Securing Interests of Bangladesh and Other Graduating LDCs in view of WTO-MC12

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Abstract

This paper examines Bangladesh's issues of concern and interests, as a graduating LDC, in view of the graduation challenges and developments in the WTO, and presents a set of policies and actions that the country would need to pursue towards sustainable graduation. LDC members of the WTO have submitted proposal for new international support measures to be put in place, in a time-bound manner, in support of the graduating LDCs, in the backdrop of the manifold challenges that these countries are anticipated to face once the leave the group of LDCs. The paper argues that the concerns in this connection involve three areas: Firstly, inspite of the impressive achievements in terms of key socio-economic indicators, LDCs slated for graduation will be making the transition with many embedded structural weaknesses which have been further exacerbated by the adverse impacts of the COVID-19 pandemic and the ramifications of the ongoing Russia-Ukraine war on their economies; secondly, graduation will entail significant negative impacts for the economies of graduating LDCs which originated from the loss of LDC-specific support measures; and thirdly, to make graduation sustainable, graduating LDCs will be in need of a set of support measures to help them adjust to the new trade and economic environment and to build the needed supply-side capacities to remain competitive. The paper focuses on three areas in this backdrop: The expectations of the graduating LDCs from the then upcoming WTO-MC12 which was held in Geneva in June 2022; an assessment of the MC12 decision; and the way forward for Bangladesh as the country strategises in view of graduation out of the LDC group in November 2026. The paper observes that whilst the WTO-MC12 decision does keep a window of opportunity open for further discussion, it had failed to deliver the expected results. Accordingly, graduating LDCs will need to prioritise their own homework to make graduation sustainable and irreversible and to take advantage of the benefits of graduation and the emerging opportunities in the regional and global markets. The last section of the paper articulates some of the key strategies that Bangladesh should pursue in this connection. The paper argues that over the next few years Bangladesh will have to be guided by three identities which will need to inform its perspectives and actions in order to make graduation sustainable: as an LDC (by making best of the preferential treatment which it will continue to enjoy till the time when the country graduates in 2026); as a graduating LDC (by proactively pursuing the cause of this particular cohort of LDCs in multinational, regional and bilateral discussions and platforms); and as a future (non-LDC) developing country (by keeping in the perspective the interests of developing country members in the WTO, by addressing the adverse implications of loss of LDC-specific preferences, by undertaking the needed reforms and by taking steps to deepen regional cooperation and global integration.)

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Acronyms

ADB	Asian Development Bank
AIIB	Asian Infrastructure Investment Bank
AoA	Agreement on Agriculture
ASEAN	Association of Southeast Asian Nations
BFTA	Bilateral Free Trade Agreement
BIMSTEC	Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation
CDP	Committee for Development Policy
COVID-19	Coronavirus Disease 2019
CPTPP	Comprehensive and Progressive Agreement for Trans-Pacific Partnership
DDR	Doha Development Round
DF-QF	Duty-free and Quota-free
DSB	Dispute Settlement Body
EBA	Everything but Arms
EEZ	Exclusive Economic Zone
EIF	Enhanced Integrated Framework
EU	European Union
EVI	Economic Vulnerability Index
FDI	Foreign Direct Investment
FTA	Free Trade Area
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	Gross Domestic Product
GEF	Global Environment Facility
GNI	Gross National Income
GSP	Generalized System of Preferences
GSP+	Generalized System of Preferences Plus
GVC	Global Value Chain
G-77	Group of 77
G-90	Group of 90
HAI	Human Assets Index
IBRD	International Bank for Reconstruction and Development
ICT	Information and Communication Technology
IDA	International Development Assistant
IDLO	International Development Law Organization
IFAD	International Fund for Agricultural Development
IP	Intellectual Property
IPoA	Istanbul Programme of Action

IPR	Intellectual Property Rights
ISM	International Support Measure
IUU	Illegal, Unreported and Unregulated
LDC	Least Developed Country
LDCF	Least Developed Countries Fund
LDC IV	Fourth United Nations Conference on the Least Developed Countries
LDC V	Fifth United Nations Conference on the Least Developed Countries
LIC	Low-income Country
MC	Ministerial Conference
MFN	Most Favoured Nation
MSME	Micro, Small and Medium Enterprise
NDB	New Development Bank
NFIDC	Net Food-Importing Developing Country
PMO	Prime Minister's Office
PoA	Programme of Action
RCEP	Regional Comprehensive Economic Partnership
RMG	Readymade Garments
RoO	Rules of Origin
RTA	Regional Trade Agreement
RVC	Regional Value Chain
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Area
SCCF	Special Climate Change Fund
SCMs	Subsidies and Countervailing Measures
SDGs	Sustainable Development Goals
SPS	Sanitary and Phytosanitary Measures
SSC	South–South Cooperation
STDF	Standards and Trade Development Facility
S&DT	Special and Differential Treatment
TFA	Trade Facilitation Agreement
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
UN	United Nations
UNCDF	UN Capital Development Fund
UNCTAD	United Nations Conference on Trade and Development
UNDESA	United Nations Department of Economic and Social Affairs
UNECOSOC	United Nations Economic and Social Council
UNFAO	United Nations Food and Agriculture Organization
UNOPS	United Nations Office for Project Services
USA	United States of America
USD	United States Dollar
WDI	World Development Indicators
WFP	World Food Programme
WTO	World Trade Organization

Introduction

The present Working Paper deals with some of the key challenges facing graduating Least Developed Countries (LDCs) such as Bangladesh as they prepare for the transition to (non-LDC) developing countries. The Paper is divided into three parts. Part A, written earlier, prior to the then upcoming twelfth Ministerial Conference of the World Trade Organization (WTO-MC12), presents the expectations in view of the Ministerial, from the perspectives of Bangladesh and other graduating LDCs. Part B presents an assessment of the MC12 outcome, by taking a graduating LDC lens, in order to capture to what extent the expectations of these countries were actually met. Part C concentrates on agendas and issues to be pursued by Bangladesh in view of the MC12 outcomes and in anticipation of the WTO-MC13 to be held in about two years and the required homework during the run up to Bangladesh's graduation in November 2026.

Part A: Expectations of Graduating LDCs in View of MC12

Part A of the Working Paper deals with issues of concern and interest to graduating LDCs, and presents in some details the priorities of Bangladesh, in the backdrop of the then upcoming WTO-MC12 which was held, after multiple deferments, on 12–17 June, 2022 in Geneva.

A.1 The Context

The WTO-MC12 took place at a time like no other. Apart from the emergent health risks associated with the raging Coronavirus Disease 2019 (COVID-19) pandemic, the outbreak was having short and medium as also far-reaching consequences for the economies and livelihoods of people across the globe. Nowhere were these adverse impacts so manifestly evident as in the relatively weaker economies, particularly in the LDCs. The case of graduating LDCs calls for specific mention since these countries were having to prepare for graduation under the long shadow of the pandemic. The discussion as regards the challenges of graduation had particular relevance for South Asian LDCs, as three of the four LDCs in the region were among those which were stated to graduate out of the LDC group in the course of next few years.

In recent years, the discourse on helping the graduating LDCs move towards sustainable graduation has been gaining increasing traction in the backdrop of old and new challenges facing the graduating LDCs; the pandemic added a new dimension and a new urgency to this discussion. It is from this vantage point that the WTO-MC12 was of such heightened interest and importance to the graduating LDCs. Supporting the graduation process and the graduated LDCs, through the multilateral trading system, was seen by the graduating LDCs as one of the key deliverables of the MC12.[1] The significantly large number of LDCs being considered for graduation at one go was also an important reason why this demanded urgent attention of the global community and WTO Members.

[1]Before the pandemic, Bhutan was recommended for graduation in December 2023, and Bangladesh and Nepal were scheduled to be recommended for graduation in 2024 at the review meeting of the Committee for Development Policy of the United Nations (UN-CDP) in 2021. However, the CDP recommended deferment of LDC graduation for Bangladesh and Nepal till 2026. The only non-graduating LDC in the region is Afghanistan.

To recall, as of now, only six LDCs have graduated since the time the group was first identified by the UN in 1971 as a separate stratum and as a distinct category among the developing countries.[2] In contrast, at present 16 LDCs are at various stages of graduation.[3] Before the pandemic had struck in 2020, 12 LDCs became eligible for graduation by either meeting at least two of the three graduation criteria, or thanks to having crossed the threshold of double the per capita Gross National Income (GNI). Eligibility of such a large number of LDCs for graduation has put the issue of possible implications of loss of International Support Measures (ISMs) at the front and centre of discussion on LDC graduation.

As was noted above, 12 LDCs were slated for graduation before the pandemic at the 2018 triennial review of the UN-CDP. Vanuatu subsequently graduated in December 2020. Thus, before the 2021 triennial review of the CDP, 11 LDCs were slated for graduation of which seven were recommended by the United Nations Economic and Social Council (UN-ECOSOC).[4] Three of these were from South Asian region—Bangladesh, Bhutan and Nepal. The recommendation was discussed at the September 2021 session of the UN. The recommendation for graduation of Myanmar and Timor-Leste was deferred by the CDP till 2024.[5] No specific timeline was suggested for Tuvalu and Kiribati (which are small island countries), taking into consideration their specific vulnerabilities and special circumstances as also in view of the request from the respective governments. At the 2022 review of the CDP, five LDCs—Cambodia, Comoros, Djibouti, Senegal, and Zambia—were considered to have met the eligibility criteria for graduation for the first time. Recommendation of the CDP and UN-ECOSOC, for graduation of Bangladesh, Nepal and Lao PDR was endorsed at the November 24, 2021 session of the UN General Assembly. There is new a firm timeline for Bangladesh to graduate out of the group of LDCs—on November 24, 2026.

Part A deals with two issues in view of the MC12 from the perspective of the graduating LDCs. Firstly, the context and the backdrop in which MC12 had taken place. Secondly, a number of areas are highlighted where LDC graduation will likely have most significant implications for the economies of the graduating LDCs. This is done from two vantage points—from the perspective of the Special and Differential Treatment (S&DT) provisions enjoyed by the LDCs as part of the various WTO Agreements and initiatives, and in view of the preferential treatment accorded by the WTO Members to the LDCs on an autonomous basis through unilateral schemes.

A.2 Emergent Scenario on the Eve of MC12

MC12 was held at a time like no other. The emergent scenario on the eve of the Ministerial Conference was not conducive for the large number of LDCs which were slated for graduating out of the group of LDCs.

As table 1 indicates, the graduating LDCs constitute an important segment among the LDCs in terms of a number of key indicators including Gross Domestic Product (GDP) and trade in goods and

[2]Botswana (1994), Cape Verde (2007), Maldives (2011), Samoa (2014), Equatorial Guinea (2017) and Vanuatu (2020).

[3]These are: Angola, Comoros, Djibouti, São Tomé and Principe, Senegal and Zambia (Africa); Bangladesh, Bhutan, Cambodia, Lao PDR, Myanmar, Nepal and Timor-Leste (Asia); Kiribati, Solomon Islands and Tuvalu (Pacific).

[4]These are: Angola (2024), Bangladesh (2026), Bhutan (2023), Lao PDR (2026), Nepal (2026), São Tomé and Principe (2024) and Solomon Islands (2024). These are regarded as 'graduating LDCs'.

[5]In part, due to recent political developments in the former (Myanmar), and because of sustainability concerns as regards the latter (Timor-Leste).

Table 1: Selected Data on LDCs and Graduating LDCs (Billion USD)

Countries	GDP	Total export of goods	Total export of services	Total import of goods	Total import of services
World	84705.43	17347.77	5041.74	16995.23	4706.09
*All LDCs** (including 16 graduating LDCs)	1108.69	170.55	41.86	237.73	60.14
*LDCs recommended for graduation (7)***	443.77	61.15	8.68	75.74	16.74
Bangladesh	324.24	32.47	6.31	48.85	8.41
Bhutan	2.41	0.65	0.13	0.96	0.23
Nepal	33.66	0.89	0.90	9.59	1.09
Angola	62.31	20.94	0.07	9.54	5.58
Lao PDR	19.14	5.81	1.18	6.27	1.25
São Tomé and Principe	0.47	0.01	0.04	0.12	0.04
Solomon Islands	1.55	0.38	0.05	0.40	0.15
Other graduating LDCs (9)	152.38	44.24	11.92	51.84	9.73
Other LDCs (26)	512.53	65.16	21.26	110.16	33.66

Source: World Development Indicators (WDI), World Bank.

Note: a. * Central African Republic, Chad, Eritrea and Somalia are not included because of lack of data. However, the concerned magnitudes are insignificant.

b. ** Respective shares of seven LDCs in the LDC group in view of the five indicators are: 40.1 per cent, 35.9 per cent, 20.7 per cent, 31.9 per cent and 27.8 per cent.

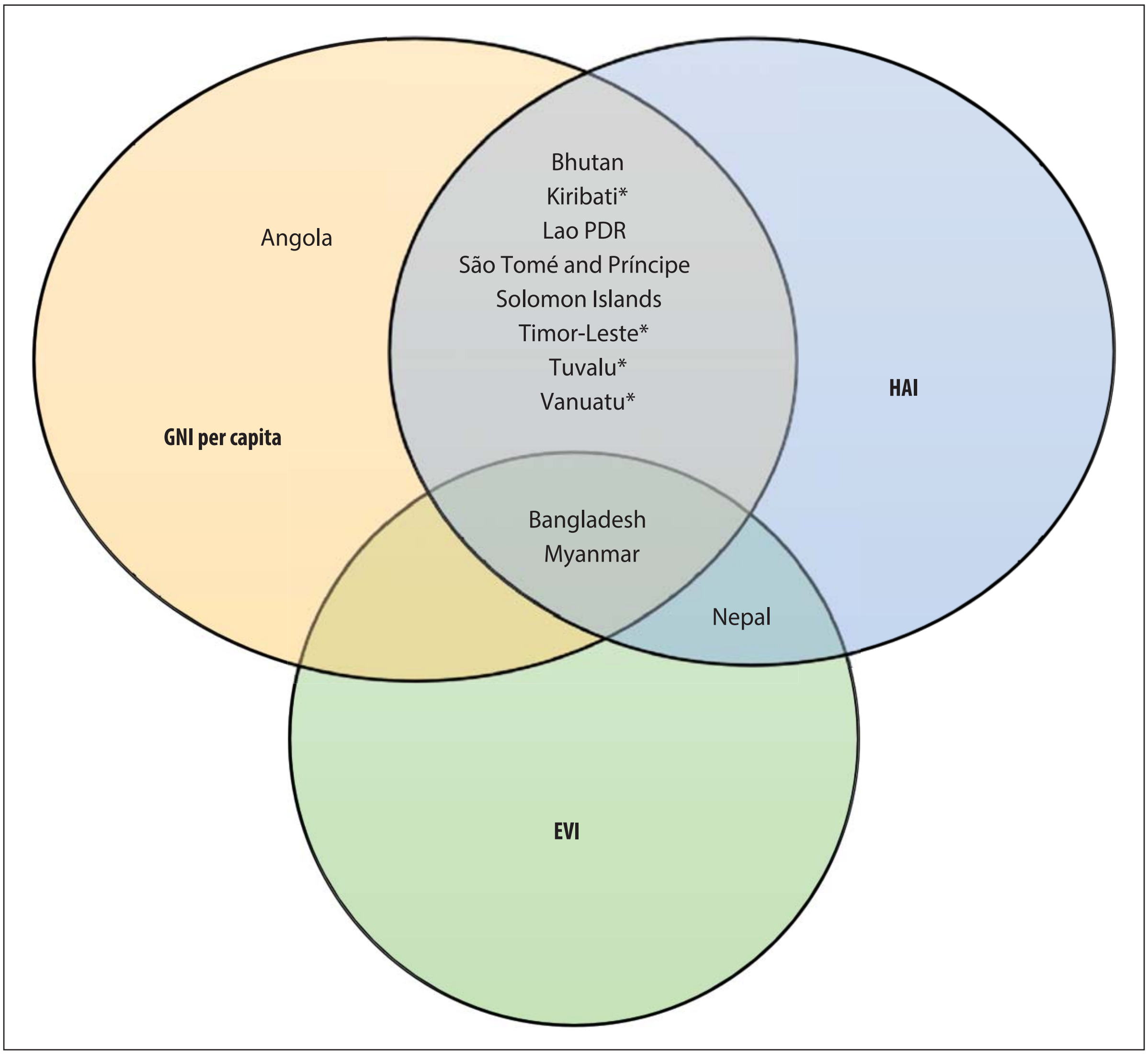
services. The fact of Bangladesh being an outlier among the graduating LDCs is also borne out by the table. The challenges facing these LDCs can be better appreciated if some of the specific features of the emergent scenario in the backdrop of which their graduation was taking place is kept in the perspective. The following discussion draws attention to some of these.

A.2.1 Graduating in the Shadow of the Pandemic

A review of cross-LDC experiences clearly reveals that the pandemic had significantly adverse implications on the prospects of smooth graduation, graduation with momentum and sustainable graduation of the graduating LDCs. Performance of LDCs and graduating LDCs in terms of all three graduation criteria—the GNI per capita, Human Assets Index (HAI) and Economic Vulnerability Index (EVI)—were impacted in a way that undermined years of progress attained by these countries in these critically important areas of socio-economic performance. It is pertinent to keep in mind that, of the currently slated seven graduating LDCs, only Bangladesh and Nepal had crossed the threshold for EVI at the time of the 2018 review of the CDP (Figure 1). The pandemic is likely to have further accentuated the economic vulnerabilities of the graduating LDCs which are making the transition under the long shadow of the pandemic .

As the United Nations Conference on Trade and Development (UNCTAD) Vulnerability Profile testifies, a number of graduating LDCs were more severely affected compared to other countries. The adverse impact of COVID-19 on their trade performance was considered to be one of the key factors in this context, with disruptions in Global Value Chains (GVCs) having further accentuated these difficulties (UNCTAD, 2020). Global trade, a major driver of economies of most LDCs and graduating LDCs, was affected in three ways: firstly, from the demand-side, through depressed

Figure 1: Graduating LDCs and Graduation Criteria: Pre-pandemic Scenario



Source: Rahman and Bhattacharya (2020a).

Note: a. (*) Graduating LDCs which have also achieved the income only criterion (the threshold is double the per capita GNI, i.e. USD 2,460).

b. Vanuatu has graduated in 2020.

c. Myanmar and Timor-Leste were not recommended at the CDP review of 2021.

consumption expenditure in export destination countries; secondly, from the supply-side, owing to stoppages and production disruptions in the sourcing LDCs; and thirdly, through disruption of transport linkages between the supplying LDCs and importing countries. Economies of some of the LDCs and graduating LDC which were highly dependent on earnings from tourism LDCs such as Nepal and Bhutan in South Asia were negatively affected since this particular sector was particularly hard-hit by the pandemic.

While for some graduating LDCs remittance flows did not decline to the extent it was apprehended initially[6], many migrant workers were compelled to return home because of the pandemic.[7] For many, the prospect of going back to work became highly uncertain. The high remittance flows to some of these countries were driven by factors which were unlikely to sustain in future.[8] Also, there had been a significant decline in both domestic investment and inward Foreign Direct Investment (FDI) flow to the LDCs with consequent fall in overall investment. Deferment of payments, cancellation orders and depressed demand meant that export earnings of graduating LDCs experienced significant fall in 2020. Even when there was some upturn in the commodity prices, considerable volatility, both in terms of demand and prices, continued to persist in the face of the second and third wave of the pandemic.

As the aforesaid UNCTAD report has pointed out, the level of external debt in LDCs was already rising before the 2020 crisis, from a low of 24 per cent equivalent of the GDP in 2012 to 32 per cent in 2019, and was expected to rise further over the foreseeable future. Although Bangladesh and Nepal in the South Asian region are considered to be at low risk from the perspective of debt distress, Bhutan is considered to be at moderate risk (IMF, 2021). In the face of increasing fiscal deficits induced by the pandemic, many LDCs and graduating LDCs had to resort to higher external borrowings. This is likely to lead to higher debt and debt servicing liabilities in future.[9] It is also pertinent to mention here that over the recent past, almost all graduating LDCs (barring Nepal) have made the transition from low-income to lower middle-income country. This would mean that these countries were no longer eligible for the highly concessional loans from the World Bank and other multilateral lending institutions. These were now considered as *blend countries*, with consequent higher rate of interest on borrowings, lower maturity and grace periods and more stringent lending conditionalities.[10]

All these developments were likely to make graduation a much more difficult journey than was anticipated earlier. Indeed, years of progress made by the LDCs and graduating LDCs were at stake. ‘The discernible progress made by the LDCs in the recent past in improving productive capacities and human assets should not be allowed by the international development community to disappear into the oblivion because of the COVID-19’ (Bhattacharya and Islam, 2020). The need for global support towards sustainable LDC graduation was thus undeniable.

A.2.2 Embedded Structural Weaknesses

While the three LDC graduation criteria are important measures of a country’s progress, in terms of a number of key socio-economic indicators, it should be recognised that they do not capture many

[6]In case of Bangladesh, remittance flows experienced a robust growth of 18 per cent in 2020 compared to 2019; while for Nepal, the flows picked up in Q4 of 2020 (about 3.5 per cent growth).

[7]About 500 thousand migrant workers had returned to Bangladesh because of the pandemic. It was apprehended that around the same number of Nepalese also returned home, many of them migrant workers (RMMRU, 2021; ADBI, OECD & ILO, 2021).

[8]Some of the drivers include the followings: cash incentives from the government, transfer from informal channel to formal owing to COVID-related disruptions, migrant workers sending their life-time savings back home in the face of uncertainties, and higher demands for support from cash-strapped remittance-receiving households in the backdrop of COVID-induced income erosion.

[9]For example, Bangladesh’s foreign borrowings are expected to be about USD 7 billion in FY2021–22, a sharp rise from about USD 3 billion in FY2018–19.

[10]The International Development Assistant (IDA), part of the World Bank, rate of interest for low-income countries (LICs) is highly concessional (at or lower than 0.7 per cent per annum), with 30 to 40 years maturity period and 5–10 years grace period. On, the other hand, for blend and non-IDA (International Bank for Reconstruction and Development—IBRD) loan, the average interest rates are much higher and the conditionalities are more stringent.

of the underlying causes of vulnerability and structural and institutional weaknesses that persist in the LDCs. Not surprisingly, many of the candidate LDCs which have met graduation eligibility requirements, continue to suffer from embedded structural deficits which could potentially undermine the ability to move towards smooth and sustainable LDC graduation. Also, to be noted, at the UN CDP review of 2014, the thresholds for graduation for HAI and EVI were fixed at the level of 2012 (at 66 and above and 32 and below, respectively). Previously these were moving numbers. The original idea was that the two thresholds should reflect the changes and improvements in reference to a set of countries which included all LDCs and non-LDC. That the number of comparator countries was fast declining is sometimes cited as the reason for fixing the EVI and HAI values at the 2012 levels. However, this is hardly tenable. While it is true that the number of non-LDC LICs was coming down, the number of LDCs have remained almost the same, and quite significant (47 at the time). It is not inconceivable that the target set at the Fourth United Nations Conference on the Least Developed Countries (LDC IV) in Istanbul as part of the Istanbul Programme of Action (IPoA) to halve the number of LDCs by 2020, had played a role in this. It was because of the changes in the two graduation thresholds which have, to a large extent, contributed to the significant rise in the number of LDCs becoming eligible for graduation in very recent years.

A.2.3 A Much Weakened WTO

As is known, in recent years, for a number of reasons, the WTO had remained largely paralysed. Questions were raised by the United States of America (USA) concerning the decision-making modality and procedures, appointment, remit of authority and mandate concerning the *Appellate Body* of the Dispute Settlement Body (DSB) of the WTO. However, the causes of dysfunctionality run deeper. Some powerful countries had raised questions about *systemic issues* concerning the multilateral trading system, including the decision-making process under the *single undertaking modality*. The pandemic has revealed the deep divide among WTO Members as regards a number of key issues of WTO governance. Many Members pursued protectionist measures in the name of the national economic interests and had imposed export restrictions.

Uncertainties about the role and the future of the WTO has meant that there has been little or no progress as regards the work of various negotiating groups in the WTO. Only in the recent past one observed some movement in the context of discussions on Fisheries Subsidies, and, to some extent, concerning certain aspects of the Agreement on Agriculture (AoA). The decision of the Agreement on Trade-Related Aspects on Intellectual Property Rights (TRIPs) Council to extend the *transition period* (relating to compliance) for the LDCs under Article 66.1 was perhaps the other positive outcome of recent times.[11] Barring these, there was hardly anything encouraging to speak of.

To note , there had not been any tangible progress as regards the built-in agendas of interest to the LDCs, such as the Duty-free and Quota-free (DF-QF) decision of the Sixth Ministerial Conference (MC6), General Agreement on Trade in Services (GATS) waiver, decision of the Eighth Ministerial Conference (MC8), follow-up of the decision concerning the Bali LDC package of the Ninth Ministerial Conference (MC9) and decisions agreed at the Tenth Ministerial Conference (MC10) in Nairobi. As may also be recalled, the Eleventh Ministerial Conference (MC11) in Buenos Aires ended without any Ministerial Declaration in the backdrop of deep-rooted divisions among Members concerning almost all the agendas on the negotiating table. The protectionist measures pursued by many developed

[11] The transition period which ended in July 2021 was extended by another 13 years, till 2034.

country Members in dealing with the pandemic, mentioned above, had further weakened the spirit of a rule-based multilateral system envisioned by the WTO.

It is true that the discussions on E-commerce, Micro, Small and Medium Enterprises (MSMEs) and Investment Facilitation had made some progress. However, these are being held in various platforms outside of the ambit of the WTO negotiating committees. On the other hand, these discussions would have important implications for trade interests of LDCs and graduating LDCs. While some LDCs are party to these discussions, others are not.

Thus, the MC12 was held at a time when WTO itself remained a much weakened institution. It is encouraging , however, to note that, the overwhelming majority of Member countries had spoken out in favour of a rule-based trading system, under the auspices of the WTO. It goes without saying that for relatively weaker economies, such a system is, in principle, preferable to one that is not. In the absence of a rule-based system, it is highly likely that it is the stronger economies which will set the rules of the game and dominate the global trading scenario. The single undertaking modality of the WTO Decisions and the consensus-based decision-making process, have, till now, worked well for the relatively weaker Members of the WTO. Thus, LDCs and graduating LDCs had a high stake in making the MC12 successful. This was more so for the graduating LDCs which were calling for a *graduation support package* to be agreed at MC12, to help deal with the ramification of the loss of the ISMs and in view of the newly emerging challenges, towards sustainable graduation of their economies.

A.2.4 Frustrating Experience of Implementation of the IPoA

As will be pertinent to recall, a decadal Programme of Action (PoA) in support of the LDCs was adopted at the Fourth LDC Summit in Istanbul in 2011 (IPoA: 2011–2021), in the presence of the world leaders. The IPoA was an ambitious and aspirational agenda which was designed to help the LDCs in their quest for accelerated economic development and towards strengthened global integration of their economies. Regrettably, the experience of implementation of the IPoA shows that it has failed to meet the expectations of the LDCs and graduating LDCs.

The IPoA had reaffirmed 'global commitment to address special needs of the LDCs', spoke of mobilising 'additional institutional support measures and actions in support of LDCs', and voiced collective commitment to 'finding lasting solutions to the complex and mutually exacerbating challenges and problems of the LDCs….with an overarching goal of enabling half of them to meet the criteria for graduation' (UN-OHRLLS, 2011). The IPoA recognised that the 'graduation process of LDCs should be coupled with an appropriate package of incentives and support measures', and pledged to 'work for development and implementation of smooth transition strategies for graduating LDCs'.

Eight priority areas were identified, and spelt out in detail, as part of the IPoA.[12] In each of these areas, actions were to be undertaken by the LDCs, the development partners and institutions and through joint initiatives. Trade was accorded a central place in this. Two specific targets were set: (a) doubling of the share of exports of LDCs in the global trade by 2020; and (b) putting substantial efforts for 'an early and successful conclusion of the Doha Development Round (DDR) of trade negotiations with an ambitious, comprehensive, balanced and development-oriented outcome'.

[12] The eight identified priority areas were: (a) Productive capacity; (b) Agriculture, food security and rural development; (c) Trade; (d) Commodities; (e) Human and social development; (f) Multiple crises and other emerging challenges; (g) Mobilising financial resources for development and capacity-building; and (h) Good governance at all levels.

As is evident by now, the target of doubling LDC share in global exports has not been achieved, nor was the WTO's DDR agendas concluded. Indeed, as of now, the DDR is dead for all practical purpose. This was the harsh reality in the backdrop of which WTO Members moved towards MC12, and the global community approached yet another decadal event, the Fifth United Nations Conference on the Least Developed Countries (LDC V), which was scheduled to be held in Doha, Qatar on March 5–9, 2023. In view of the emergent scenario, the MC12 was seen as an opportunity to keep the pledge made at the LDC IV by coming up with an appropriate package of support for the graduating LDCs, and to set an optimistic tone for the LDC V.

A.2.5 The Ascendancy of the Mega-RTAs

Graduating LDCs are moving towards their new status as non-LDC developing country Members of the WTO at a time when forces outside the multilateral trading system are on the ascendancy. This is manifested in the many mega-Regional Trade Agreements (mega-RTAs) which are being negotiated in recent years. As is the case, majority of the LDCs are not Members of these RTAs. There is a high cost for these 'innocent bystanders', particularly when looked at from the perspective of graduation challenges. The aforesaid trading blocs allow Member countries to have preferential access in each other's markets. On the contrary, upon graduation, LDCs will have to export to the Member countries of these regional blocs on non-preferential, Most Favoured Nation (MFN) basis.[13] Vietnam could serve as an appropriate comparator in this context. Vietnam, a developing country, will, in near future, have preferential market access in various important export destination countries and regions: in the European Union (EU), thanks to Vietnam–EU Free Trade Area (FTA); in Canada, in view of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and in Japan, Australia and China, by taking advantage of the recently signed Regional Comprehensive Economic Partnership (RCEP) Agreement. In most of these markets, non-RTA Member LDCs, including the three graduating LDCs of South Asia, will be required to export by facing MFN duties. Joining such groupings, a process which will entail a large measure of reciprocity, give and takes and exchange of *offer and request lists*, will not be easy for the graduating LDCs, although this may become a necessity to compensate for the loss of preferential market access.

Thus, graduating LDCs are having to undertake their journey at a time when the pandemic had left adverse footprints on many areas of their economies, the role of the WTO as an institution governing the multilateral trading system had weakened significantly, the mega-regional blocs were on the ascendancy, and many of the ISMs pledged at LDC IV have remained unrealised. Addressing the adverse impact of LDC graduation will become even more challenging under these circumstances.

The next section captures some of the major ramifications of graduating out of the LDC group that relate to policy flexibilities, market access conditions and the terms of interactions with other economies.

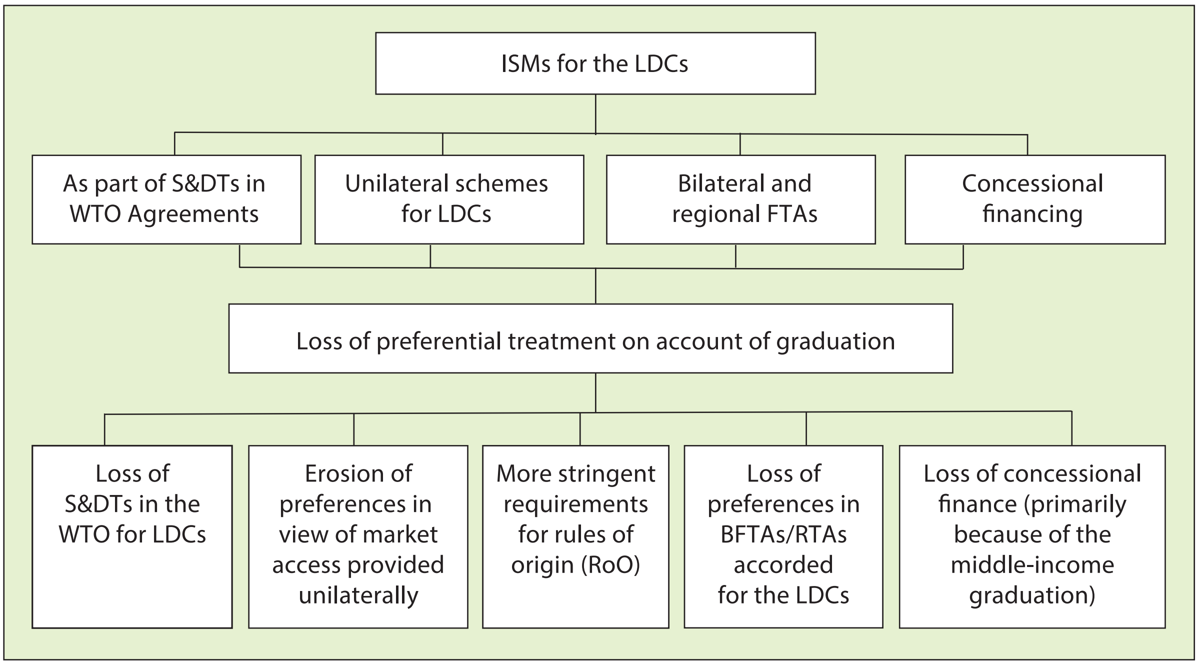
[13]Non-RTA Members will have to enter the relevant markets by paying the MFN tariffs.

A.3 Implications of LDC Graduation in View of ISMs

The ISMs, in place for the LDCs, have played an important role in the economic development and trade and global integration of the graduating LDCs. While not all LDCs were able to take advantage of the ISMs in equal measure, these countries, as a group, have without doubt benefitted from the support measures. This section presents the possible impacts and implications of graduation for the economics of the graduating LDCs when many of the LDC-specific ISMs will no longer be available.

Chart 1 depicts key ISMs in place for the LDCs and the various forms in which the loss of ISMs will impact on LDCs when these countries graduate out of the group.

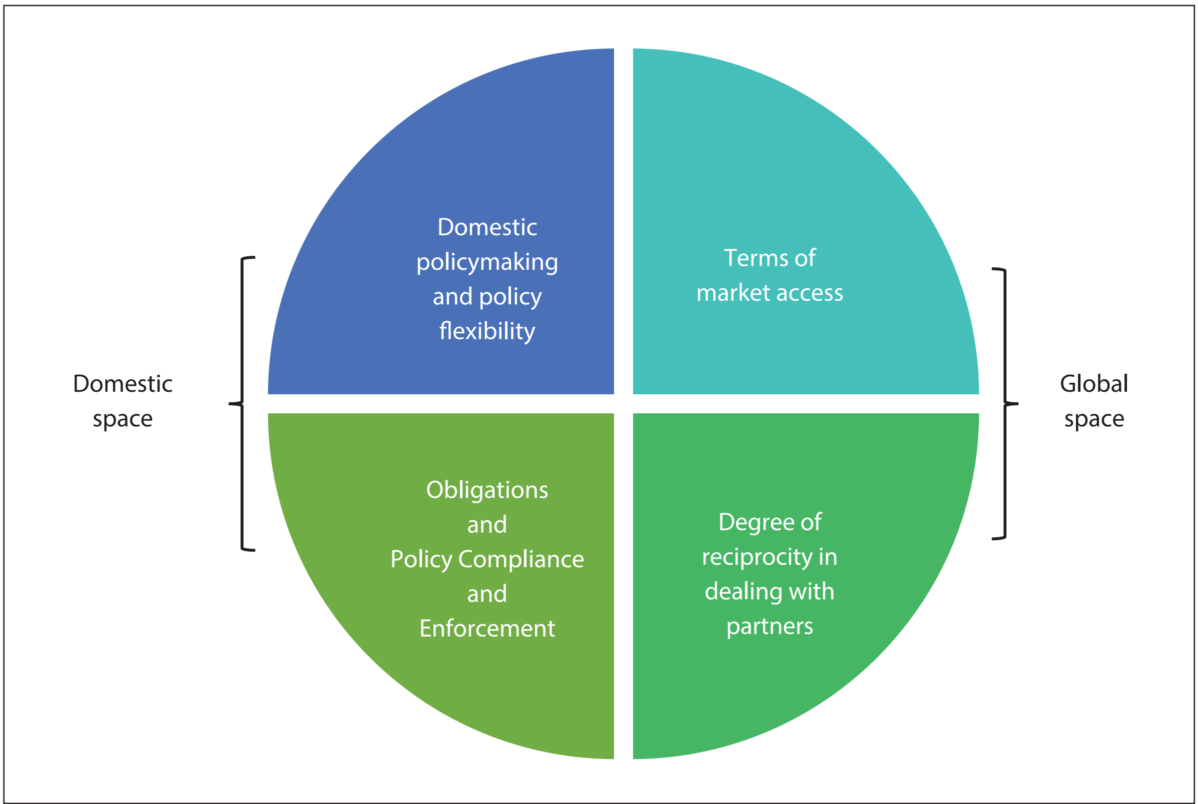
Chart 1: Graduation and Loss of Preferential Treatment



Source: Developed by the author.

It is reckoned that the impacts of loss of ISMS will be felt in both domestic space and global space, as depicted in Figure 2. These are likely to concern four areas: (a) policy-making and policy flexibilities; (b) obligations, compliance and enforcement relating to various WTO Agreements; (c) terms of market access; and (d) degree of reciprocity in dealing with extended partners.

Figure 2: Impact of LDC Graduation on Policy Space



Source: Author's elaboration.

A.3.1 The ISMs in Place for the LDCs

The ISMs, which are geared towards the LDCs, are primarily of two types: as part of the various Agreements in the WTO[14], and preferential treatment accorded by other (developed and developing) WTO Members on a unilateral basis. The former is provided under the various S&D provisions in the WTO Agreements. As regards the latter, the *Enabling Clause* of 1979 adopted by the GATT Members in 1979 provides the legal basis for this type of support.

LDC-specific S&D Treatment in WTO Agreements

There are 183 S&D provisions in 16 major WTO Agreements; of these 25 are exclusively for the LDCs (Low, Mamdouh & Rogerson, 2018). These take multiple forms: (a) extended periods for implementation of obligations; (b) flexibilities in pursuing trade-related policies; (c) relaxed disciplines as regards subsidies; (d) notification as regards ceilings for bound and operative tariffs; (e) trade-related technical, legal and financial support; (f) voluntary notification requirements. Such LDC-specific preferences will no longer be available to the graduated LDCs once these countries come out of the group. This will have significant implications for their participation in global market, both from the perspective of pursuing trade-related policies and in the form of undertaking obligations and in the area of enforcing compliance assurance as envisaged under the various WTO

[14]Both as part of the built-in agendas of the General Agreement on Tariffs and Trade (GATT), incorporated into the WTO, and those in Agreements that became part of the WTO after its establishment in 1995.

Agreements. It is to be noted in this connection that while there are S&D provisions in the WTO for developing country Members as well, which LDCs will be eligible to enjoy following graduation, these are not as extensive and as deep as those in place for the LDCs.

Preferential Market Access

The Enabling Clause allows the GATT/WTO Members to grant preferential treatment to other Members, on a unilateral basis. Many non-LDC WTO Members, both developed and developing, have preferential market access programmes in place, as part of respective Generalized System of Preferences (GSP) schemes or dedicated LDC-specific GSP schemes. While such schemes are not in the WTO schedule, these are legal and WTO-consistent measures, allowable in the WTO under the Enabling Clause, subject to appropriate notification. Bangladesh is an appropriate test case as regards what could be the ramifications of the loss of the ISMs. That Bangladesh is currently the world's second largest apparels exporter, after China, owes much to the duty-free market access and the attendant favourable Rules of Origin (RoO) in almost all major markets.[15] For example, about 70 per cent of Bangladesh's exports enter the global market under DF-QF access granted to the LDCs. In addition, about 2 per cent of the country's global export enter duty-free into the markets of partner countries as part of the various RTAs (Khan, 2022). A number of LDCs have been able to gain significantly, thanks to the TRIPS waiver decision for the LDCs which allows these countries exemptions from the obligations of patenting and licensing requirements. While the waiver has been extended till December 2032, if an LDC graduates before this timeline it will no longer be eligible to enjoy the attendant benefits.

For many LDCs, the preferential market access has been a critical driver of their competitive edge in the global market. Several regional and bilateral trading arrangements also pursue a two-track approach for LDCs and non-LDC Members. For example, in South Asian Free Trade Area (SAFTA), of which Afghanistan, Bangladesh, Bhutan and Nepal are Members, these four LDCs enjoy S&D status in a number of ways: (a) lower range of initial tariff reduction and longer implementation period under trade liberalisation plans; (b) longer number of items in the sensitive lists compared to non-LDC Members[16]; (c) less stringent RoO in case of both domestic value addition and regional cumulation; (d) relatively more flexibility in the form of allowing continuity as regards application of quantitative and other restrictions and in case of deployment of anti-dumping and countervailing duties and safeguard measures; (e) a mechanism for compensating for likely loss of revenue on account of trade liberalisation.[17] Later on, India had offered DF-QF market access to all the four LDC Members, for almost all items of export, on a non-reciprocal basis. This is a significant initiative from the point of view of export interests of particularly Bangladesh.[18]

As part of the Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)-FTA negotiations, the four graduating LDC Members of the grouping (Bangladesh, Bhutan, Nepal and Myanmar) will enjoy preferential treatment since BIMSTEC-FTA has a two track provision

[15]Bangladesh's apparels enjoy DF-QF market access in almost all developed country markets (barring the US, whose GSP scheme for LDCs does not cover most apparels items (the GSP for Bangladesh has been discontinued by the US since 2013, following the Rana Plaza Tragedy), and also in a number of developing countries (e.g. India, China, Republic of Korea, etc.).

[16] Items in the sensitive lists remain outside the purview of tariff reduction.

[17]However, while this is allowed under the SAFTA, it has never been operationalised.

[18]India's DF-QF offer for the LDCs include virtually all items excepting 25 that include arms, narcotics, liquors, etc.

for LDCs and non-LDC Members.[19] BIMSTEC-FTA is important for the three graduating LDCs of South Asia since, when concluded, it will provide these countries with an opportunity to enter into the Association of Southeast Asian Nations (ASEAN) from a position of strength. However, as it currently stands, graduating BIMSTEC LDCs will hardly be able to enjoy the preferences offered under the aforesaid two-track system, since the envisaged FTA is yet to be signed.

Preferential market access provided by the WTO Members had been critically important for the competitiveness of many exports from LDCs and graduating LDCs. This is more so for South Asian graduating LDCs, such as Bangladesh and Nepal, for which textile and clothing products constitute major export items. Since MFN duties on apparels tend to be significantly high in most destination countries[20], duty-free market access provides substantive competitive edge to products originating from these countries. Also the RoO under the preferential schemes tend to be relatively less stringent. For example, for apparels items, in the EU, under the Everything but Arms (EBA) initiative, the RoO requirement for enjoying the DF-QF market access involve only one stage transformation[21]; in Canada, for apparels and other items, the RoO requires meeting a flat 25 per cent domestic value addition requirement.

A.3.2 Implications of Loss of ISMs

Graduation will have implications primarily in two forms: through loss of S&DTs for the LDCs in WTO Agreements and in the form of loss of preferential market access provided by WTO Members unilaterally.

Implications of Loss of S&DT Provided as Part of WTO Agreements

Loss of S&DTs, accorded to the LDCs as part of various WTO Agreements, will have important implications for the graduating LDCs. Table 2 presents a number of key WTO Agreements with S&D provisions for the LDCs. The last column indicates the implications of graduation in view of these provisions. The table clearly indicates that loss of S&DT is going to have negative impacts for graduating LDCs in the form of loss of preferential treatment, loss of policy space both concerning domestic and global space, and loss of preferential access to financial support from LDCs-dedicated funds. Graduated LDCs will be required to undertake various obligations and ensure compliance as are applicable to developing Members of the WTO. These countries will lose policy flexibility, and will be required to make regular notifications to the WTO Secretariate about policies and policy changes. For example, patent laws in view of TRIPS, subsidies in view of AoA, notification in view of Trade Facilitation Agreement (TFA), higher share in financing in the context of Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) and support from the LDC Climate Fund will no longer be available.

[19]Although BIMSTEC-FTA negotiations were supposed to involve both goods and services, as of now, services discussions could not make any tangible progress.

[20]The MFN duties on apparels are, on average, 10–12 per cent in the EU and 10–20 per cent in the USA and Canada, if key items of South Asian apparels export are taken into consideration. On the other hand, duties on crude petroleum (a key export of Timor-Leste, which was slated for graduation before the pandemic, but was not recommended by the CDP at the 2021 review) and fish (a major export of graduating small island countries) tend to be much lower or zero.

[21]The one-stage transformation in the EU requires conversion from fabrics to Readymade Garments (RMG) items for purposes of RoO compliance.

Table 2: Implications of Graduation in View of Selected WTO Agreements

Provision	LDC flexibilities	Implications for LDC graduation
Subsidies and Countervailing Measures (SCMs)	Flexibility concerning subsidies contingent on local content requirement for export from the LDCs has expired in 2002. However, pursuant to Article 27.2 and Annex VII (a), LDCs are exempted from prohibition of export subsidies for non-agricultural products. Annex VII (b) allows countries whose per capita GNI is less than USD 1,000, in 1990 terms, to enjoy flexibilities in this regard.	Many graduating LDCs, including those in South Asia, provide subsidies for a large number of items in the form of cash schemes (e.g. for new products and new items in case of RMG exports by Bangladesh), export credit support, incentives for backward linkages, etc. Some have subsidies in place contingent on local content requirement in case of export. With regard to subsidies for export of non-agricultural products, the exemption will no longer be available upon graduation. LDCs may try to get into the list of Annex VII (b) countries whose per capita GNI (in 1990 terms) is less than USD 1,000. Bangladesh is not expected to benefit from this provision.
AoA	LDCs are not required to undertake tariff reduction commitments but need only to bind tariffs in the WTO. With respect to Export Competition agreed at MC10, LDCs and net food-importing developing countries (NFIDCs) are allowed to provide certain subsidies and are allowed to monetise international food aid. They are also permitted lower frequency of notification. LDCs are required to notify every two years as regards domestic support.	LDCs have bound tariffs for agricultural and manufacturing goods, but not to the fullest extent. These bound tariffs will remain unchanged. However, agri-export subsidies will not be allowable. However, a Member can continue to enjoy flexibilities if it is listed as an NFIDC. Indeed, 42 out of 47 LDCs are NFIDCs. On graduation, LDCs will be required to submit notifications on a regular basis.
TRIMs	The Agreement on Trade-Related Investment Measures (TRIMs) does not allow local content requirement or value/volume ceiling on import content as per cent of exports. However, LDCs were granted exemption till December 2020.	LDCs have not made any notification to the WTO as regards taking recourse to any TRIMs flexibilities. However, certain sectors do have local content requirements in place. This will no longer be allowable. Industrial Policy and Export Policy will need to be made WTO-compliant following graduation.
TRIPS	TRIPS Article 66.1 allows LDCs flexibilities in implementing TRIPS provision till July 2021 (latest extension).	At the 29th June 2021 meeting of the TRIPS Council, the transition period has been extended for LDCs till July 2034. But an LDC will lose eligibility to enjoy the benefits from the time it will graduate.
TRIPS and Public Health	TRIPS and Public Health Decision allows the LDCs flexibility in areas of patents and licensing requirements (effective till end-2032).	LDCs such as Bangladesh have made good use of TRIPS flexibilities. For example, 20 per cent of drugs produced by Bangladesh's pharma industry are generic versions of patented drugs. Import restrictions and price regulations are also in place. Intellectual property (IP) legislations and patent laws will need to be made compatible with the TRIPS regime.

(Table 2 contd.)

(Table 2 contd.)

Provision	LDC flexibilities	Implications for LDC graduation
		Price of a common drug like insulin could rise several times.
Trade Facilitation	LDCs are allowed to self-determine the process of implementing TFA (as codified by categories A, B and C). They have also been granted extra time for notification. Longer grace period for dispute settlement creates flexibility in expending commitments as regards B and C.	The LDC-specific timeline for notification as regards definite dates of implementation of category C commitment will expire in August 2022. Thus, graduating LDCs will need to comply with this even before graduation. On graduation, graduating LDCs will lose the flexibilities as regards dispute settlement and extension of B and C categories of commitment.
Trade in Services	Under the WTO GATS, LDCs are allowed to liberalise at slow pace. LDCs are to be given special priority in accessing sectors and modes of supply of export interest to the LDCs. In the context of LDC services waiver, Members are to provide preferential treatment to services and service-suppliers of LDCs with regard to market access. The waiver is currently valid till end of 2030.	Waiver notification has been provided by 24 WTO Members that cover a wide range of areas and all four modes of services. However, the waiver is yet to be operationalised. A large number of LDCs will graduate earlier than 2030. Accordingly, they will cease to benefit from current benefits or any benefits to be agreed upon later, accruing from operationalisation of the services waiver.
Climate Fund	There is a dedicated fund for LDCs for climate-related support.	Support from Least Developed Countries Fund (LDCF) will no more be available. However, graduated LDCs will continue to have access to Special Climate Change Fund (SCCF) and Green Climate Fund as these are open to all vulnerable developing countries.
SPS Agreement	SPS Agreement provides for technical and capacity building support to both LDCs and developing countries. However, LDCs are to get preference as regards support from Standards and Trade Development Facility (STDF) and are required to have a lower level of co-financing (10 per cent).	Impact of graduation is anticipated to be limited. However, graduating LDCs are likely to receive lower priority in getting support from STDF once they graduate. Their share of financing contribution will rise from 10 per cent to 20 per cent.

Source: Compiled by the author on the basis of information in WTO (2020a).

Many graduating LDCs will also not be eligible to benefit from Annex VII (b) of SCM Agreement, since the per capita GNI of the country will likely be significantly higher than USD 1,000 in 1990 terms, the threshold for eligibility. As can be seen from the estimates presented in Table 3, at present, four LDCs

Table 3: LDCs with Current Per Capita GNI below USD 1,000 in 1990 Terms

Country	Latest GNI per capita (2020)	1990 GNI per capita	Value
Bangladesh	2,010	320	985.3
Myanmar	1,260	-	617.6
Nepal	1,190	210	583.3
Timor-Leste	1,830	-	897.1

Source: Estimated from the WDI, World Bank.

in the region have their respective per capita GNIs lower than the aforesaid threshold. These are: Bangladesh (USD 985), Myanmar (USD 618), Nepal (USD 583) and Timor-Leste (USD 897). As can be seen from the table, per capita GNI of Bangladesh in 2020 was only marginally lower than the USD 1,000 threshold.

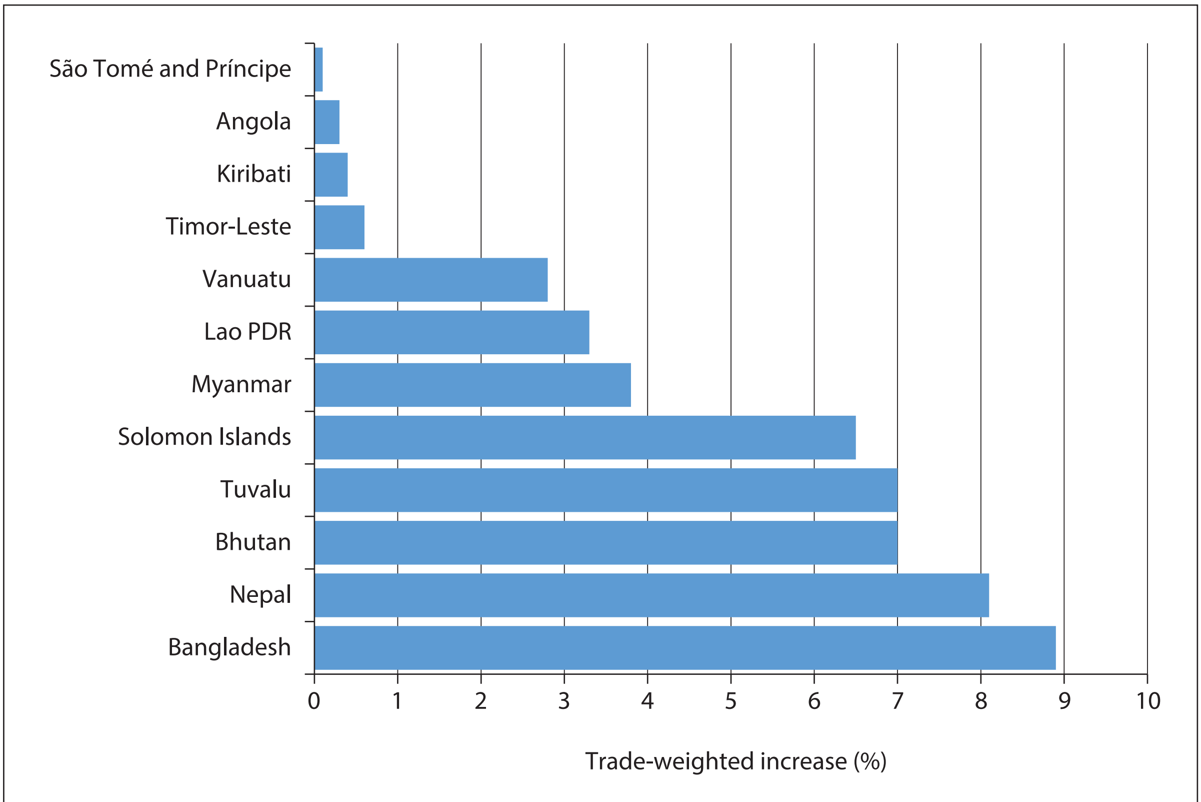
It is highly likely that Bangladesh will not be eligible for the flexibility provided under SCM since by 2026 its per capita GNI will be much higher than the 1990 threshold.

Implications of Loss of Preferential Market Access

Figure 3 shows how average tariffs are expected to rise once graduating LDCs lose the preferential market access facility in preference-providing markets after graduation. As can be seen, for some graduating LDCs, particularly those from South Asia, the tariffs are expected to rise significantly.

As is mentioned in a WTO report (WTO, 2020a), the loss to the 12 graduating LDCs,[22] on account of erosion of preferential market access, is estimated to be to the tune of about 6.4 per cent of their total export (in terms of 2016–2018 average export). For Bangladesh, for example, likely losses on account of loss of preferences is estimated to be the highest. As a WTO study bears out (WTO, 2020b), of the anticipated losses in the form of decline in export earnings, originating from graduation of 12 LDCs slated for graduation, 90 per cent of all losses will fall on Bangladesh (other things remaining

Figure 3: Projections as Regards Impact of LDC Graduation on Tariffs



Source: Extracted from Integrated Database (IDB), WTO.

[22]These 12 LDCs were slated for graduation before the pandemic (as per the CDP review of 2018).

the same). It is estimated that the loss in terms of Bangladesh's export earnings (in 2018 terms) will be equivalent to about 8-10 per cent (Rahman & Bari, 2018).

While graduated LDCs will be eligible for preferential access as provided under the GSP schemes in place for the developing countries, these preferences are considerably shallower on three counts: (a) narrower coverage of products; (b) depth of tariff cuts will be lower[23]; and (c) RoO will be more stringent.[24] Additionally, for countries such as Bangladesh, it will also not be easy to get into the EU's Generalized Scheme of Preferences Plus (GSP+) scheme in view of the revised proposal for the next phase (2024-2034).[25]

The three graduating LDCs in South Asia will cease to enjoy the benefits accruing from the unilateral preferential scheme of India under the SAFTA once they leave the LDC group. However, to note, the preferential market access offered on bilateral basis (to Nepal and Bhutan), as part of respective Bilateral Free Trade Agreements (BFTAs), is set to continue even after these countries had graduated. For Bangladesh, which does not have a BFTA with India, graduation will lead to significant loss preferences offered currently under the Indian scheme. India can, however, make an offer of continuing with the preferential treatment for a specified period following graduation of these LDCs. Bangladesh should pursue this case with India.

It is in this backdrop, that a new set of ISMs is being proposed to compensate for the loss of LDC-specific ISMs and in support of efforts being made by graduating LDCs to make graduation sustainable, is gaining traction.

It is not that LDCs are unwilling to graduate. They see graduation as a recognition of their success and progress in terms of key socio-economic indicators. LDCs understand that they all will be required to come out of the LDC group and graduate at some point. They are cognisant of the fact that they will need to be competitive based on skills and productivity rather than depending perennially on ISMs and preferences. However, as an UNCTAD report stated, 'graduation is a milestone, not the winning post'. LDCs are keen to make graduation sustainable. What the LDCs are calling for is a set of support measures, for a time-bound period, as a contribution of the global community towards their sustainable graduation.

There was a strong consensus among WTO Members that MC12 in Geneva should not suffer the fate of MC11 in Buenos Aires, and there needed to be a meaningful outcome of the Ministerial. The Mini Ministerial of the WTO held on July 15, 2021 gave reasons to be hopeful in this regard. However, in the end, MC12 failed to live up to the expectations of the graduating LDCs. The next section, Part B, presents an assessment of the outcome of the Ministerial in some detail, from the particular perspective of the LDCs.

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[23]For example, in the EU, the tariff reduction for apparels, as applicable for developing countries, is only 15 per cent, as against 100 per cent for the EBA initiative for the LDCs.

[24] For apparels, the general GSP scheme of the EU requires a two-stage transformation (yarn to fabrics to RMG).

[25]Because of eligibility in terms of share (7.5 per cent ceiling as share of total imports entered under the EU-GSP Schemes), more stringent RoO and lower coverage of products. It is also to be noted that EU-GSP+ also calls for higher compliance enforcement.

Part B: An Assessment of MC12 from Graduating LDC Perspectives

Part B undertakes a critical examination of the various decisions taken at WTO-MC12 from the perspective of Bangladesh and other graduating LDCs. It focuses on why the proposal for extension of LDC-specific ISM was justified and presents an averment of the outcomes as seen from the perspective of graduating LDCs.

B.1 MC12: A Statement of Faith in Multilateral Trading System

The MC12 was held in Geneva during June 12-17, 2022 after five years and several postponements following the WTO-MC11 held in Buenos Aires.[26] To recall, the WTO-MC11 ended without any final, substantive agreements.[27] That the Ministers were at all able to come to a common agreement as regards a Ministerial outcome document was seen by many as a significant success. In one sense, this actually was so. The MC12 was able to restore some faith in the multilateral trading system as represented by the WTO.

As would be recalled, several powerful WTO Members had raised questions as regards a number of systemic issues concerning the WTO, at MC11 and at subsequent discussions during the run up to MC12. The areas of contention included role of the WTO, trade and development interface, WTO decision-making under the *single undertaking* modality, functioning of the DSB, role of plurilaterals and others. Many WTO Members had diametrically different views as regards these and others issues. Protectionist (both tariff and non-tariff) measures by many WTO Members pursued during the pandemic also went against the basic spirit and tenets of the WTO (such as high tariff and import bans, export bans and export restrictions) and had put under question the rules-enforcement capacity of the WTO. As was noted in the preceding section, the Appellate Body of the WTO-DSB had remained virtually paralysed for a long time. Indeed, some analysts and observers thought that the WTO was under an 'existentialist threat'.

It is in this backdrop that the holding of MC12, participation of trade Ministers from almost all Member countries and the consensus-based Ministerial outcome document were viewed by many as a statement of faith in the multilateral rule-based trading system. However, significant differences surfaced in the course of discussions at MC12 as regards almost all the agendas on the table. In the end, the Ministerial Meeting had to be extended by two days and an outcome document was carved out to which all Members agreed to sign on. The outcome document and the decisions were, however, seen by many as a compromise, and not ambitious enough. Many contentious issues were kicked down the road for follow-up discussion in concerned bodies and decision at MC13. However, as some observers saw it, 'The WTO was saved'.

B.2 Looking at MC12 Outcomes with Graduating LDC Lens

LDCs were keen to make MC12 successful and were looking for a meaningful outcome. From this perspective, LDCs and graduating LDCs had welcomed that at MC12 WTO Members reiterated their commitment to the multilateral trading system. However, they also felt that the Ministerial failed

[26] MC11 was held in Buenos Aires, Argentina on 10-13 December, 2017.

[27] However, a number of working groups were set up including on E-commerce, small economies and others. The MC11 also saw a number of new initiatives concerning such areas as E-commerce, investment facilitation and micro, small and medium-size enterprises (MSMEs).

to take into cognisance the concerns of the graduating LDCs which had hoped for a set of support measures towards making the graduation process smooth, to help graduating LDCs move towards the graduation timeline with momentum, and to make graduation sustainable.

Following sections examine the outcomes of MC12 by undertaking an assessment of the MC12: the process, discussion and the key messages emanating from the Ministerial Decision (WTO, 2022a).

Modality of Discussion and Negotiation at MC12

WTO-MC12 had continued with the tradition of conducting discussions primarily through the modality of the so-called *Green Rooms* where powerful WTO Members had seats around the table but participation of the LDCs was highly limited. As is known, the Green Room has been a common practice leading up to and during the various Ministerial Conferences. This has been criticised by LDCs and many developing country Members of the WTO and Civil Society groups as being non-representative. The outcomes of the Green Room were often not owned and shared by the excluded Members.[28] In view of MC12, such exclusionary practices were of important implications for the graduating LDCs. A number of issues being discussed at the MC12 were of high importance to the LDCs slated for graduation, both as graduating LDCs and as future (non-LDC) developing country Members of the WTO. Graduating LDCs were often not able to raise their issues of concern and interest in the context of the agendas that were being discussed by Green Room participants.

Extension of LDC Preferences

As may be recalled, Chad had submitted a proposal, on behalf of the LDCs, which asked for a time-bound extension of LDC preferences for the graduating LDCs, following graduation. However, the proposal failed to get the necessary traction at MC12. While many Members of Group of 77 (G-77) and Group of 90 (G-90) and some developed country Members were sympathetic, other powerful WTO Members were clearly opposed to the idea. Some delegates who opposed the idea argued that there is no group called 'graduating LDCs' in the WTO in view of which the LDCs countered that the proposal has been submitted not by 'graduating LDCs' but LDCs which would be graduating at some future point in time. Some Members argued that any support to graduated LDCs should be calibrated according to their particular needs, and there was no need for a common package for these countries since each had its own concerns and difficulties in view of graduation. The LDCs argued that differentiation among graduating LDCs will make implementation of any support measure difficult since there are differences of opinion as regards what a particular graduating LDC's difficulties are and what a provider country may view as appropriate remedial measure. Graduating LDCs argued that they should have the flexibility to choose whichever measure they felt they needed to address their specific challenges.

The outcome document in Para 8 did recall earlier decisions in support of the LDC (e.g. DF-QF market access, LDC-friendly RoO, operationalisation of services waiver and preferential treatment in favour of services and service suppliers from the LDCs, support to LDCs for implementing commitments as regards Category C in view of TFA[29] and others. However, there was no time-bound commitment for implementation and operationalisation of these WTO Decisions which were adopted several years

[28]Although they often had to sign on under pressure of the consensus-based decision-making process of the WTO.

[29]Category C referred to commitments as part of TFA which LDCs had committed to implement subject to receiving the necessary financial and technical assistance from WTO Members and relevant institutions.

before at various WTO Ministerial Conferences. Thus, from the perspective of the graduating LDCs at least, the MC12 Decision in connection with the above had little practical significance.[30] A number of LDCs currently slated for graduation, such as Bangladesh, were likely to graduate before most of these commitments are realised on the ground, if at all.

What MC12 did come up with, in view of concrete measures in support of graduating LDCs, was rather discouraging. Para 5 of the MC12 outcome document stated, 'We…acknowledge the particular challenges that graduation presents, including the loss of trade-related, as they leave the LDC category. We recognise the role that certain measures in the WTO can play in facilitating smooth and sustainable transition for these Members after graduation from the LDC category.' A reading of the text leaves nothing to imagination—the outcome document acknowledged the challenges associated with graduating out of the LDC group, but did not make any concrete commitment as to what will be done to address and mitigate the attendant concerns of the graduating LDCs. No Ministerial Decision was taken or work programme launched on this count.

Some have interpreted the above as an opportunity to open a window to discuss graduation-related issues in the run up to MC13. According to them, the decision allows Members an opportunity to give shape to the part in the statement that mentions about 'the role that certain measures in the WTO can play in facilitating…sustainable transition' of graduating LDCs. They are hoping that this leaves room for discussions as regards the LDC proposal for extension of ISMs for the graduating LDCs, so that some concrete measures can be agreed upon which then can be reflected in the outcome document of WTO-MC13.

TRIPS Agreement

As may be recalled, the LDC submission at the WTO TRIPS Council had asked for extension of the TRIPS waiver for the LDCs (till July, 2034) and TRIPS waiver for the Pharmaceutical sector (till January, 2033), for the graduating LDC (in cases when these countries graduate out of the LDC group prior to these timelines). These had critical implications for the developing countries and the graduating LDCs as future developing countries, and is of particular significance for Bangladesh.

In the end, no mention was made in the outcome document as regards the proposal submitted by the LDCs. In view of this, it will be prudent for Bangladesh to get the necessary infrastructures and institutions in place for a TRIPS-compliant regime (copy rights, patent, industrial design etc.) by 2026.[31] On the other hand, the Patent Act passed in the Parliament[32] should be amended so that the flexibilities that the country is allowed to enjoy as an LDC, till November, 2026 (both in view of TRIPS and TRIPS and Pharmaceuticals waivers), are embedded in the Act.

UK and Sweden particularly took a hard stance with regards the discussion on the TRIPS text at MC12. Many of the proposals submitted by developing country Members remained out of the purview of the agreed text of the Ministerial Decision on the TRIPS Agreement. Here also the outcome document leaves open the opportunity for discussion, during the run up to MC13, as regards a Ministerial Decision at MC13 concerning the waiver extension proposal submitted on behalf of the LDCs at

[30]For example: the DF-QF decision was adopted at MC6 in Hong Kong in 2005; the services waiver was adopted at MC9 in Bali in 2013; the RoO decision were adopted at MC10 in Nairobi in 2015.

[31]Violation of TRIPS Agreement obligations could draw Bangladesh to the WTO Dispute Settlement Mechanism.

[32]The Patent Act was passed by the Parliament in April 2022 and was to come into operation with immediate effect.

the TRIPS Council and the General Council. As a future developing country Member of the WTO, Bangladesh will need to take cognisance of the various provisions as articulated in the decision.

TRIPS and Vaccines

Following protracted discussion, Members agreed on the text of Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics, which referred to the urgent issue of vaccines in the backdrop of the pandemic (WTO, 2022d).

Para 1 of the outcome document states, 'We note that over the course of the COVID-19 pandemic, Members experienced supply constraints of COVID-19 vaccines, therapeutics, diagnostics, and other essential medical goods. These experiences were not shared equally during the pandemic, in particular due to Members' differing levels of development, financial capabilities, and degrees of import dependence on those products. We encourage Members to understand and build upon the experience of the pandemic, as contemplated by this declaration, in order to support increased resilience for COVID-19 and future pandemics'.

Para 1 of the TRIPS decision stated, 'Notwithstanding the provision of patent rights under its domestic legislation, an eligible Member may limit the rights provided for under Article 28.1 of the TRIPS Agreement (hereinafter "the Agreement") by authorising the use of the subject matter of a patent required for the production and supply of COVID-19 vaccines without the consent of the right holder to the extent necessary to address the COVID-19 pandemic, in accordance with the provisions of Article 31 of the Agreement'.

Para 3(b) stated, 'An eligible Member may waive the requirement of Article 31(f) that authorised use under Article 31 be predominantly to supply its domestic market and may allow any proportion of the products manufactured under the authorisation in accordance with this decision to be exported to eligible Members, including through international or regional joint initiatives that aim to ensure the equitable access of eligible Members to the COVID-19 vaccine covered by the authorisation.'

Para 6 stated, 'An eligible Member may apply the provisions of this decision until 5 years from the date of this decision. The General Council may extend such a period taking into consideration the exceptional circumstances of the COVID-19 pandemic. The General Council will review annually the operation of this decision.'

Para 8 stated, 'No later than six months from the date of this decision, Members will decide on its extension to cover the production and supply of COVID-19 diagnostics and therapeutics.'

Accordingly, the exemption of patent requirement for purposes of vaccine production and export for five years, with scope for further discussion, may be considered as a positive outcome of MC12.[33]

Fisheries Subsidy

Developing countries had considerable defensive interests as regards the proposal to desubsidise illegal, unreported and unregulated (IUU) fishing. India, for example, argued that it was the high

[33]However, it should be kept in mind that this came somewhat late now that the worst of the COVID-19 pandemic was already behind in the past.

per capita subsidies granted to fishermen in the big subsidising countries that caused depletion of world's fish stocks. India, Indonesia, Sri Lanka and some other developing country Members asked for a 25 years of S&DT to develop the marine sector, with policy space. The US, EU and Australia were agreeable to go only up to 7 years. Graduating LDCs proposed that they be allowed an extension of 7 years as regards the flexibilities to be enjoyed by the LDCs. In the end, Agreement on Fisheries Subsidy was adopted with compromise in several areas. Artisanal and inland fisheries were kept outside of the purview of the Agreement. The Agreement stated 'For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the Exclusive Economic Zone (EEZ) shall be exempt from actions based on Articles 4.1 and 10 of this Agreement (WTO, 2022e).'

As a compromise, no mention of timeline for the S&DT was mentioned. However, the graduating LDC proposal did not figure in the text of the Agreement. The Agreement stated that the Negotiating Group on Rules will continue discussion 'with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognising that appropriate and effective S&DT for developing country Members and LDC Members should be an integral part of these negotiations'. A voluntary WTO funding mechanism was to be established in cooperation with relevant international organisations (such as United Nations Food and Agriculture Organization (UNFAO) and International Fund for Agricultural Development (IFAD)) to extend targetted technical assistance and capacity building assistance to LDCs and developing country Members. The support was to be provided 'for the purpose of implementation of the disciplines under the Agreement'.

As part of its homework in view of graduation, Bangladesh will need to take advantage of the flexibilities offered to the developing countries and strategise accordingly to develop its fisheries sector over the next years.

Food Security

The issue of food security assumed heightened importancein the discussion at MC12 in view of the pandemic and the attendant risks of food availability. As may be recalled, a number of countries adopted protectionist measures, violating WTO rules, by invoking emergency needs. Some countries had put in place food export bans and taken other measures and taken other restrictive measures concerning trade in food items.

In this backdrop, the MC12 adopted two documents: Ministerial Declaration on the Emergency Response to Food Insecurity and the Ministerial Decision on World Food Programme (WFP) Food Purchases Exemption from Export Prohibitions or Restrictions (WTO, 2022b; WTO, 2022c).

The Ministerial Decision stated, 'The *Ministerial Conference, … Decides* as follows: (1) Members shall not impose export prohibitions or restrictions on foodstuffs purchased for noncommercial humanitarian purposes by the World Food Programme. (2) This decision shall not be construed to prevent the adoption by any Member of measures to ensure its domestic food security in accordance with the relevant provisions of the WTO agreements'. Para 3 of the Ministerial Declaration stated, 'We commit to take concrete steps to facilitate trade and improve the functioning and long-term resilience of global markets for food and agriculture, including cereals, fertilizers, and other agriculture production inputs. Particular consideration will be given to the specific needs and circumstances of developing country Members, especially those of least-developed and net food-importing developing countries'. Para 9 stated, 'We understand the importance of providing technical and financial assistance to LDCs and NFIDCs, including through international and regional financial institutions, with a view to improving their agricultural productive capacity, infrastructure and access to agricultural inputs'.

Bangladesh has not declared itself as a NFIDC. It is felt that to take full advantage of the flexibilities to be enjoyed by the NFIDCs, and in view of Bangladesh's experience in recent times when it had to import a large amount of food from the global market, Bangladesh should get listed as an NFIDC.[34] This will allow Bangladesh to enjoy the flexibilities accorded to the NFIDCs.

As was noted, in the end, no concrete decision was taken in view of the LDC submission although the difficulties facing graduating LDCs were acknowledged in the Ministerial outcome document.

Part C: Strategies for the Way Forward

As the preceding discussion in Part B bears out, MC12 failed to live up to the expectations of the graduating LDCs. True, the challenges to be faced by this particular group of countries were recognised by the Members of the WTO, and the doors have been kept open for future initiatives geared to addressing their interests and mitigating their concerns. However, given that a large number of LDCs are slated for graduation over the next few years, and, indeed, one (Bhutan) is set to graduate even before MC13, timing of any initiative in support of the graduation has emerged as a crucial consideration. For Bangladesh, in view of its graduation timeline (November, 2026), the period in the run up to MC13 (between one and one and half years) will be of crucial significance as far as reaching an agreement as regards concrete measures in support of graduation was concerned.

In view of the above, following points are important to keep in mind while pursuing and advancing the interests of the graduating LDCs in view of the WTO.

- *Develop Suitable Arguments Favouring a Graduation Support Package*

As may be recalled, the LDCs have floated a proposal at the WTO General Council meeting of 15–16 December, 2020, for extension of the ISMs for the LDCs for 12 years following the date of graduation of the concerned LDC out of the LDC group. LDCs have forcefully argued their case citing the adverse effects of the pandemic on their economies, embedded structural weaknesses, endemic vulnerabilities and the challenges originating from the impending loss of ISMs.[35] What is to be noted in this connection is that the proposal has received unanimous support of all the LDC Members of the WTO. In the discussions in the General Council, many Members, including developed and developing, have extended support to the LDC proposal.

[34] It is interesting to note that during the visit of the Bangladesh Prime Minister to India in September, 2022, India had proposed not to impose protectionist measures as regards export of food grains to Bangladesh during times of emergencies. To what extent this was triggered by the MC12 Decision is, however, not known.

[35] The proposal was submitted by Chad, as coordinator of LDC group in the WTO, on behalf of all the LDCs. It is to be noted in this connection that Bangladesh has played a critically important role in preparing the submission and mobilising support for it.

To garner support of reluctant Members, LDCs in their revised submission (Rev.1) had watered down the earlier ambitions significantly. For example, no timeline was specified and this was left subject to discussion in the WTO. Rev. 2 of the LDC proposal submitted as 5 December, 2022 asks for (a) extension for an appropriate period of time, LDC-specific special flexibilities, (b) exemption from action under WTO-DSB, for an appropriate period of time, and (c) provide continued access to technical assistance and other capacity building supports, for an appropriate period of time. LDC proposal asks that this work is completed and reported to the General Council no later than 30 June 2023.

Some Members such as the USA had asked for more time to consider the implications of the proposal and to discuss this with their respective capitals. Some of the WTO Members which had expressed reservation had argued that there is no group such as 'graduating LDCs' in the WTO. LDCs responded by making the point that such a decision would lead to differentiation among the developing country Members of the WTO. Also, that the nature of difficulties faced by the graduating LDCs vary across these countries. Accordingly, any horizontal decision in support of graduating LDCs may not be effective, and even necessary. In the General Council meeting held in July 2021, USA had raised concerns as regards issues of horizontal inequality among developing countries if graduating LDCs are allowed to continue enjoying supports similar to the ones as LDCs.

In view of the above, the following arguments may be put forward. Firstly, the support is not being sought by 'graduated LDCs', but by LDCs, a group recognised in the WTO, which will be graduating over time, depending on meeting certain eligibility criteria. Secondly, there is already support measures in place within the ambit of the WTO (Enhanced Integrated Framework (EIF), Technology Bank) which extend support to LDCs following their graduation. These allow LDCs to enjoy benefits for additional periods (for an extra five years in both the aforesaid cases, following graduation). Thirdly, it is not that WTO does not recognise differentiation among the developing countries. For example, the WTO-SCM Agreement (Annex VII b) allows for derogation from obligations on grounds of per capita income (USD 1,000 in 1990 terms). Also the WTO AoA offers flexibility for NFIDCs. Fourthly, there is precedence in the WTO as regards support to graduating LDCs. It is pertinent to recall in this connection that, when it was slated for graduation in 2004, Maldives had requested for a five-year extension (2004–2009) of the transition period for implementation of the TRIPS Agreement. The TRIPS Council allowed such an extension till 2007, referring to the date of graduation—20 December 2007 (Bhattacharya, 2020). This indeed sets a precedent for consideration of separate individual requests for extension of the transition period (Bhattacharya, 2020).[36]

In informal discussions, some developed countries have argued that not all graduating LDC are in need of all the ISMs. To this, the graduating LDCs have argued that it will be difficult to manage if differentiation is introduced among graduating LDCs. Also, the time-bound nature of any support will ensure that graduating LDCs will cease to enjoy the ISMs at some point in time in not too distant future.

- *Be Proactively Engaged in the Discussions to Follow-up on MC12 Decision*

MC12 Ministerial Decision has noted the challenges to be faced by the graduating LDCs originating from the loss of various ISMs in place favouring the LDCs. Members agreed to work to mitigate

[36]According to the WTO analytical index, 'On 15 June 2005, i.e. prior to the adoption of the decision to extend the general transition period for all LDC Members, the Council for TRIPS adopted a decision extending the Maldives' transition period under Article 66.1'. The terms of the decision provide that, 'The Maldives shall not be required to apply the provisions of the TRIPS Agreement, other than Articles 3, 4 and 5, until 20 December 2007' (Bhattacharya, 2020).

the attendant concerns. This has created an opening which must be taken advantage of during the ongoing and upcoming discussions and negotiations in the various WTO fora. Efforts must be geared towards designing a package of support measures for the graduating LDCs, as also to embed measures in support of graduating LDCs in various issue-specific negotiations. Bangladesh, as is known, is a recognised leader of the LDC group in the WTO, and the country should be ready to provide stewardship in the various discussions concerning the interests of the graduating LDCs.

- *Strive to Build Coalitions of Supporting Members*

As was noted in the preceding Part B, a large number of WTO Members are sympathetic to the cause of graduating LDCs. Bangladesh and other graduating LDCs should build issue-specific coalitions (by drawing, for example, on the support of selected OECD countries, G-77, G-90) to advance their interests. Such coalitions could also play a critically important role in garnering support for a new set of ISMs for the graduating LDCs.

- *Make Southern Solidarity Work for MC12*

In the recent past, there has been an increasing trend toward deepening of South–South Cooperation (SSC). This is manifested in the form of closer connectivities in various areas such as trade, investment, transport and logistics, aid, credit, people-to-people connectivities, etc. Development of production networks and value chains and greater intra-regional trade and investment are seen by graduating LDCs as key elements of post-graduation development strategies. SSC could play a crucially important role in this connection. Southern advanced developing countries, such as India, China, South Africa and others, could come up with initiatives in support of graduating LDCs through lines of credit, technology transfer, collaboration in research and exchange of professionals. Many LDCs are Members of regional and bilateral trading arrangements where they are accorded preferential market access by Southern partners. In principle, once these countries graduate out of the LDC group, they will no longer be eligible for the concerned preferential treatment. Similarly, many Southern developing countries, such as India, South Korea and Thailand, have LDC schemes in place as part of which they offer preferential market access to the LDCs. As part of Southern solidarity, these countries may be urged to extend preferential access, for specified period, beyond graduation, in line with the proposal floated by the LDCs in the WTO General Council. This could send a powerful signal to other countries at MC13. In this regard, graduating LDCs should try their best at in view of MC13 to mobilise the support of groups in the WTO, such as the G-90, in support of their cause.

- *Ensure and Maintain LDC Solidarity*

All LDCs are expected to graduate out of the group at some point in time. Thus, the issue of support measures for graduating LDCs is not a matter of interest to this specific sub-group among the LDCs but all the LDCs individually and collectively. It is to be noted that the proposal to extend LDC-specific ISMs to the LDCs, for a certain period of time following graduation, was submitted at the WTO by Chad, on behalf of all the LDCs (although Chad itself was not a graduating LDC). This solidarity needs to be maintained and consolidated further.

- *Argue Against a Differentiated Approach*

A number of OECD Member countries have earlier argued that they were agreeable to support graduating LDCs on a case by case basis. However, it is not in the interest of the LDCs and graduating LDCs to be considered as a differentiated group for purposes of S&DT. Such differentiation will dilute the potential benefits accruing from any supportive initiative since perspectives as regards what is required by a particular graduating LDC is likely to vary, and there could be interpretative differences (on the part of both recipient and provider countries). Thus, there is a need to design a comprehensive set of support measures for all the graduating LDCs. Graduating LDCs can ask for, and take advantage of, any particular preferential treatment as they deem necessary.

- *Pursue Issues of Interest in Other Relevant Fora*

Graduating LDCs should pursue their causes in non-WTO platforms as well, including regional and bilateral fora and in discussions with non-WTO international bodies. Bilateral and regional partner countries should be urged to come up with supportive initiatives of their own (including by way of time-bound preferential market access), not waiting for the WTO, as has been the case with the EU's EBA offer (to extend the EBA for three years following graduation out of the LDC group). Bangladesh should actively pursue the case of continuing preferential market access through bilateral discussions, with Canada, Japan, China and India in particular. Multilateral financial institutions could come up with financial packages to help graduating LDCs to adjust to the new scenario. In this connection, the idea of debt relief support has been floated by the CDP. Such initiatives should be seen as complementary and mutually reinforcing measures towards sustainable graduation. In cases where such supportive measures need to be notified to the WTO, this should be done expeditiously.

- *Make Best Use of LDC Specific ISMs*

Almost all graduating LDCs have some time left in the run up to their respective graduation timelines. Graduating LDCs should develop appropriate strategies to make best use of the LDC-specific ISMs during the time they have prior to graduating out of the LDC group so that they are well-prepared when the transition actually takes place.

- *Take Advantage of WTO Measures in Place in Support of Graduating LDCs*

WTO already has some in-built measures in support of graduating LDCs (Table 4). For example, LDCs are eligible for support under the EIF and from the Technology Fund, for five years following graduation. These opportunities must be taken advantage of by the graduating LDCs once they have graduated out of the LDC group.

Table 4: Support to Graduating LDCs in Various Trade-related Areas

Programme	Area of support and the provider	Extension period after graduation
EU-EBA scheme	Trade-related LDC-specific market access support by the EU	3 years
EIF	Trade-related capacity building multi-donor support managed by the United Nations Office for Project Services (UNOPS)	5 years

(Table 4 contd.)

(Table 4 contd.)

Programme	Area of support and the provider	Extension period after graduation
UN Capital Development Fund (UNCDF)	Finance-related support for the LDCs	3 years + 2 years on an equal cost-sharing basis
LDCF	Climate fund operated by Global Environment Facility (GEF)	Projects approved before graduation would be funded
UN Technology Bank for LDCs	Information and communication technology (ICT) and knowledge sharing platform	5 years
International Development Law Organization (IDLO) pro-bono legal support	On-demand legal and professional assistance to LDC governments	5 years
UN travel support for General Assembly sessions	Travel support fund extended by UN agencies	3 years

Source: Based on UNOHRLLS (n.d.).

- *Emphasise the Need for Ensuring Policy Coherence*

There are specific UN resolutions in support of graduating LDCs and sustainable LDC graduation. Various other resolutions adopted by UN organisations and studies by the UNCTAD, among others, have also underscored the need to come up with concrete measures to help LDCs to graduate with momentum. A number of targets, including the SDG target of helping the LDCs double their share in global exports by 2020, have not been met. Coherence between UN resolutions and discussions in the WTO must be ensured and this spirit should inform the outcomes of any negotiated document concerning the graduating LDCs. UN General Assembly has urged for phasing out of the LDC-specific ISMs to be carried out 'in a gradual and predictable manner following the final exit of countries from the list'. A UN resolution mentions in this connection that for LDCs, graduation is *not a destination*, *but a milepost*. While the UN General Assembly has introduced the term 'smooth transition' in its resolution, there is no clarity as regards what *smooth transition* would entail in practice. As of now, countries may choose to voluntarily offer extension of particular ISMs. For example, EU's has offered to extend preferential treatment under the EBA for an additional three years; China has offered to allow Samoa enjoy benefits accorded as part of China's LDC scheme even after it had graduated (in 2014).

Allowing currently graduating LDCs to enjoy flexibilities that are already in place, till the time of their validity, is a powerful argument. For example, TRIPS and Public Health Decision will be effective till end-2032, the extended TRIPS transition period will end in December 2032 and the services waiver for LDCs has been extended till end-2030. COVID-19 has demonstrated the severe fragility of LDC economies to health risks. A strong case can be put in favour of extension of both the TRIPS transition period and the TRIPS and Public Health Decision. The graduating LDCs are also susceptible to high climate and environmental vulnerabilities. In view of this, these countries will need additional support through a set of special measures taking into cognisance their low EVI score. The other point relates to the built-in agendas concerning issues of interest to the LDCs, including the Hong Kong Ministerial Decision concerning the DF-QF Market Access, the Services Waiver Decision of MC8, the Bali MC9 LDC package (Monitoring Mechanism for S&DTs for LDCs) and MC10 Decision on favourable RoO for the LDCs, to name only a few. These decisions are yet to be operationalised in spite of the long passage of time after these were adopted. The currently graduating LDCs are unlikely to benefit from these decisions for which they have argued for so long. An extension of these measures may help deal with this frustrating situation. LDCs and graduating LDCs must emphasise the issue of coherence in their discussions with developed Members of the WTO.

- *Take the Graduation Issue to LDC V*

The upcoming decadal summit to design a PoA in support of the LDC, LDC V in Doha, Qatar to be held on 5–9 March, 2023, should be seen as an opportunity to pursue the case of graduating LDCs. LDC V must come up with a separate action agenda for the particular group of graduating LDCs which stand at a crucial turning point in their developmental journey. The failure in attaining the concrete targets set out in the LDC IV IPoA must be pointed out in this connection. A strong signal coming from world leaders could transmit an unequivocal message to negotiators in Geneva and this then could have important impact on the negotiations during the run up to MC13 to be held sometime in 2024.

- *Argue for a Graduation Support Fund*

The EIF is the only multilateral programme under the ambit of the WTO which is dedicated exclusively in support of LDCs in the areas of trade related aid and technical assistance with a view to facilitating strengthened global integration of their economies. LDCs are eligible to receive support from the EIF for an additional five years following graduation. However, regrettably, EIF has not received the required support in spite of pledges and promises made by WTO Members, concerned institutions and development partners. Also, the current phase of the EIF was planned to come to an end in 2022. The ex-ante impact assessment of the United Nations Department of Economic and Social Affairs (UNDESA), Country Vulnerability Profiles prepared by the UNCTAD, as also the assessment reports prepared by the graduating LDCs themselves, have identified a number of next generation of challenges that go beyond the limited remit of the three graduation criteria. The areas that were identified in these reports as critically important from the perspective of sustainable LDC graduation include productivity enhancement, technology upgradation, skills development, export product and market diversification and building of trade-related soft skills. Addressing these challenges are key to ensuring that the graduation of the LDCs is sustainable. It is proposed that a dedicated fund is established to cater to the specific and differentiated needs of the graduating LDCs identified in various aforesaid reports. This fund could also be deployed for technical support to build negotiating capacities in graduating LDCs, since a key strategy of these countries will need to be directed at deepening economic integration through bilateral and regional arrangements which will call for formidable skills in undertaking complex negotiations.

- *Design a Debt Relief Initiative for LDCs and Graduating LDCs*

The pandemic had adverse implications in the form of income erosion, rising unemployment, falling GDP growth rates, declining exports and rising debt burden for many LDCs and graduating LDCs. A large number of graduating LDCs was experiencing savings—investment gap, fiscal deficit and balance of payments shortfall even before the pandemic (Rahman and Bhattacharya, 2019). Many of these countries are having to incur higher amounts of debt in the backdrop of lower foreign exchange earnings, lower domestic resource mobilisation and higher expenditure consequent to the pandemic. As the LDCs try to receive from the pandemic, many of the attendant challenges continue to persist.Many are likely to end up with debt burden that may be unsustainable and could fall into debt trap. To recall, in recent times Bangladesh, a leading ceremony among the graduating

LDCs, had to resort to a USD 4.7 billion loan from the IMF because of its balance of payments difficulties. A debt relief initiative could release much-needed forex resources for addressing the immediate developmental needs of the LDCs and graduating LDCs and for meeting the needs of additional investment which will be required by the graduating LDCs. At MC12, Ministers from these countries had drawn attention to these concerns and urged provider countries to consider a debt relief initiative for LDCs and graduating LDCs. Indeed, such an initiative could be one of the key deliverables at the upcoming LDC V in Doha.

- *Take Care of Developing Country Priorities in View of the Fisheries Subsidies Discussion*

It is likely that the Agreement on Fisheries Subsidies, which aims at reducing IUU fishing, could be one of the key deliverables at MC12. It is estimated that about 60 per cent of assessed fish stocks are fully exploited and 30 per cent are already overexploited (FAO, 2016). Such overexploitation, in large part assisted by high subsidies, is considered to be not only seriously undermining the livelihoods of particularly small-scale fishing communities, but is also posing grave threat to ecosystem, undermining the broader cause of sustainable development. Share of subsidies to small-scale fishing is only about 10 per cent of global fishing subsidies (ICTSD, 2018), although what constitutes 'small-scale fishing' and at what point to trigger sanctions remain highly debatable. According to estimates, governments spend, approximately USD 35 billion annually in fisheries subsidies, leading to decline in fish stocks, and the consequent adverse impacts for marginalised fishing communities.

Indeed, the Sustainable Development Goals (SDGs) had earlier set 2020 as the deadline for concluding a WTO Agreement on Fisheries Subsidies. The objective of these negotiations is to promote the cause of sustainable fishing and to eliminate IUU fishing subsidies and prohibit subsidies which contribute to overcapacity and overfishing. There are primarily three areas of fishing—territorial waters (12 nautical miles from the sea shore), (EEZs: 200 nautical miles) and high seas. The current text includes a list of subsidies to prohibit IUU fishing, a new rule for actionable fisheries subsidies, general exceptions and a system of S&DT that provides for exceptions for small-scale fishing close to shore and narrower exceptions for large-scale fishing. Developing countries and LDCs are asking for exclusion of fishing activities in territorial waters from the ambit of any Agreement.

With respect to fishing in non-territorial waters they are asking for transition period for the UU part of the IUU in the EEZ. While there has been tangible progress in the discussions in the WTO, many issues still remain unresolved. Some developed countries (most notably, USA and the EU) have raised a number of questions and concerns in view of the text under discussion. Indeed, while the Members do have a consensus as regards safeguarding the interests of low-income, resource-poor and artisanal livelihood fishing,[37] discussions proved to be rather prolonged and increasingly complex.[38] The S&DTs being discussed in this connection include transition periods before rules on prohibited subsidies would apply for developed and developing countries and the LDCs, prohibitions not applying to UU part of IUU, subsidies applying on scale of fishing rather than geography, technical assistance and capacity-building support for conducting stock assessment and monitoring and surveillance of fish stocks. Among the contentious issues are those concerning how to achieve the overall objectives of enhanced ocean sustainability while also allowing flexibilities for some subsidies, including under the ambit of S&DTs in favour of developing countries and LDCs.

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[37] As also fishing within 12 nautical miles for a period of [2] years from the date of entry into force of the Agreement.

[38] For example, introduction of the concept of 'biologically sustainable fishing' and issues of labour rights by the USA and environmental standards by Brazil have added new dimensions to the ongoing discussion.

In the end, the MC12 Decision marked an importance step forward for ocean sustainability. Members agreed to prohibit harmful subsidies and consented to make additional recommendations at MC13 which would further strengthen the discipline of the Agreement. Graduating LDCs had urged that since they had common concerns, they be allowed flexibilities similar to the LDCs for a time-bound transition period following entry into force of the Agreement (Article 6.1). However, the MC12 Decision with regard the fisheries subsidies have failed to make the expectations of graduating LDCs and their concerns were not reflected in the text of the Agreement endorsed at the Ministerial. Graduating LDCs will need to take an active part in the discussion, in the run up to MC13, by keeping in the purview their interests both as graduating LDCs and as future developing countries.

- *Embed graduating LDC concerns in AoA discussions*

A number of WTO Members had been pushing for a credible outcome at MC12 as regards Agriculture. Some Members argued that this should be done in the form of a Framework Decision rather than just a Work Programme as the absolute minimum, keeping in view the trajectory for full modalities for MC13. Others wanted to keep the ambitions low by emphasising the need to be pragmatic. A number of contentious issues were involved here, including domestic support, cotton, special safeguard mechanisms, public stockholding, export restriction exemption for humanitarian food purchases under WFP and improved transparency, notification as regards applied tariffs and COVID-related export-restrictive measures. A large number of Members expressed a willingness to reach a permanent solution as regards the issue of Public Stockholding for food security purpose as part of the MC12 outcome. However, Members continue to have divergent views on a number of technical issues, including programme and product coverage, transparency requirements, safeguard measures, and whether a permanent solution should be a standalone outcome or an integral part of an overall domestic support package. In view of food security concerns, more specifically because of the adverse impacts of the pandemic, graduating LDCs have compelling concerns as regards the involved issues.[39]

Currently, discussion is continuing on the draft agriculture negotiating text circulated on 29 July 2021 geared to reaching consensus-based outcome at MC12. Major issues in the text include Domestic Support, Public Stockholding programmes for food security purposes and Special Safeguard Mechanism that would enable developing countries to raise tariffs temporarily in the event of an import surge or price depression.

- *Take Care of Graduating LDC Interests in Member-led Discussions*

A large number of WTO Members are taking part in the Member-led discussions on the so-called new issues, including Investment Facilitation and E-commerce, Services Domestic Regulations, MSMEs and Women Economic Empowerment. Some Members are keen to seek MC12 outcomes as regards at least some of these. Several LDCs are also taking part in these discussions. For example, the number of countries taking part in the discussions on Investment Facilitation increased from 70 to 100 between MC11 in 2017 and now. As regards E-commerce, several Members have pointed out to the need to reinvigorate the 1998 Work Programme on E-commerce, with some Members stating that the focus should be on development dimensions. LDCs and graduating LDCs are keen

[39]In this context, the graduating LDCs in particular will need to keep in the purview the perspectives of not only graduating LDCs, but also their future as developing countries. Graduating LDCs have both offensive and defensive interests in Agriculture. They must be proactively engaged in the discussions on S&DTs in view of these discussions.

to safeguard their interests when approaches and rules are framed, and also to ensure that S&DTs for LDCs are appropriately embedded in the outcome documents. Members should come to an agreement that graduating LDCs will be allowed to enjoy S&DTs, similar to the LDCs, for a time-bound period, if and when an Agreement is reached in concerned areas.

- *Contribute towards a Strengthened Multilateral Trading System*

As was noted earlier, a rule-based multilateral trading system is good for all countries, but more particularly for the relatively weaker economies. There is no denying the fact that WTO has lost steam in recent years. The failure of MC11 in Buenos Aires in 2017 to come out with a (consensus-based) Ministerial Declaration was a testimony to this. The muted result of MC12 have further strengthened this pessimistic outlook. Powerful Members have raised questions as regards systemic issues concerning the WTO, modality of WTO Decision making, developmental dimensions of the work of multilateral trading system and, most notably, as regards the workings of the Appellate Body of the DSB, among others.

On the other hand, there is a broad-based consensus that the WTO as an institution, albeit a reformed one at that, is in the interest of all countries and the smooth functioning of the global trading system. There is a wide recognition that in the absence of a rule-based multilateral system protectionism will hold sway and global trade will suffer irreparably. As was noted earlier, even the powerful Members who are opposing many aspects of the WTO have remained engaged in the ongoing discussions and negotiations. This is manifested in the granting of the extension of TRIPS transition period for 13 years and in the active participation of EU and USA in the discussions on Agreement on Fisheries Subsidies and AoA. Graduating LDCs, as future developing countries, must be engaged and contribute to the ongoing discussions as regards reforms in the WTO, modalities to operationalise the S&DT provisions in the WTO Agreements (beyond just monitoring the implementation), multilateralisation of the outcomes of the plurilateral discussions, among others. While at the onset of the pandemic many Members initiated protectionist measures, most have by now been withdrawn. The consensus to start text-based discussion on the TRIPS (patent waiver) proposal submitted by India and South Africa was a good sign. LDCs and graduating LDCs should remain engaged in this discussion and extend their fullest support towards its successful conclusion. Whilst MC12 Decision did not live up to the expectations of the LDCs, that there was an agreed outcome document with same consensus-based results was in itself encouraging and give reasons for hope in going forward.

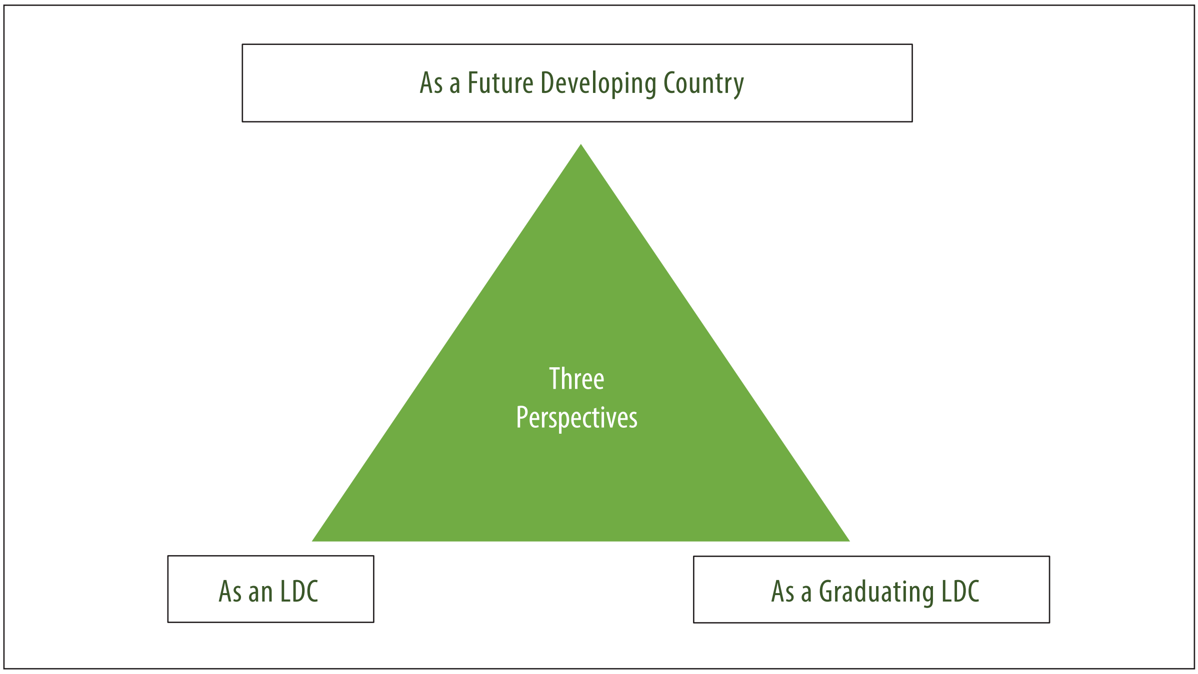
In fine, LDCs and graduating LDCs should join hands with key groups in the WTO to make the multilateral system stronger and more development-friendly. In this connection, the graduating LDCs will need to be cognisant of their three identities in the context of the ongoing discussion in the WTO—as an LDC, as a graduating LDC and as a future developing country, secure their interests and contribute to the strengthening of the WTO. They should play a proactive role in the forthcoming discussions in view ofthe upcoming WTO-MC13.

- *Prioritise Undertaking the Needed Domestic Homework*

There is no denying that on their part the graduating LDCs must do their homework as part of their own sustainable graduation strategies. Indeed, almost all graduating LDCs have set in motion this process in preparation of their post-graduation future.

Indeed, the graduating LDCs will need to be engaged in the MC12 discussions by wearing three hats: as LDCs, as graduating LDCs and as future developing countries (Figure 4). As LDCs, by arguing for meaningful implementation of the S&DTs and preferential markets access schemes in place; as graduating LDCs by stressing the need for measures, through a graduation package, in support of sustainable graduation; and as future developing countries, by keeping in the purview the interests of the developing countries in view of the ongoing discussions, including on fisheries subsidies, TRIPS flexibilities, Member-led initiatives and WTO reforms and others.[40]

Figure 4: Three Perspectives Informing the Design of Graduation Strategies



Source: Author's elaboration.

As figure 5 indicates, graduation strategies of LDCs must be informed by (a) endeavours to retain current benefits for time-bound period; (b) mitigating the adverse impacts of graduation; (c) preparations for the future as developing countries and (d) steps to realise regional and global market opportunities.

[40]WTO reforms include issues of both horizontal and systematic nature.

Figure 5: Strategic Focus of Graduating LDCs in View of Graduation

Retention (of current international support measures).	***Mitigation*** (of adverse impacts originating from graduation).
Preparation (for the future as a developing country).	***Realisation*** (of potential opportunities of closer regional and global integration).

Source: Author's elaboration.

Final Remarks

While support measures in the WTO are important for the graduating LDCs, these countries need to develop and implement their own actions and initiatives that will be required to address graduation challenges. For this, they should seek support also from other actors and financial institutions (e.g. World Bank, Asian Development Bank (ADB), New Development Bank (NDB), Asian Infrastructure Investment Bank (AIIB)) which will also enable graduating LDCs to leverage the support provided under the aegis of the WTO. They should also take initiatives to deepen regional cooperation through establishment of production networks and Regional Value Chains (RVCs) to take advantage of the emerging opportunities in the regional and global markets, and towards sustainable LDC graduation.

In view of the above discussion, graduating LDCs such as Bangladesh should continue to pursue their agendas in the WTO as also in other fora. Bangladesh should develop a comprehensive strategy to make best use of the time, in the run up to MC13, so that by the time it graduates in November 2026 at least some concrete measures are in place (even if not a comprehensive package with graduating LDC-specific ISMs) for the graduating LDCs. At the same time domestic homework must be pursued in all earnest in view of Bangladesh's future as a (non-LDC) developing country. In this connection, Bangladesh should prioritise implementation of the concrete suggestion which have been articulated in the Action Agendas prepared by the high level committee on LDC graduation at the Prime Minister's Office (PMO) and in the 8th FYP of Bangladesh. A time-based plan of action, with specific responsibilities, must be chalked out. Bangladesh will need to implement long overdue reforms in the areas of fiscal-budgetary- monetary macroeconomic management, and renew efforts at strengthening institutional capacities and efficiency, private sector competitiveness, and GoB's negotiating capacities to meet the challenges of the post-LDC world.

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Bangladesh is scheduled to graduate from the group of Least Developed Countries (LDCs) in November 2026. This paper discusses the challenges faced by Bangladesh as a graduating LDC in the context of developments in the World Trade Organization (WTO). The paper highlights three key concerns: the embedded structural weaknesses in the backdrop of which LDCs such as Bangladesh are graduating, the negative impacts of graduation due to the loss of LDC-specific support measures, and the need for initiatives to help these countries adjust to the new economic environment and build the required supply-side capacities. The paper examines the expectations of the graduating LDCs from the WTO-MC12 and suggests that the Ministerial Conference has failed to deliver the expected results and now the graduating LDCs must prioritise their own homework to make graduation sustainable and irreversible. The paper proposes three identities that should guide Bangladesh's strategies in the coming days: as an LDC, to make the best use of the rest of the period prior to graduation, as a graduating LDC, to pursue the demands of the group in the WTO discussions and negotiations, and as a future developing country, by taking the necessary preparatory steps towards successful transition. Bangladesh should make the best use of the preferential treatment it is currently enjoying, proactively pursue the cause of the graduating LDCs in global fora, address the adverse implications of loss of LDC-specific preferences and undertake necessary reforms to deepen regional cooperation and strengthen global integration to make LDC graduation sustainable and attain its development aspirations.

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