.

3. Benchmarks on Goods

The negotiations on goods benchmarks focused on defining an appropriate overall level of average bound rates for both agricultural and NAMA products, as well as an agreed level of binding coverage for NAMA. Importantly, the text states that establishing benchmarks on average bound rates does not prejudge the right of members to negotiate the level of bound rates in individual lines of interest to them. In this respect, the agreed benchmarks do not establish a minimum or maximum bound tariff but rather a set of multilaterally agreed reference points that should guide bilateral market access negotiations between acceding LDCs and their trading partners.

The LDC group, which is a coalition tasked with representing current LDC members’ views at the WTO, initially proposed that the average bound rate of all LDC members7 - i.e. the average of the 30 original LDC Members plus the five recently acceded LDCs - be used as a basis for establishing the benchmarks. More specifically, the group proposed an average bound rate of 70 percent in agriculture and 40 percent in NAMA, with 55 percent binding coverage of NAMA lines. At the other end of the spectrum, the European Commission proposed a 40 percent and 30 percent benchmark, respectively, for agriculture and NAMA, along with 100 percent binding coverage of NAMA lines in order to ensure predictability.

The final agreed text is a compromise between the two approaches. It aims to ensure an appropriate balance between predictability of tariff concessions - a key element of the multilateral trading system - and the need to address the specific constraints or difficulties of LDCs and reflect their “legitimate development objectives.”

According to the text, acceding LDCs shall bind all agricultural tariff lines at an overall average rate of 50 percent. This level is about 28 percentage points lower than the average of the 30 LDCs which joined the organisation in its early years, but 18 percentage points higher than the five recently acceded LDCs. With regard to non-agricultural products, the decision provides two options: acceding LDCs shall bind 95 percent of their NAMA lines at an overall average rate of 35 percent, or they can undertake more comprehensive binding coverage. In the latter case, the acceding country shall be afforded proportionately higher overall average rates, to be agreed with WTO members. The text also specifies that “in such cases the acceding LDC shall be entitled to transition periods of up to 10 years for up to 10 percent of their tariff lines.”

Table 2 summarises the main options discussed during the negotiations.

6 WT/L/846
7 Including Maldives and Cape Verde: in fact, the first joined the WTO when it was still LDCs, the second negotiated its accession before its graduation.
8 WT/COMTD/LDC/21, p.3
Table 2: Main Benchmark and Binding Coverage Options Discussed in the Negotiations

<table>
<thead>
<tr>
<th></th>
<th>NAMA</th>
<th>Agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benchmark negotiations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average bound tariff of original LDC members</td>
<td>44.4%</td>
<td>78.8%</td>
</tr>
<tr>
<td>Initial LDC group proposal</td>
<td>40%</td>
<td>70%</td>
</tr>
<tr>
<td><strong>Agreed benchmark</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU informal proposal</td>
<td>30%</td>
<td>40%</td>
</tr>
<tr>
<td>Average bound tariff of recently acceded LDCs</td>
<td>23%</td>
<td>31.6%</td>
</tr>
<tr>
<td><strong>Binding coverage negotiations</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Average binding coverage of original LDC members</td>
<td>48.4%</td>
<td></td>
</tr>
<tr>
<td>Initial LDC group proposal</td>
<td>55%</td>
<td></td>
</tr>
<tr>
<td><strong>Agreed binding coverage</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU informal proposal</td>
<td>100%</td>
<td></td>
</tr>
<tr>
<td>Average binding coverage of recently acceded LDCs</td>
<td>100%</td>
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</tbody>
</table>


Figure 3 compares the agreed benchmarks with the average tariff currently applied in eight acceding LDCs. It shows that in all these countries, average applied tariffs are lower than the 50 percent benchmark in agriculture, and the 35 percent benchmark in NAMA. In other words, the existing tariff structure of those acceding LDCs is already in line with the proposed benchmarks and would not need to be adjusted in any significant way as they go through their accession process.

The real concern during the negotiations was rather how to guarantee a certain level of comfort, or “water in the tariff,” given the high dependence of LDCs on tariffs for fiscal revenue and their vulnerability to external shocks. This situation prevails in most WTO member LDCs, including those who acceded recently. All deliberately maintain a certain difference between their bound rates and those applied in practice (see Figures 1.a and 1.b).
While all acceding countries' average tariffs are already below the agreed benchmarks at the sectoral level, several of them have tariff peaks that exceed the benchmark, particularly in industrial goods. Figure 4 presents a breakdown of NAMA applied tariffs in those countries. In the case of Ethiopia, the average applied NAMA tariff is at 16.6 percent, but all tariffs in the clothing sector are at 35 percent (figure 4.a). Average applied tariffs on textiles are at 27.9 percent, with peaks at 35 percent. For other NAMA sectors, average applied tariffs are lower, but Ethiopia has tariff peaks at 35 percent for mineral and metal products, chemicals, wood, paper, leather, footwear, transport equipment, and manufactures.

For Sudan (Figure 4.b) average applied NAMA tariffs are at 18.4 percent, and the average tariff for clothing, fish and fish products is higher than the benchmark, respectively at 40 percent and 39.4 percent. With the exception of petroleum, Sudan has tariff peaks at 40 percent for all the NAMA sub-sectors. In the case of Bhutan, the average applied NAMA tariff is at 18.9 percent (figure 4.c). The average tariff in all NAMA sub-sectors is lower than the benchmark outlined in the guidelines. Nevertheless, the country has high tariff peaks in almost all sub sectors: up to 100 percent in manufactures and up to 50 percent for chemical products, wood, paper, textiles, leather, footwear, and non-electrical machinery.

Figure 4: NAMA applied tariffs in selected acceding LDCs (AVE %)
Figure 4.b: Sudan


Figure 4.c: Bhutan

The July 2012 decision does not prevent LDCs from negotiating higher rates for sensitive lines, as it does not impose any tariff cap. For example, paragraph 3 (c) recognises that “the tariff concessions to be offered by the acceding LDCs could vary depending on their individual/particular circumstances.” It further states that “establishing benchmarks on average bound rates does not pre-judge the right of Members to negotiate the level of bound rates in individual lines of interest to them.”  

Furthermore, paragraph 7 (i) allows LDCs to keep up to 5 percent of their NAMA lines unbound. This binding coverage is more restrictive than the 55 percent binding coverage originally envisaged by LDCs. In practice however, acceding LDCs’ imports tend to concentrate on a fairly small number of items. Figure 5 illustrates this high import concentration by presenting the share of the most heavily imported industrial goods against a country’s total NAMA imports. It shows that, in theory, excluding 5 percent of total NAMA lines could allow LDCs to leave between 80 and 99 percent of all their imports unbound. To avoid such an extreme scenario, some WTO members initially suggested that unbound lines should not represent more than a certain percentage of total imports. This was opposed by LDCs, who insisted that they must be allowed to choose which lines to leave unbound. In an effort to reconcile the two perspectives, a footnote to paragraph 7 states that “the unbound tariff lines will be subject to negotiations and will include tariff lines that take into account the sensitivities of acceding LDCs.”

**Figure 5: Import concentration in acceding LDCs**

As mentioned previously, those acceding LDCs who are ready to bind more than 95 percent of their tariff lines should, according to paragraph 7 (ii), be afforded a proportionately higher overall average tariff rate and be entitled to transition periods of up to 10 years for up to 10 percent of their tariff lines. The exact binding coverage, tariff rate, and transition periods will remain a matter of negotiation. The decision thus introduces a trade-off between the level of predictability for the system guaranteed by a wider binding coverage and the level of ambition in market access commitments undertaken by acceding LDCs. In deciding between the two options, acceding LDCs will have to balance their need to protect a limited number of sensitive products versus the overall level of water in the tariff that they wish to maintain.

Figure 6 illustrates the implications of both options on the overall average level of water in the tariff, expressed in percentage points. It considers two extreme scenarios.

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10 Ibid.
In the first one, LDCs decide to bind their average tariff at 35 percent and leave five percent of their highest tariff lines unbound (assuming that these are the most sensitive). The exclusion of those lines from the calculation of the overall average applied rates results in a slightly lower average rate and therefore a higher level of water in the tariff, defined as the difference between the average applied rate and the 35 percent NAMA benchmark. In the second scenario, we assume that LDCs decide to bind 100 percent of their NAMA lines. In exchange we assume that they are granted a proportionally higher overall average benchmark of 40 percent, instead of the 35 percent envisaged in paragraph 7(i). By increasing the level of the benchmark, this also results in a higher level of water in the tariff. The extent to which either scenario results in higher level of overall water in the tariff largely depends on the tariff structure of the acceding LDC.

Figure 6: Changes in the level of overall water in the tariff under two different benchmark scenarios

![Graph showing changes in water in the tariff under two scenarios](source: ICTSD calculation based on WTO World Tariff Profiles 2008 - 2011)

For the eight acceding LDCs considered in this information note, scenario 2 results in a higher overall level of water in the tariff by a range of 3.8 to 4.8 percentage points, depending on the country. For instance, under the first scenario Comoros will have an overall average level of water in the tariff of 23.1 percentage points, whereas under the second one the level reaches 27.9 percentage points.

In other words, opting for broader binding coverage should be the preferred option for those countries that privilege the need of maintaining a higher level of water in the tariff across the board, given that the effect of excluding unbound lines does not compensate for the stricter benchmark level envisaged in scenario 1. On the other hand, those privileging first and foremost the need to protect a small number of sensitive lines are better off going for a stricter benchmark.

In conclusion, the decision on goods represents a clear compromise between the initial LDC position and what other WTO members were ready to concede. As explained above, the benchmarks will apply to the final overall average bound rates of acceding LDCs. As such, they won’t affect the right of members to negotiate individual lines in bilateral talks as long as the final average is consistent with the multilaterally agreed benchmarks. This, together with the possibility of leaving a limited number of lines unbound, provides sufficient flexibility for LDCs to address their sensitivities, while at the same time ensuring predictability and a reasonable level of ambition. Overall, as summarised by one international observer, the main merit of the decision is that “the two parties could agree on a common denominator that puts clear and enforceable limits to potential unreasonable demands on LDC acceding countries.”

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4. Benchmarks on Services

Discussions on services in the negotiations were conceptually more complicated. In addition to defining an average number of service sectors and sub-sectors where acceding LDCs would undertake commitments, several developed countries highlighted the need to establish qualitative benchmarks to assess the breadth of commitments that acceding LDCs would undertake. In this spirit, the approved guidelines identify a series of principles and qualitative benchmarks, along with posing some limits that shall inform accession talks. The guidelines do, however, fall short of establishing measurable and clearly enforceable benchmarks as in the case of goods.

According to the decision, WTO members “shall take into account the serious difficulty of acceding LDCs in undertaking commitments, in view of their special economic situation and their individual development, financial and trade needs.” Therefore, “there shall be flexibility for acceding LDCs for opening fewer sectors, liberalising fewer types of transactions, and progressively extending market access in line with their development situation. Acceding LDCs shall not be expected to offer full national treatment, nor are they expected to undertake additional commitments under Article XVIII of the [General Agreement on Trade in Services, or GATS].”

Commitments from acceding LDCs may vary depending on each country’s particular circumstances. Therefore, each acceding LDC shall identify its priority service sectors and sub-sectors and make reasonable offers commensurate with its specific situation and capacities. Furthermore, it “shall have the flexibility to undertake commitments, whether full or partial, under different modes of supply,” along with having “the flexibility to phase in such commitments [...] over an adequate period of time.” Finally, “acceding LDCs shall not be required to undertake commitments in services sectors and sub sectors beyond those that have been committed by existing WTO LDC Members,” and countries “shall exercise restraint in seeking commitments in trade in services from the acceding LDCs.”

Some LDC delegates have criticised the lack of detail in the services guidelines. A few trade observers even qualified the services benchmarks as a missed opportunity, arguing that “no serious effort had been made to show either the importance of services for the development of the countries concerned or to find some common ground on what would be a reasonable approach to services negotiations.” Others, while recognizing the merits of the decision, feared that the proposed text would do little in preventing WTO members from seeking disproportionate services commitments from acceding LDCs.

As in the case of goods, recently acceded LDCs have indeed undertaken commitments that go further than those of original LDC members. For example, while original LDC members have undertaken commitments on 20 services subsectors, on average out of the 160 subsectors identified by the WTO classification list - Cambodia, Nepal, and Cape Verde undertook commitments in 94, 99 and 77 of their service subsectors, respectively.

The telecommunications sector is an illustrative case in this respect. Due to its economic importance, this sector has attracted a relatively high level of commitments from members with different levels of development. According to a recent paper prepared by the WTO Secretariat at the request of the LDC Subcommittee Chair, twelve least developed countries have undertaken commitments in telecommunications in their GATS schedules. The five recently acceded ones are among the twelve, whereas 23 LDCs have not yet undertaken any commitments in this sector. The sectoral breadth of commitments is also larger for recently acceded countries. In fact, the three LDC members to have undertaken commitments in all 15 telecommunications subsectors are recently acceded members. Six other LDCs have commitments in a range of eight to eleven subsectors, and the remaining three members have commitments ranging from just one to six subsectors.
Finally, the text contains various recommendations and general principles that are to guide future negotiations on LDC accessions. WTO members recognised that accession “shall continue to remain one of the systemic elements of the WTO Work Programme for the LDCs.” To enhance the transparency of bilateral accession negotiations and reduce the risk that acceding LDCs are asked to take on disproportionate commitments, the text says that “the Accession Working Parties will continue to provide the forum for Members and acceding LDCs to collectively review the bilateral market access negotiations on goods and services. Members shall [also] refrain from reopening the accession package once negotiations have been completed.’’

The text also emphasises the need for enhanced technical assistance and capacity-building “to help acceding LDCs to complete their accession process, implement their commitments and to integrate them into the multilateral trading system.” The WTO secretariat is to provide technical assistance to acceding countries on the base of their direct inputs in order to enhance greater coordination and an effective delivery of assistance programmes. The text suggests that acceding LDCs identify and prioritise their accession-related needs while preparing or updating their Diagnostic Trade Integration Studies under the Enhanced Integrated Framework. Thus, the text recognizes that technical assistance programmes shall be demand-driven and tailored to each LDC’s accession process.

Special and Differential Treatment (S&DT) provisions and transition periods are recognized as general principles that shall guide accession negotiations. Indeed, the text reaffirms that S&DT, as guaranteed in multilateral trade agreements, ministerial decisions, and other WTO legal instruments, shall be applicable to LDCs in the process of accession. Moreover, “requests for additional transition periods/arrangements beyond the ones foreseen under specific WTO Agreements shall be favourably considered on a case-by-case basis,” These shall also be “accompanied by Action Plans, with a view to helping acceding LDCs implement WTO rules” through specific technical assistance programmes. WTO members have also committed themselves to support and assist acceding LDCs during the transition periods.

16 A diagnostic trade integration study (DTIS) evaluates internal and external constraints on a country’s integration into the world economy, and recommends areas where technical assistance and policy actions can help the country overcome these barriers.
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Information Note by Christophe Bellmann, Paolo Ghisu and Anne-Katrin Pfister.

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ICTSD welcomes feedback and comments on this document. These can be forwarded to Paolo Ghisu (pghisu@ictsd.ch) or Anne Pfister (apfister@ictsd.ch)

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