

GC decision on LDCs accession: progress on goods and missed opportunities on services and transparency

IDEAS Centre's comments on the recommendations on strengthening, streamlining and operationalization of 2002 LDC Accession Guidelines ([WT/COMTD/LDC/W/55/Rev.2](#))

Background

The decision of the Ministerial Conference back in December 2011 on giving the mandate to the Sub-committee on LDCs to “develop recommendations to further strengthen, streamline and operationalize the 2002 Guidelines” by, inter alia, “including benchmarks, in particular in the area of goods, which take into account the level of commitments undertaken by existing LDC Members” was seen as an acknowledgment that the Guidelines were not followed in the WTO accession negotiations of LDCs. It is a fact that only 5 LDCs acceded to the WTO since the WTO was formed under conditions which expose their economies to the worldwide competition much more than is the case with more developed original WTO members, or their LDC peers who became members of the WTO in 1995. While being a comprehensive and well balanced text, the Guidelines from 2002 offered opportunity to different interpretations and had no enforceable provisions. The work on benchmarks, as it was thought, was supposed to fill in those blanks and provide better protection from unreasonable requests of WTO members in negotiations, while still guaranteeing a result which would be both development friendly and a contribution to global market openings.

Almost seven months down the road of a complex negotiating process, a text has been presented to the members of the Sub-Committee which should meet these ambitious goals. Was it worth the trouble? Has it been able to meet the high expectations? What would be the future of WTO accessions for LDCs after this text is adopted? The following analysis will try to address those questions and put the decision in the context of wider WTO reality.

IDEAS Centre believes it is well placed to provide this analysis as it has been providing policy- and negotiating advice over 10 years continuously in the accession process to LDCs, as well as to developing and transition economies. IDEAS has been involved in the discussions on the systemic issues of accession process for many years and has provided assistance to developing and least developed economies.

Overall context

In 1995 when the WTO was formed, 30 LDCs acceded instantly to the organization as original WTO LDC members. Five more acceded since the WTO was formed while 10 are still in the various stages of the accession process. For 3 LDCs (Laos, Yemen and Bhutan) which are in advanced stages of negotiations the document will not be applied. There are therefore only 7 LDCs still being in the accession process. With the potential arrivals of Tuvalu, Kiribati, East Timor, Eritrea, Somalia and South Sudan who are still some time apart from starting their negotiations we are arriving at a number of 13 LDCs who can count on agreeing their terms of accession according to the provisions of this document. It is clear that the size of the markets of

these 13 countries is negligible in world trade terms, which speaks about the economic impact of this document. To put it more bluntly, we may speak on closing the barn doors after the horses have already left.

Clearly the document has much stronger political relevance than economic one. After all, it comes at a time when the Doha Round reached its most serious stalemate so far. This context has facilitated the agreement on the decision as WTO members wanted to send a message about being able to reach agreement on providing urgent response to critical situation faced by the LDCs. The LDCs WTO accession is an issue which may be outside of the scope of the Round but it is still important for the efficient work of the organization, and the urgency and diligent work on the document are therefore easy to understand.

It needs to be said that the LDCs felt bigger pressure to conclude the negotiations, as the decision directly concerned the future of 13 LDCs. Developed countries, on the other hand, could afford not to have a decision as the current model was acceptable to them. The only pressure they had was a political one, and they responded to it by agreeing on the decision as it is today. This asymmetric distribution of negotiating power is the reason why the final result is tilted more towards the negotiating position of developed countries.

General assessment

The fact that the WTO has come to an agreement on an issue which was disputed is already a huge success given the fact the members have failed to come to a common denominator on any of the subject under the Doha agenda. In this sense the decision is a step in a right direction, and we hope it will bring much needed positive impulse in the Doha round.

The merit of the decision is that it reaffirms the development content and priority of trade policy. It is certainly useful to remind WTO members that the development priorities of acceding countries should be the target of accession negotiations rather than the commercial interests (which in the case of LDCs are anyway very limited) of WTO members. When it comes to looking at concrete results of this document we can see it adding positive value in the area of goods negotiations, while being potentially dangerous for the development interests of LDCs when it comes to the text on services negotiations. In other areas, the document contributes only one new and useful element.

Obviously, the full agreement on a more meaningful package in all areas the decision covers would be probably much more difficult to achieve, both from political, and technical perspectives. Such wide-ranging package would also take considerably more time to be agreed upon. It is for that reason that we support this document acknowledging the little added value it brings to the negotiations, as the alternative would be no deal or a deal at such a late point that it would not benefit anybody.

The Benchmark document deals with the following six areas: Goods negotiations, services negotiations, transparency, S&D and transition periods and technical assistance. The whole chapter on multilateral negotiations (probably the most important track in the accession process) has been left out. The fact that LDCs did not insist on inclusion of multilateral negotiations in the package is regrettable as it would greatly improve the conditions of the process. The LDCs position was always that reforms are a painful way to arrive to international best practices which should be in line with their development objectives. Obviously it would

have been useful if WTO members could have agreed on what are the key priority reforms for both the integration into the world market and the development objectives. We regret that the decision does not address requests of members which go beyond WTO requirements. We also believe that the decision was a perfect opportunity to introduce the rule which would require WTO members not to ask commitments they themselves are not able to do.

The document is a result of a hard and dedicated work of the group of interested members headed by the Chair of the Sub-Committee and is clearly reflecting the flow of the discussions within the Sub-Committee. In terms of wording, it departs slightly from its previous iterations as it is more concrete and offers clearer solutions and numbers in the area of goods negotiations, but also new provisions in the area of services negotiations.

In the remainder of this document we will provide comments on different areas of the decision from our perspective.

Goods benchmarks

As explained above LDCs were the only ones to gain or lose from these negotiations. Developed countries did not have a direct interest to conclude negotiations and therefore had a stronger negotiating position. From a pragmatic standpoint it seems that any result higher than the average of recently acceded LDCs (status quo) is a win for the LDCs.

And indeed, the decision stipulates that all agricultural products should be bound at 50%, while for the industrial products LDCs should bind at the average of 35% if they decide to bind 95% of the tariffs, or have a higher average if they decide to bind at 100% after a transition period.

IDEAS is of the view that by exempting 5% of tariffs from binding LDCs should be able to protect its vital economic interests. Virtually all of each acceding LDCs trade can be covered with the exempted 5% of tariffs. The proposals for average bindings are also a good result for LDCs as they are quite above the average commitments of recently acceded LDCs (for AG products 50% compared to 32% and for NAMA products 35% or higher compared to 23%). The fact that the decision provides the incentive for LDCs to bind at 100% is positive too, as many LDCs have applied rates far below required bound rates and would be able to enjoy “policy space” even if the bindings would be at 100%. Moreover the fact that the tariffs are bound provides more transparency and predictability to the trade system of LDCs and contributes to their development. Additionally, an average of 50% means that there are tariffs for sensitive product which can go much above this level, as long as there is a sufficient number of less sensitive tariffs below this threshold.

This decision is therefore important as the two parties could agree on a common denominator which puts clear and enforceable limits to potential unreasonable demands on acceding LDCs.

Services benchmarks

Services negotiations are important for the development of acceding LDCs. The proposed text, however, clearly shows that no serious effort has 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. We believe members missed the opportunity to address in a comprehensive manner the complex services negotiations. It seems

that the complexity prevented members from entering into discussions which would made an attempt to provide measurable benchmarks.

The agreed text does not contain benchmarks but repetitions of principles which already exist and are largely not applied. The only benchmark: “no commitments in services sectors and sub-sectors that ... (go beyond)...what has been committed by existing WTO LDC members” could actually be dangerous for the development interests of LDCs and could negatively reflect on their negotiating processes. If the interpretation of this wording by the WTO members would go into the extreme direction by adding the maximum commitment of each LDC in the various sectors and sub-sectors, this decision may give full freedom to them to impose ever more stringent commitments on newcomers which go way beyond what other countries have done. No benchmark would actually be better than a benchmark that can be interpreted that way.

The principles of members exercising restraint and LDCs having the right to do less in terms of commitments were all enshrined in the Guidelines from 2002. The reason why members decided to go one step beyond the Guidelines is because those principles were largely not applied. It is in this sense disappointing to note that members were not able to go beyond this general language which will not advance the process.

Transparency in accession negotiations

Again, here we believe another opportunity to elaborate a mechanism which would guarantee a transparent proceeding in bilateral negotiations was missed. The provisions of using offices of the chairs of Sub- Committee, or reporting on the progress of discussions were all available and used even before the decision was made. We do not see how this set of general clauses could help resolve more contentious issues in bilateral negotiations, as they mainly count on peer pressure, which many members proved to be able to resist quite effectively.

We commend the provision which prevents members from reopening the accession package once negotiations have been completed and consolidated schedules circulated for verification at the level of the Working Party. In the past members demonstrated on occasions that they are ready to contravene to this “good common practice” which now became an obligation.

S&D and transition periods

The provisions under this chapter are mainly repetition of previous commitments or simply stating the obvious developments observed already in the accession processes. No serious effort has been made to provide concrete examples or areas where LDCs should be able to benefit from the differentiated treatment.

Technical assistance

The creation of new aid functions and monitoring mechanisms to be added to the WTO portfolio are largely functions that should be done by development agencies which have been created for that purpose. This decision can, in our view, therefore well contribute to further bureaucratization of technical assistance activities without the promise of more efficiency.