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OPERATIONALISING THE 2002 LDC ACCESSION GUIDELINES: AN ANALYSIS

SYNOPSIS

Benchmarks to 'further strengthen, streamline and operationalize' the 2002 LDC Accession Guidelines have been developed. The following conclusions can be made regarding these benchmarks:

- With these benchmarks, acceding LDCs are asked to take on liberalisation commitments that are far steeper than the flexibilities many existing WTO members enjoy, including some developed countries.
- The numbers put at risk the ability of acceding LDCs to build their production capacities in agriculture and industry.
- The benchmarks seem to have omitted the explicit provision of transition periods in agriculture, and in industrial tariffs (except for a few tariffs and only if the countries do not take advantage of having 5% of unbound tariffs).
- There is the possibility that these benchmarks will impact on other countries. i) Non-LDC acceding countries could be asked to do more than these benchmarks. ii) Once a multilaterally recognised baseline has been developed (by way of these benchmarks), existing WTO Members open themselves to the possibility of being asked to take commitments up to the level of these benchmarks or beyond in current or future WTO negotiating Rounds, even if this had not been the intention of the present negotiators.
- The 2002 Accession Guidelines says that when WTO Members seek concessions and commitments, they must take 'into account the levels of concessions and commitments undertaken by existing WTO LDCs' Members'. If this is taken to mean the average tariff levels of existing WTO LDC Members, then the average bound agricultural tariff would be 76.1%; binding coverage for NAMA 51.6% and the bound NAMA tariff would be 42.9%. Compared to these, the new benchmarks - the average bound agricultural tariff of 50%; binding coverage for NAMA of 95%, and the average bound tariff for NAMA of 35% - are much more onerous for acceding LDCs.

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2. The numbers put at risk the ability of acceding LDCs to build their production capacities in agriculture and industry.

3. The benchmarks seem to have omitted the explicit provision of transition periods in agriculture, and in industrial tariffs (except for a few tariffs and only if the countries do not take advantage of having 5% of unbound tariffs).

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II. BACKGROUND TO THE NEGOTIATIONS ON LDC ACCESSION GUIDELINES

Mandate

1. In the Doha Ministerial Declaration, WTO Members declared that they attach great importance to concluding accession proceedings as quickly as possible (paragraph 9). Accession of LDCs was considered a priority and Members agreed to work to facilitate and accelerate negotiations with acceding LDCs. Paragraph 42 of the Doha Ministerial Declaration instructs the Sub-Committee for Least Developed Countries to report on an agreed work programme to the General Council at its first meeting in 2002.

2. The Sub-Committee on Least-Developed Countries agreed on 12 February 2002 on a work programme for least-developed countries.[1] This work programme focused on seven systemic issues[2], LDC accession being one of them.

3. The LDC work programme emphasizes that these issues are 'systemic'. In other words, LDC accession and other issues in the LDC work programme are relevant for the WTO and the multilateral trading system, regardless of whether a negotiation round takes place. Effectively, these issues have been 'decoupled' from the Doha Round and should not be used as a bargaining chip by developed countries to early harvest other Doha Round issues (such as Trade Facilitation).

4. The implementation of work on LDC Accession in the LDC Work Programme led to the adoption by the General Council of the Guidelines for the Accession of LDCs in December 2002.[3] In the 2002 LDC Accession Guidelines, Members agreed that they *'shall exercise restraint in seeking concessions and commitments on trade in goods and services from acceding LDCs'*. Accession to plurilateral trade agreements (i.e. government procurement and trade in civil aircraft) or participation in other optional sectoral market access initiatives shall not be a precondition for accession to the WTO.

Implementation of the 2002 LDC Accession Guidelines

5. Thirty LDCs are original WTO members. Since the creation of the WTO, the WTO membership has approved the accession package of five LDCs (Nepal, Cambodia, Cape Verde, Samoa and Vanuatu). Seven more LDCs are in various stages of the accession process (Afghanistan, Bhutan, Comoros, Laos, Liberia, Sao Tome and Principe, Sudan and Yemen).[4]

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[1] WTO document WT/COMTD/LDC/11 of 13 February 2002

[2] These seven issues included a) Market Access for LDCs; b) Trade-Related Technical Assistance and Capacity Building Initiatives for LDCs; c) Providing, as appropriate, support to agencies assisting with the diversification of LDCs' production and export base; d) Mainstreaming, as appropriate, into the WTO's work the trade related elements of the LDC-III Programme of Action, as relevant to the WTO's mandate; e) Participation of LDCs in the Multilateral Trading System; f) Accession of LDCs to the WTO; and g) Follow-up to WTO Ministerial Decisions/Declarations.

[3] WTO document WT/L/508 of 20 January 2003

[4] Six other LDCs have not applied for WTO membership (Eritrea, Kiribati, Somalia, South Sudan, Timor-Leste and Tuvalu). In its 2012 triennial review, the UN's Committee for Development Policy

6. There has been a feeling that no real 'restraint' has been exercised, especially by some developed countries in the bilateral accession negotiations. In fact, according to UNCTAD's Least Developed Country Report of 2004 which studied the terms of accession of Cambodia and Nepal, these two LDCs 'made commitments that significantly exceed commitments made by current WTO members'. Posh Raj Pandey, Chairman of the South Asia Watch on Trade, Economics & Environment (SAWTEE) based in Kathmandu, concludes that the level of accession commitments made by Nepal is broader and deeper than those of the original LDC members and marks a considerable deviation from the letter and spirit of the General Council Guidelines on the accession of LDCs.[5]

WTO-plus obligations and WTO-minus rights

7. Besides market access conditions, many recently acceded LDCs have agreed to commitments not required by WTO Agreements ('WTO-plus') or imposed on existing LDC Members. Examples of WTO-plus rules are accession to the International Union for the Protection of New Varieties of Plants (UPOV), more stringent transparency disciplines, national treatment to foreign investors and privatization. In some accession protocols, commitments on government procurement have been made without the country acceding to the Government Procurement Agreement itself.[6] Furthermore, LDCs have had to agree to waive their rights to certain WTO provisions ('WTO-minus') that are otherwise available to existing LDC Members. Commonly, recently acceded LDCs have abolished 'other duties and charges' (ODCs) or have agreed not to introduce trade-related investment measures (TRIMs) in future. Also, in some cases, certain Special Differential Treatment provisions for existing WTO LDC Members (e.g. the right to provide export subsidies) are waived by recently acceded LDCs. The 2002 LDC Accession Guidelines do address some of those issues: for instance, Special and Differential Treatment provisions for existing LDCs do also apply to acceding LDCs; and accession to plurilateral agreements (on trade in civil aircraft and government procurement) is not a precondition for WTO Membership. Nevertheless, despite the fact that some of these areas have been addressed by the Guidelines, WTO Members clearly did not restrain themselves in extracting concessions from the acceding LDCs.

MC8 - From LDC package to LDC accession guidelines

8. After the release of the April 2011 texts, WTO members came to recognize that they could not conclude the Doha Round by the end of 2011. In the absence of a concluded Doha

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recommended Tuvalu for graduation from the LDC list. Kiribati will most likely be recommended for graduation in 2015. See UN document E/2012/33.

[5] Nepal's Accession to the World Trade Organization: Case Study of Issues Relevant to Least Developed Countries, Posh Raj Pandey, Ratnakar Adhikari and Swarnim Waglé, http://webapps01.un.org/ldcportal/c/document_library/get_file?uuid=b42e6818-65c4-45f8-8766-7741597aac40&groupId=10136

[6] For instance, in the section on government procurement in Vanuatu's Working Party Report, Vanuatu confirmed that it 'did not permit discrimination against foreign suppliers and that no such discrimination will be introduced in the future' for government contracts above certain stipulated amounts.

Round, and with the Eighth WTO Ministerial Conference (MC8) looming in December 2011, in May and June 2011, WTO Members explored the possibility of having a package of issues agreed for the benefit of the least developed countries (LDCs) during the Ministerial.

9. The LDCs put forward four elements of the LDC package at the meetings in May and on June 22 of the WTO Trade Negotiating Committee (TNC):

- duty free access for at least 97 per cent of their products into developed countries (implementation of Annex F of the Hong Kong 2005 Ministerial Decision)
- more harmonized and favourable rules of origin for goods originating from LDCs
- a step forward in reducing subsidies for cotton
- a waiver to allow LDCs to get special access to the services markets of other WTO members[7]

10. Regrettably, this LDC package while agreeable to developing countries was not accepted by some developed countries. The US and also some other developed countries pushed for the addition of other "plus" issues. These topics included trade facilitation, export subsidies and other areas of export competition in agriculture, fisheries subsidies, provisions on regional trade agreements, liberalized trade in environmental goods and services and a "standstill" commitment to refrain from raising trade barriers even within countries' committed limits.

11. The concept of the LDC-package broke down partly due to disagreement on the 'plus' issues. In the attempt to seem to be delivering something to LDCs just ahead of MC8, some Members came up with the idea of working on certain regular or systemic issues and the strengthening LDC accession guidelines with benchmarks that could make the accession process as far as possible multilateral, rather than bilateral.

12. There was no time, however, ahead of MC8 to deliver a package at the Ministerial. Instead, Ministers at MC8 decided that the WTO would further the work on some smaller LDC issues, namely the extension of the LDC transition period under Article 66.1 of the TRIPS Agreement, the LDCs services waiver as well as LDC Accession Guidelines. With respect to LDC Accession Guidelines, Ministers agreed that the Sub-Committee on LDCs would

> *'develop recommendations to further strengthen, streamline and operationalize the 2002 guidelines by, inter alia, including benchmarks, in particular in the area of goods, which taken into account the level of commitments undertaken by existing LDC Members. Benchmarks in the area of services should also be explored' (WT/L/846).*

13. Ministers asked the Sub-Committee on LDCs *'to complete this work and make recommendations to the General Council no later than July 2012' (WT/L/846).*

[7] http://www.twnside.org.sg/title2/gtrends/gtrends350.htm

14. The negotiations on establishing these benchmarks have been taking place in 2012. The LDC Sub-Committee decided on 29 June 2012 that they would submit a draft Addendum to the 2002 Guidelines to the General Council.

15. The General Council meeting of 25 – 26 July 2012, will consider the recommendations of the Sub-Committee on LDCs. This Note highlights the key elements of the current draft Addendum (WT/COMTD/LDC/W/55/Rev.2) and the implications on acceding countries especially LDCs, acceding non-LDCs, and the possible systemic implications on existing WTO Members.

III. STATUS OF THE ADDENDUM

16. According to some trade diplomats familiar with the negotiations, it is understood that the draft Addendum (at the time of writing, its document number is WT/COMTD/LDC/W/55/Rev.2) would have the same standing as the 2002 LDC Accession Guidelines. It would not supersede or replace the Guidelines, and should be read in conjunction with the 2002 Guidelines.

IV. MULTILATERALISING ACCESSION NEGOTIATIONS, OR KEEPING THEM BILATERAL?

17. A key demand of the LDC group was to, as far as possible, multilateralise the accession negotiations. Presumably, the idea was that it would reduce the 'bully' factor in the negotiations which have been conducted on a bilateral basis, during which individual members of the WTO can make and have made tough demands on acceding countries, including LDCs. Hence the proposal on this issue by LDCs themselves (WT/COMTD/LDC/W/52, November 2011) states categorically:

- *'For better predictability and transparency, bilateral market access negotiation shall be replaced by multilateral market access negotiations;*
- *Any derogation from the benchmarks shall be allowed only under exceptional circumstances in the context of multilateral market access negotiations'.*

18. Multilateralising the process however, was opposed by the United States, and also some other developed countries. The US reportedly noted that they would not allow for 'negotiations to be taken out of the negotiations'. i.e. for them, the accession process was fundamentally about bilateral negotiations and they did not agree to transforming it into a multilateral process. Multilateralising the process would mean that demandeurs of concessions from acceding LDCs would not be able to get a range of bilateral deals from these LDCs.

19. Unfortunately, the US position to keep the process primarily bilateral/ plurilateral[8] prevailed, and is reflected in the Addendum in several places:

- Para 3c notes that *'Establishing benchmarks on average bound rates does not prejudge the right of Members to negotiate the level of bound rates in individual lines of interest to them'*.
- Footnote 1 of the Addendum states that *'market access negotiations shall proceed bilaterally on the basis of requests from WTO Members or on the basis of offers from an acceding LDC'*.
- To reinforce this point even further, the Addendum states that *'Benchmarks do not stipulate minimum or maximum bound tariffs to be undertaken by any acceding LDC'*. (Para 3c, WT/COMTD/LDC/W/55/Rev.2). i.e. despite these benchmarks, the final tariff levels would still be a matter of negotiations.

V. DIVERGENT VIEWS AND BENCHMARK NUMBERS IN THE NEGOTIATIONS

20. The bulk of the negotiations on the draft Addendum centred on creating benchmarks in agriculture and industrial goods, and there were also long discussions on services. It seems that little attention was paid to the other issues (technical assistance; Special and Differential Treatment etc).

21. Very divergent positions were taken by the US and EU, and the LDC group in the negotiations. In their November 2011 paper, the LDCs were of the view that the benchmarks should be the averages of the original LDC Members - 79% for agriculture tariff rate, 44% for NAMA tariff rate, and 48% binding coverage for NAMA tariff lines (WT/COMTD/LDC/W/52). The binding coverage for agriculture for original LDCs since the Uruguay Round has been 100%.

22. However, several developed countries took a different view, that instead of using the average rates of original LDC members of the WTO, the benchmarks should use as reference the averages of the rates agreed to with recently acceded LDCs, i.e. average bound tariff of 32% for agriculture and 23 % for industrial product (NAMA) lines; plus 100% coverage for the NAMA lines.

23. It would seem that this latter view prevailed to a larger degree as compared to the LDC position. In particular, instead of the 48% binding coverage in NAMA the LDCs wanted, some developed countries asked for 100% coverage and the final number is now 95%. Moreover, the 5% unbound NAMA tariffs are not to be self-selected by the acceding LDCs, but would be subject as well to negotiations with existing WTO members.

[8] Most WTO Members do not take an active part in being demandeurs in accession negotiations. Some major developing countries in fact make it a principle not to do so in order to support the acceding developing country. Bilateral negotiations are a key negotiating modality between demandeurs and the acceding country. However, negotiations also do take place in what is effectively a 'plurilateral' setting between a limited group of demandeurs and the acceding country.

VI. BENCHMARK ON AGRICULTURE – IMPLICATIONS

The New Agriculture Benchmark vis-à-vis the 2002 Guidelines

24. The 2002 LDC Accession Guidelines states that LDCs' market access commitments shall take into account the levels of concessions and commitments undertaken 'by existing WTO LDCs' Members'.

25. If we are to interpret this as the average of existing LDCs' commitments, in agriculture, this would imply 100% binding and an average bound agricultural tariff of **76.1%.**[9]

26. In contrast, the new benchmarks in the draft Addendum (para 5) states that acceding LDCs have to

    i. bind all their tariff lines (i.e. 100% tariff binding)
    ii. these bound tariff rates will be at an average rate of **50%.**

27. The benchmark of 50% is much lower than the average of 76.1% of all existing LDC members or 79% with respect to original LDC members, and compared to these rates, it is not to the advantage of the acceding LDCs.

Existing WTO Members' More Flexible Commitments

28. Some existing WTO members have much higher average bound tariffs in agriculture – showing WTO Members' preference to maintain their policy space. This raises the question of why acceding LDCs, despite their LDC status, are being asked to make commitments with respect to bound tariff rates that are far higher than those of some existing members in the WTO. The boxes below provide these numbers for developed countries (Iceland and Norway); Small and Vulnerable Economies (SVEs); existing LDC Members; and other developing countries.

Developed Countries with Agriculture Bound Tariffs Higher than 50%

Country/ Territory	Bound tariff, simple average (%)
Iceland	109
Norway	131.1

[9] At the time of writing, Samoa and Vanuatu did not become existing LDC Members yet. They will become a Member of the WTO 30 days after notifying the Secretariat of the domestic ratification of their accession package. Their tariffs have therefore not been included in the calculation of the tariff averages of existing WTO LDC Members.

Developing Countries with Agriculture Bound Tariffs Higher than 50%

LDCs	
Country/ Territory	**Bound tariff, simple average (%)**
Lesotho	198.9
Bangladesh	192
Zambia	123.4
Malawi	121.2
Tanzania	120
Gambia	104.3
Myanmar	103.6
Mozambique	100
Burkina Faso	98.2
Democratic Republic of the Congo	98.2
Burundi	94.7
Niger	84.2
Chad	80
Togo	80
Uganda	77.6
Rwanda	74.2
Solomon Islands	71.9
Benin	61.8
Mali	59.2
Angola	52.9
NB: 20 out 32 existing WTO LDC members have Agricultural bound tariffs > 50%	
SVEs[a]	
Mauritius	119.7
Barbados	110.8
Trinidad and Tobago	89.9

Other developing countries[b]	
Country/ Territory	**Bound tariff, simple average (%)**
Tunisia	116
India	113.1
Kuwait	100
Pakistan	95.6
Egypt	95.2
Colombia	91.4
Israel	73.3
Malaysia	67.6
Turkey	60.7
Korea, Republic of	55.9
Venezuela	55.7
Morocco	54.3
Nigeria	150
Zimbabwe	140.1
Saint Vincent and the Grenadines	114.6
Saint Lucia	114.5
Dominica	112.2
Saint Kitts and Nevis	108.6
Antigua and Barbuda	104.7
Belize	101.1
Grenada	100.7
Kenya	100
Guyana	99.6
Ghana	97.2
Jamaica	96.9
Cameroon	80
Gabon	59.6
Guatemala	51

[a] This category is the WTO grouping of Small, vulnerable economies (SVEs) in Agriculture, according to a list of WTO groupings compiled by the WTO secretariat (update 4 July 2012), http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf.
[b] Inclusion of a country in the category 'Other developing countries' does not imply that this country cannot avail of SVE treatment according to the draft Doha Agriculture modalities contained in TN/AG/26, 21 April 2011.

OECD Countries' Agricultural Subsidies and Dumping and the Necessity of Tariffs for LDCs

29. Binding agricultural tariffs at an average of 50% is very low for LDCs, particularly since most LDCs are predominantly agricultural economies. They may require high tariffs in agriculture if they want to avoid the agricultural dumping by OECD countries which is enabled by their high subsidies resulting in low prices for OECD exports. The EU provides domestic supports in agriculture of between 80 – 90 billion Euros a year; and the US, according totheir last notification for 2008, provided 102 billion USD. (See tables below)

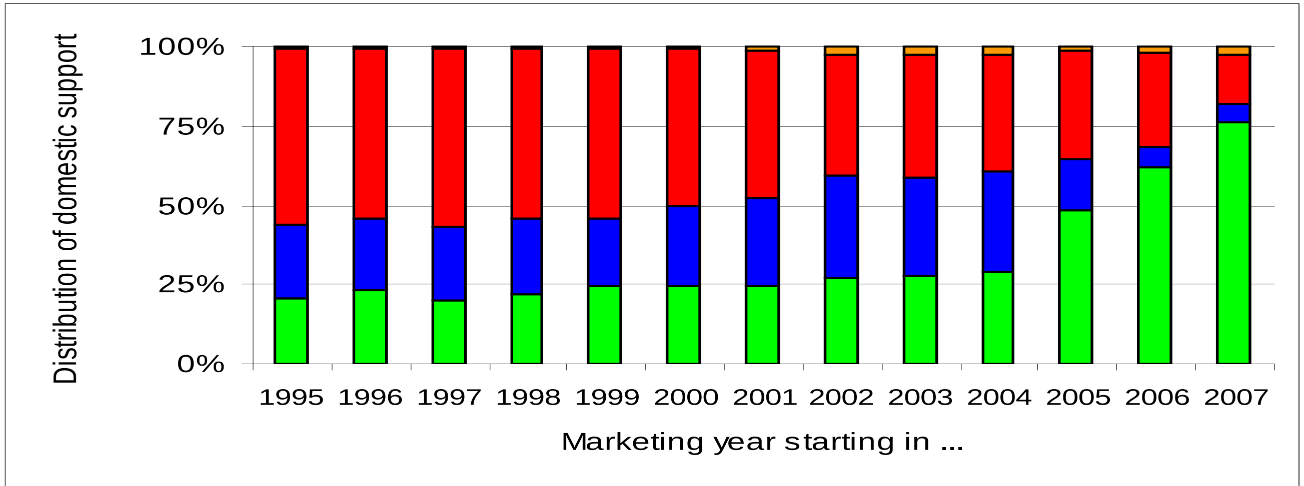
30. These subsidies are not adequately disciplined in the WTO, particularly the Agreement on Agriculture's Green Box where subsidies can be provided without limits. They have had an impact on many developing countries' agricultural sector. LDCs therefore need the ability to make use of tariffs as a possible countervailing measure to safeguard themselves against these unfair trade practices.

31. Ironically, while developed countries are still enjoying the privilege of using high domestic supports including in the most trade-distorting amber box (Aggregate Measure of Support (AMS)[10], many LDCs and recently acceded LDCs have had to bind their agricultural AMS at zero. This implies that they are not allowed to have any AMS subsidies, beyond very low levels (known as the *de minimis*).

[10] Aggregate Measure of Support (AMS) in the WTO's Agreement on Agriculture includes both direct and indirect government supports to the agricultural sector if they are judged to create distortions in the market. For example, it could include direct payments to farmers to guarantee them a higher than world market price, or indirect payments such as taxes on food at the point of sale to consumers, which are then used to support farm programmes.

EU domestic support (based on WTO notifications) - Figures in EUR million

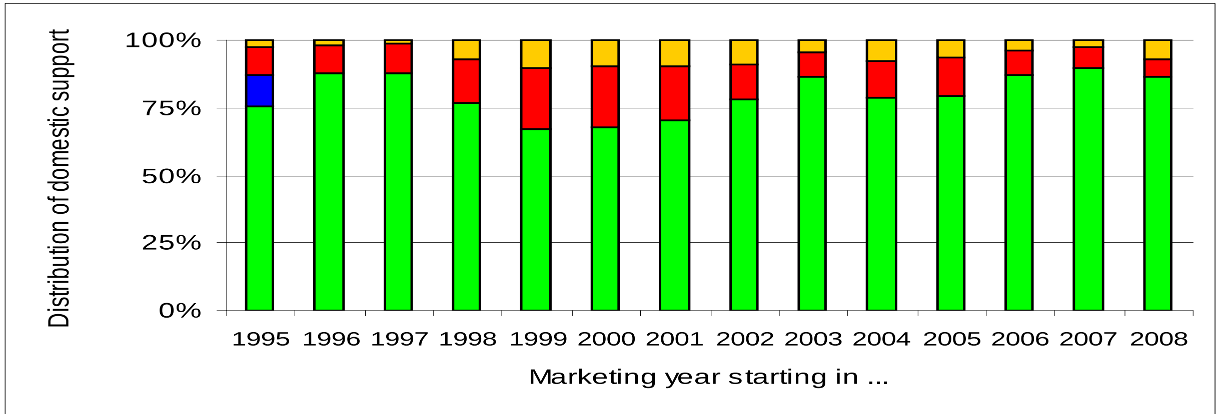
Marketing year starting in …	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	50,181	20,846	825	71,852	18,779	90,631
1996	51,163	21,521	761	73,445	22,130	95,576
1997	50,346	20,443	733	71,521	18,167	89,688
1998	46,947	20,504	525	67,975	19,168	87,143
1999	48,157	19,792	554	68,502	21,916	90,419
2000	43,909	22,223	745	66,876	21,848	88,724
2001	39,391	23,726	1,012	64,128	20,661	84,790
2002	28,598	24,727	1,942	55,266	20,404	75,670
2003	30,891	24,782	1,954	57,626	22,074	79,700
2004	31,214	27,237	2,042	60,493	24,391	84,884
2005	28,427	13,445	1,251	43,123	40,280	83,404
2006	26,632	5,697	1,975	34,304	56,530	90,833
2007	12,354	5,166	2,389	19,909	62,610	82,519



The EU"s bound OTDS level is €110.3 billion. The OTDS cut to be undertaken is 80% (Rev.4, para 3a) and thus the bound level will be €22 billion.
However, in 2007, the actual or applied OTDS of the EU was €19.9 billion, which was below the bound level. Thus, the EU need not cut its actual OTDS under the new rules. It would only be cutting "water."
See also South Centre Analytical Note 'Present Situation of the WTO Doha Talks and Comments on the 21 April Documents', April 2011

US domestic support (based on WTO notifications - Figures in USD million

Marketing year starting in …	Total Amber	Total Blue	Total de minimis	OTDS	Total Green	Total domestic support
1995	6,214	7,030	1,643	14,887	46,041	60,928
1996	5,898	-	1,175	7,072	51,825	58,897
1997	6,238	-	812	7,050	51,252	58,302
1998	10,392	-	4,750	15,142	49,820	64,962
1999	16,862	-	7,435	24,297	49,749	74,046
2000	16,843	-	7,341	24,184	50,057	74,241
2001	14,482	-	7,054	21,536	50,672	72,208
2002	9,637	-	6,690	16,328	58,322	74,650
2003	6,950	-	3,237	10,187	64,062	74,249
2004	11,629	-	6,458	18,087	67,425	85,512
2005	12,943	-	5,980	18,923	72,328	91,251
2006	7,742	-	3,601	11,343	76,035	87,378
2007	6,260	-	2,260	8,520	76,162	84,682
2008	6,255	-	6,697	12,952	81,585	94,537
2008 revised	6,255	-	9,971	16,226	86,218	102,444



The US' current bound level of OTDS is $48.3 billion. The 60% cut it is asked to undertake (para 3b, Rev.4) will bring the bound OTDS level to $14.5 billion. However, the applied OTDS was $12.9 billion in 2007.
Thus the US does not have to reduce its actual or applied OTDS. It only has to "cut water" (the value between the bound and applied level).
See also South Centre Analytical Note 'Present Situation of the WTO Doha Talks and Comments on the 21 April Documents', April 2011

Lessons from the Food Crisis and the Importance of Agriculture for Development

32. During the times when global agricultural prices are high, LDCs may not be looking at increasing their tariff levels in agriculture. Many LDCs and other developing countries have in fact become 'dependent' on obtaining cheap imports, since their own domestic agricultural production have been undermined by the inflow of cheaper imports as a result of structural adjustment programmes. These programmes included the lowering of tariffs and the withdrawal of subsidies and supports to the agriculture sector. However, especially since the 2008 global food crisis, there is a new impetus in developing countries including LDCs to produce more of their own food. Failure of LDCs to build the capacity to produce their own food could leave their populations at risk when prices on the world market get too high or too volatile, and when global supplies are limited or erratic.

33. Given this, setting agricultural tariffs at appropriate and high enough levels to encourage domestic production, and to wean countries off their dependence on cheap imports, is of critical importance. LDCs with large segments of their population being engaged in agriculture must ensure that tariff policies can support a viable food production strategy which can also provide employment to their people.

34. The new guidelines, by setting tariff levels that are far above what many existing WTO members now have, do not provide a fair standard for acceding LDCs.

VII. BENCHMARKS ON NON-AGRICULTURE (NAMA) - IMPLICATIONS

The New NAMA Benchmark vis-à-vis the 2002 Guidelines

35. If we are to interpret the 2002 LDC Accession Guidelines as the average tariff of existing LDCs' commitments in NAMA, this would imply a binding coverage for NAMA of **51.6%**, and an average bound NAMA tariff of **42.9%**.[11]

36. In contrast, the new benchmarks in the draft Addendum (para 5) states that acceding LDCs have to

   i. bind **95%** of their non-agricultural tariff lines at an overall average rate of **35%** ***OR***
   ii. take 'comprehensive bindings' of NAMA lines (i.e. higher than 95% binding coverage) and when they do, have transition periods of 10 years for 10% of their tariff lines.
   iii. In addition, the tariff lines to be unbound in NAMA are not through self-selection but are subject to negotiations (as clarified in para 7 footnote 3).

[11] At the time of writing, Samoa and Vanuatu did not become existing LDC Members yet. They will become a Member of the WTO 30 days after notifying the Secretariat of the domestic ratification of their accession package. Their tariffs have therefore not been included in the calculation of the tariff averages of existing WTO LDC Members.

37. These benchmarks in NAMA requiring LDCs to bind 95% of tariff lines at an average tariff of 35% are much more demanding of acceding LDCs than the 42.9% tariff average and binding coverage of 51.6%.

Existing WTO Members' More Flexible Commitments

38. The benchmarks in the draft Addendum places acceding LDCs in a position in which they have to make steeper commitments than the present commitments of many existing WTO Members. The following boxes show the Members in the WTO (LDCs and non-LDCs) which have either average bound tariff levels higher than 35% or tariff binding coverage for NAMA which are lower than 95%.

39. When NAMA tariffs are not 'bound' in the WTO, it means that on these unbound lines, countries have freedom to set and amend the applied tariff levels without an upper limit.

LDCs with NAMA Bound Rate > 35% or NAMA Binding Coverage < 95%

Country/ Territory	Binding coverage (%)	Bound tariff, simple average		Country/ Territory	Binding coverage (%)	Bound tariff, simple average
Tanzania	0.2	120		Mauritania	29.8	10.7
Chad	0.3	75.4		Mali	31.1	14.1
Mozambique	0.5	11.3		Central African Republic	56.3	37.9
Gambia	0.6	57.6		Haiti	87.7	18.2
Togo	0.8	80		Niger	96.2	38.3
Bangladesh	2.6	34.4		Maldives	96.6	35.1
Uganda	2.9	50.8		Guinea Bissau	97.4	50
Zambia	4.1	42.7		Democratic Republic of the Congo	100	95.9
Myanmar	5	21.5		Rwanda	100	91.7
Burundi	10.1	26.6		Solomon Islands	100	79.4
Madagascar	19	25.4		Angola	100	60.1
Malawi	21.2	42.3		Lesotho	100	60
Guinea	29.2	10.1		Sierra Leone	100	48.5
Burkina Faso	29.6	13.2		Djibouti	100	40
Benin	29.7	11.4				

**Non-LDC developing countries with Bound Rate > 35%
or NAMA Binding Coverage < 95%**

SVEs[a]		
Country/ Territory	**NAMA binding coverage (%)**	**NAMA bound tariff, simple average (%)**
Antigua and Barbuda	97.5	51.5
Barbados	97.5	73
Bolivia	100	40
Dominica	93.9	50
El Salvador	100	35.7
Fiji	43.9	40
Grenada	100	50
Guatemala	100	39.7
Jamaica	100	42.4
Nicaragua	100	40.3
St. Kitts and Nevis	97.5	70.8
St. Lucia	99.5	54
St. Vincent and the Grenadines	99.7	54.6
Trinidad and Tobago	100	50.6

[a] This category is the WTO grouping of Small, vulnerable economies (SVEs) in non-agricultural market access (NAMA), according to a list of WTO groupings compiled by the WTO secretariat (update 4 July 2012), http://www.wto.org/english/tratop_e/dda_e/negotiating_groups_e.pdf.

[b] Inclusion of a country in the category 'Other developing countries' does not imply that this country cannot avail of SVE treatment according to the draft Doha NAMA modalities contained in TN/MA/W/103/Rev.3/Add.1, 21 April 2011.

Other developing countries[b]		
Country/ Territory	**NAMA binding coverage (%)**	**NAMA bound tariff, simple average (%)**
Bahrain	69.3	33.5
Belize	97.6	51.5
Cameroon	0.1	57.5
Colombia	100	35.4
Congo	3.3	14.8
Costa Rica	100	42.9
Côte d'Ivoire	22.7	8.6
Cuba	20.3	9.4
Ghana	1.3	36.1
Guyana	100	50
Hong Kong, China	37.3	0
India	69.8	34.6
Indonesia	95.1	35.5
Israel	71.5	11.4
Kenya	1.8	55.1
Korea	93.8	10.2
Kuwait	99.9	100
Macao, China	16.9	0
Malaysia	81.9	14.9
Mauritius	5.4	21.3
Morocco	100	39.3
Nigeria	6.7	48.6
Pakistan	99.1	54.6
Philippines	61.9	23.4
Singapore	65.1	6.4
Sri Lanka	28.7	19.6
Suriname	15.5	16.5
Thailand	71.2	25.4
Tunisia	51.6	40.7
Turkey	42.7	17
Zimbabwe	10	11

Developed countries with NAMA Bound Rate > 35% or NAMA Binding Coverage < 95%

Country/Territory	**NAMA binding coverage (%)**	**NAMA bound tariff, simple average (%)**
Iceland	94.2	9.6

Binding Coverage: Many WTO Members Enjoy Much Lower Levels of Binding Coverage

40. If average tariff levels are set at quite low rates (e.g. the 35%), then the level of binding coverage becomes very important. Especially important is the tariff level when a country has a domestic industry in that product or sector, and therefore may need to support that domestic industry. Having tariff peaks is a common practice, even in developed countries. Hence keeping tariff lines unbound serves a very useful function. It is for this reason that there are a significant number of countries which have low levels of binding coverage in NAMA. Even **Iceland, a developed country, has a NAMA binding coverage of only 94.2%,** lower than the 95% asked of acceding LDCs. Those WTO Members that have high binding coverage generally have average NAMA bound tariff levels which are higher than 35% (as shown in the tables above for SVEs and LDCs).

41. The requirement to have binding coverage of 95% at an average bound level of 35% is even more stringent than what the low-binding coverage developing countries have attained in the Doha Round's draft NAMA modalities. Countries with a NAMA binding coverage of less than 35% have the flexibility to bind 75% or 80% of their NAMA tariff lines at an average of up to 30%.[12] Countries concerned are: Cameroon; Congo; Côte d'Ivoire; Cuba; Ghana; Kenya; Macao, China; Mauritius; Nigeria; Sri Lanka; Suriname; and Zimbabwe.

42. The following existing WTO Members enjoy binding coverage that is less than the 95% asked of acceding LDCs:

[12] The binding coverage of 75% applies when the NAMA binding coverage is below 15%, and the binding coverage of 80% applies when NAMA binding coverage is between 15% and 35%.

WTO Members with a Binding Coverage Lower than 95%

LDCs		**SVEs**		**Other developing countries**		**Developed countries**	
Tanzania	0.2	Cameroon	0.1	Hong Kong, China	37.3	Iceland	94.2
Chad	0.3	Ghana	1.3	Turkey	42.7		
Mozambique	0.5	Kenya	1.8	Tunisia	51.6		
Gambia	0.6	Congo	3.3	Philippines	61.9		
Togo	0.8	Mauritius	5.4	Singapore	65.1		
Bangladesh	2.6	Nigeria	6.7	Bahrain	69.3		
Uganda	2.9	Zimbabwe	10	India	69.8		
Zambia	4.1	Suriname	15.5	Thailand	71.2		
Myanmar	5	Macao, China	16.9	Israel	71.5		
Burundi	10.1	Cuba	20.3	Malaysia	81.9		
Madagascar	19	Côte d'Ivoire	22.7	Korea	93.8		
Malawi	21.2	Sri Lanka	28.7				
Guinea	29.2	Fiji	43.9				
Burkina Faso	29.6	Dominica	93.9				
Benin	29.7						
Mauritania	29.8						
Mali	31.1						
Central African Republic	56.3						
Haiti	87.7						

Is there Enough Protection for Domestic Industries?

43. Many developing countries till now are reluctant to bind a large number of their NAMA tariff lines at the WTO. This is because in those sectors where there is domestic production, they would like the flexibility to adjust tariffs to the levels that are supportive of their industries. In such situations, many prefer to leave tariff lines unbound, the unbound lines representing products which are locally produced.

44. In this context, it is useful to see the extent of local production and exports that exists in some acceding LDCs.

Acceding LDCs' Level of Local Production / Exports[13]

Country	Current local production (number of tariff lines)	Current local production (% of tariff lines)
Ethiopia	1'729	34.2%
Yemen	462	9.1%
Laos	1'315	26.0%

VIII. TRANSITION PERIODS

45. Transition periods are very important because they allow a country time to phase in and implement its commitments within a certain period of time. In the Uruguay Round, all countries including developed countries were given transition periods. For example, the Agreement on Agriculture provided transition periods of 6 years for developed countries and 10 years for developing countries to implement their commitments. Since all members including developed countries enjoyed transition periods when they themselves acceded to the WTO (at the inception of WTO), it would only be fair for the poorest countries, the LDCs, to be given an even longer period to adjust through transition periods.

46. However, the benchmarks do not provide a general transition period for acceding LDCs in meeting their market access commitments in both agriculture and NAMA. With respect to agriculture, there is no mention of transition periods (para 5 of the Addendum). In NAMA, an acceding LDC has two choices: 1) it can bind 95% of tariff lines and 2) it can bind more than 95%. In the second situation, , the LDC can have a transition period of 10 years for 10% of their tariff lines. In the first situation, the Addendum is silent on the matter of transition periods. So this would seem to imply that there are no transition periods for agriculture, nor when countries undertake 95% NAMA binding coverage. It would also seem that the transition periods are provided as an incentive for LDCs to have binding coverage of more than 95%.

47. It can be argued, however, that there could be another interpretation. Footnote 1 of the draft Addendum states that the negotiations on bound tariff rates will be 'in accordance with established procedures and practice'. One may argue that this means transition periods would be provided since this has been the practice. However, it is very unclear what is meant by 'established procedures and practice'. In any case, , it would be up to each individual LDC to fight its own uphill battle to get adequate transition periods, which would be 10 years or more, or perhaps similar to what developed countries

[13] A product is considered to be locally produced when the world imports a 'substantial' amount of that good from a country. We use a threshold value of USD 100,000: when this amount was exceeded in one of the last three years for which data is available, the product is considered locally produced. A threshold value was used to filter out 'noise' in the trade data. All trade data is based on ITC Trade Map and on a six-digit level in the Harmonized System (HS6). ITC TradeMap contains trade data for 5,052 tariff lines on six-digit level, 5,051 tariff lines if we do not consider HS 99999 (commodities not elsewhere specified).

obtained in agriculture when they joined the WTO (i.e. 6 years). At any rate, for the LDCs that will negotiate their accession presently and in future, the lack of clarity on what are the transition periods, if any, could be to their disadvantage.

48. The table below shows what a selection of recently acceded countries has vis-à-vis transition periods. Each tariff line was assigned with a specific transition period. The maximum transition period was up to 14 years (for Panama). The recently acceded countries are not given the maximum transition period for every line. Thus the average transition period (i.e. the average of all tariff lines) is significantly lower than the "maximum" transition period. In the Addendum, it is proposed that the maximum transition period is 10 years when acceding LDCs bind more than 95% of their NAMA tariff lines. The average transition period would be 1 year in this scenario (10% of tariff lines with a transition period of 10 years). In comparison, Cape Verde had a maximum transition period of 11 years and an average transition period of almost 4 years. Nepal had a maximum transition period of 10 years and an average transition period of almost 3 years. In other words, their transition periods were 3 to 4 times better than what is currently contained in the Addendum.

Recently acceded WTO Members and their transition periods

	Country	Year of approval by MC/GC	Approval by GC/MC	Maximum transition period		Average transition period		Max transition period	Average transition period	Share of tariff lines with transition period (%)
				Ag	NAMA	Ag	NAMA			
Recently acceded LDCs	Cambodia	2003	MC	8	10	0.02	0.05	**10**	**0.05**	**0.6%**
	Nepal	2003	MC	3	10	1.97	2.99	**10**	**2.85**	**92.5%**
	Vanuatu	2011	MC	4	2	0.07	0.02	**4**	**0.03**	**1.7%**
	Samoa	2011	MC	11	11	0.12	0.02	**11**	**0.04**	**0.5%**
	Cape Verde	2007	GC	6	11	3.89	3.88	**11**	**3.88**	**60.5%**
Selected other recently acceded countries	Ukraine	2008	GC	5	5	0.13	0.05	**5**	**0.07**	**0.0%**
	Saudi Arabia	2005	GC	5	10	0.16	0.31	**10**	**0.29**	**7.4%**
	Russia	2011	MC	9	8	2.49	2.56	**8**	**2.54**	**61.4%**
	China	2001	MC	9	9	1.53	1.38	**9**	**1.40**	**53.2%**
	Panama	1996	GC	14	14	2.92	4.07	**14**	**3.85**	**48.8%**

Note: the transition period is counted in years from the year of approval of accession package by the Ministerial Conference/General Council until implementation period for a particular tariff line.

IX. BENCHMARKS ON SERVICES – IMPLICATIONS

The Benchmark

49. The benchmark on services is vague:

'Acceding LDCs shall not be required to undertake commitments in services sectors and sectors beyond those that have been committed by existing WTO LDC Members, nor in sectors and sub-sectors that do not correspond to their individual development, financial and trade needs. Accordingly, WTO Members shall exercise restraint in seeking commitments in trade in services from the acceding LDCs' (para 12).

50. The language that acceding LDCs should not be required to go beyond the commitments of existing LDCs is ambiguous. This leaves acceding LDCs open to be pressured to make commitments in services up to the level that the LDCs with the highest commitments have undertaken.

51. According to some trade diplomats that are familiar with the negotiations, para 12 of the draft Addendum text (WT/COMTD/LDC/W/55/Rev.2) must be read in conjunction with para 8b:

'There shall be flexibility for acceding LDCs for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development situation…'.

Existing and Recently Acceded Members' Commitments in Services

52. There are 12 services sectors in all, and about 160 sub-sectors (the exact number or sub-sectors varies depending on how the 'counting' is done). According to the WTO Secretariat, almost a third of WTO members (44 Members) have commitments in 20 sub-sectors or less. On average, across all schedules of both developed and developing countries, a 'typical' original WTO Member has undertaken commitments on slightly more than 25 subsectors, thus covering about 15% of the total. The only criterion used is the inclusion of a sector in a Member's schedule.[14]

53. In contrast, the newly acceded LDCs have had to agree to committing many more sectors and sub-sectors than most existing WTO members. To date, the average number of subsectors committed per WTO Member (including the countries that have acceded since 1995) is 50.[15] Recently acceded LDCs have undertaken the following services commitments:

- Nepal: 11 sectors and 70 subsectors
- Cambodia: 6 sectors and 94 subsectors
- Cape Verde: 10 sectors

[14] http://www.wto.org/english/res_e/booksp_e/chap4_e.pdf

[15] WTO E-learning, 'Trade in Services in the WTO', February 2012, page 106, http://etraining.wto.org/admin/files/Course_254/CourseContents/GATS-R7-E-Print.pdf

- Vanuatu : 10 sectors and 72 sub-sectors
- Samoa: 10 sectors and 81 sub-sectors

54. That the recently acceded LDCs have had to undertake such a large extent of commitments has significance for what will be demanded of LDCs negotiating for accession. Given the ambiguity of the new draft Guidelines, the acceding LDCs could try to argue that they do not have to do more than what original WTO LDC Members have done. However, others negotiating with them could also argue that they could and should commit up to the same level as LDCs which have opened up the largest number of sectors and sub-sectors, and this would constitute not taking commitments 'beyond those that have been committed by existing WTO LDC Members'. This is because "existing LDC members" also include the recently acceded LDCs.

55. Therefore the ambiguous language in this text does not guarantee fair treatment for acceding LDCs during the negotiations as it could instead by used against them.

X. Impact of the Draft Addendum on Acceding Developing Countries and Existing WTO Members

56. Will the benchmarks established in the Addendum to operationalize the 2002 LDC Accession Guidelines affect other countries including existing WTO members? It could be argued that the benchmarks strictly speaking relate only to LDCs that are acceding to the WTO and will not have any bearing to other countries. However it can also be argued that there are implications for other countries.

Impact on Non-LDC Acceding Developing Countries

57. Non-LDC acceding countries are the countries that are most likely to be affected. If the benchmarks are to apply to LDCs, it can be expected that developing countries that are not LDCs would be asked to take on commitments that are even deeper.

Impact on Existing WTO Members

58. These benchmarks can impact on existing WTO Members in at least two ways:

    i) Impact on Common External Tariffs (CETs) of customs unions

59. Many of the Acceding LDCs are part of existing or planned customs unions. Whatever commitments they take will have lasting implications for all the other countries within the customs union.

60. Customs unions' Common External Tariffs (CETs) are applied tariff levels. These can be changed by the members as long as the members of that customs union have higher bound tariffs at the WTO. The country with the lowest WTO bound tariff within the customs union for a tariff line will determine the applied tariff ceiling for the customs union as a whole for that tariff line. Customs unions with acceding LDCs will find that

their NAMA average can only be a maximum of 35%. This is quite low and may not be sufficient to support their industrialisation.

ii) Possible Future Impact on Existing WTO Members' Flexibilities

61. Although these guidelines are meant to apply to acceding LDCs, there is a possibility or even a danger that the benchmarks may be referred to by some WTO Members in future negotiations during the Doha Round or after, to pressurise other WTO Members, including LDCs, to take on stronger commitments than what has already been offered in the modalities, or than they are willing to offer.

READERSHIP SURVEY QUESTIONNAIRE
South Centre Analytical Note

OPERATIONALISING THE 2002 LDC ACCESSION GUIDELINES: AN ANALYSIS

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