



**General Council
Council for Trade in Goods
Committee on Trade and Development
Council for Trade-Related Aspects of
Intellectual Property Rights
Working Group on Trade and Transfer of Technology**

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**POLICY SPACE FOR INDUSTRIAL DEVELOPMENT - A CASE FOR REBALANCING TRADE
RULES TO PROMOTE INDUSTRIALIZATION AND TO ADDRESS EMERGING CHALLENGES
SUCH AS CLIMATE CHANGE, CONCENTRATION OF PRODUCTION AND DIGITAL
INDUSTRIALIZATION**

COMMUNICATION FROM THE AFRICAN GROUP (ANGOLA; BENIN; BOTSWANA; BURKINA FASO;
BURUNDI; CABO VERDE; CAMEROON; CENTRAL AFRICAN REPUBLIC; CHAD; CONGO;
CÔTE D'IVOIRE; DEMOCRATIC REPUBLIC OF CONGO; DJIBOUTI; EGYPT; ESWATINI; GABON; THE
GAMBIA; GHANA; GUINEA; GUINEA-BISSAU; KENYA; LESOTHO; LIBERIA; MADAGASCAR;
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NIGERIA; RWANDA; SENEGAL; SEYCHELLES; SIERRA LEONE; SOUTH AFRICA; TANZANIA; TOGO;
TUNISIA; UGANDA; ZAMBIA AND ZIMBABWE)

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1 BACKGROUND

1. The global economy continues to grapple with the COVID-19 pandemic, food insecurity and slow economic growth. Various factors continue to hamper global economic recovery, including ongoing geopolitical instability. These developments have had a profound impact on trade and development. As a result, developing countries including least developed countries (LDCs) are faced with a new set of global challenges that threaten to undermine their economic development and the achievement of the targets under the UN sustainable development goals (SDGs). They are now also exposed to external shocks such as rocketing inflation, and the food and energy crises, supply-chain disruptions, increasing market concentration, increasing rent extraction resulting in "winner-takes-most markets" characterized by super-profits, and balance of payment challenges.

2. The Multilateral trading system from the early days of the General Agreement on Tariffs and Trade (GATT) through to the establishment of the World Trade Organization (WTO) recognized the differences in levels of economic development among its members. The Marrakesh Agreement Establishing the WTO further recognizes the need for positive efforts to be designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development. To date, this has been dealt with through exceptions to the general rules and disciplines providing for some measure of flexibility for developing countries colloquially called "special and differential treatment" (SDT). This piecemeal and ad hoc approach has not worked.

2 AFRICAN CONTEXT

3. African economies remain locked in production patterns dominated by extractive sectors with their exports concentrated in basic unprocessed commodities with minimal value addition.

4. While Africa continues to benefit from several preferential market access mechanisms, including special and differential treatment, its global trade footprint remains marginal at less than 3% of global trade. Preferential schemes while they have certain benefits, at times can also constrain the promotion of independent, autonomous, and discretionary determination of African economies' own domestic development policies, as envisaged in the African Union Agenda 2063. Furthermore, these preferences are granted at the discretion of developed countries and are revocable at will. Often noncompliance with political and other demands of developed countries results in suspension of preferential access to developed markets. Increasingly non-reciprocal market access is being replaced by fully reciprocal models.

5. For many African states, development remains the core focus at the WTO alongside levelling the playing field in international trade. This has informed the African Group's negotiation strategy and positions at the WTO.

3 POLICY SPACE FOR INDUSTRIAL DEVELOPMENT

6. In an interdependent world a sustainable balance between domestic and global rules revolves around States' policy space: too little can make States incapable of responding to their local needs and constraints, ultimately undermining the effectiveness of and trust in global rules and institutions. But national policy space should be tempered with the need for regional and global coordination toward sustainable development and other common goods.

7. The ultimate test of successful trade policy at the macro-economic level should be in whether it promotes economic diversification, increasing value addition and industrial upgrading without deepening inequality domestically and among nations or contributing to environmental degradation. Trade rules should be a catalyst to accelerating structural transformation, industrial development and diversification in developing and least developed countries to enable them to address inequality and exclusion. The system must be tailored to better respond to current global dynamics and megatrends, including effectively contributing to the attainment of the UN SDGs.

8. Trade rules should provide for producers and nations in the developing world the necessary policy space to integrate more meaningfully and qualitatively in global value and supply chains not only as suppliers and exporters of primary products but also as producers of intermediate and final goods. Such meaningful integration should help developing economies create jobs, develop their industrial, agricultural and agroprocessing sectors, as well as the services sectors in an environment of expanding and deepening industrial capabilities.

9. Furthermore, in an increasingly uncertain global energy supply environment, policy space is also required to promote green industrialization, as a critical complement to other adaptation and mitigation-related actions to build resilience against climate change. The multilateral trading system also has a key role to play in ensuring that economic and industrial development opportunities associated with the green transition contribute to the structural transformation of developing countries and their structural position in global production and supply networks. Accordingly, developing countries should be cautious about premature tariff liberalization on environmental goods and services associated with the green transition prior to building their own requisite capacities and capabilities in areas of revealed and latent comparative and competitive advantages.

10. Rebalancing trade rules and guaranteeing access to the requisite policy tools will assist developing countries and LDCs in developing capacities and capabilities to contain, prevent, respond and recover more effectively from acute shocks and more chronic crises associated with a changing world.

11. Whilst World Trade Organization (WTO) rules such as those on border trade measures have helped developing countries by providing certainty to trade, more often than not, Members have found themselves constrained from pursuing their development and industrialization objectives by rules which do not allow them to use the very policy tools that other advanced Members have used to industrialize. These rules in many instances foreclose the 'policy space' to, change the structure of these economies and in some cases, reindustrialize strategic sectors. These limitations have contributed in entrenching persistent production and trade-related imbalances in the global economy. Furthermore, such imbalances are exacerbated by 'special' privileges that developed countries enjoy and maintain while developing countries are subjected to punitive measures or

graduation models and conditionalities, including those related to the generalized systems of preferences (GSP) and the AGOA that do not compliment their developmental priorities and requirements.

12. Several exceptions or derogations are available to developing countries in recognition of the specific economic, social, and administrative challenges they face. The G90 has advocated the use of these flexibilities. These include "flexibilities" for developing members, contained in GATT (1994) Articles XII (balance of payment) and XVIII (infant industry and balance of payment), in the Agriculture Agreement, TRIMS, TRIPS and in the SCM Agreement. Additional derogations are provided by the Enabling Clause, effectively creating exceptions to the MFN clause of the GATT for preferential trade agreements and South-South trade agreements, and several other ad hoc waivers.

13. Article XX of GATT allows derogation from GATT rules in order to achieve certain legitimate policy objectives, including protection of public morals; protection of human, animal or plant health life; conservation of exhaustible natural resources; restriction on exports of domestic materials necessary to ensure essential quantities of such materials to a domestic processing industry. There are, however limitations arising from specific WTO Agreements that need to be reviewed to provide flexibility in application and interpretation, providing 'policy space' for Governments to respond to the unfolding polycrisis in a more inclusive and agile manner. Thus, the call by the African Group for greater policy space should not be confused with existing SDT provisions in various WTO agreements. Rather, this call should be considered as an integral feature of the WTO reform process. A reform process aimed at making the WTO, as a multilateral institution Members have all collectively built, better able to respond to the implications of the polycrisis to the interest of its Members.

14. The African Group, therefore calls on members to initiate discussions to elaborate on what is meant by the growing calls for greater policy space to promote industrialization and to address growing consolidation and concentration of market power in key product and service markets. Moreover, such discussions must also dedicate their attention to emerging challenges such as the impacts of climate change and digital industrialization on domestic, regional and global production and supply networks.

15. Furthermore, the African Group has identified the TRIMS Agreement, the ASCM, the TRIPS Agreement and matters related to technology transfer as key agreements and areas where members can initiate policy discussions. These discussions should be undertaken with a view to rebalancing and calibrating trade rules in a manner that ensures that they enable structural transformation, diversification and industrialization in an inclusive and equitable manner.

16. These agreements or areas are by no means exhaustive of the arena where necessary policy space is needed to contribute to industrialization. They may further include, among others, those areas that could be identified in the course of the evolving policy discussions. These areas might include the role of trade, debt and finance and the scope and role of infant industry protection as complementary policy tools or measures.

3.1 Agreement on Trade-Related Investment Measures (TRIMS Agreement)

17. The WTO TRIMS Agreement came into force in 1995, as part of the Uruguay Round negotiations. Members increasingly consider TRIMS as useful tools of industrial development and economic diversification. In the context of global supply-chain disruptions, pandemics and geo-political conflicts and the reconfiguration of globalization, it is important to focus on how these tools can be used to respond to the challenges of the moment. Moreover, the heightened focus on strategies for climate change mitigation and adaptation bring into sharp focus the need for the development of capabilities that enable structural transformation and decarbonization in response to these imperatives.

18. Members across the board are seemingly employing these policy tools to build domestic manufacturing capabilities and stimulate production linkages. Unsurprisingly so, as growing firm-level needs for shorter lead times and supply uncertainty has prompted many firms to consider producing goods and services closer to markets, as global logistics and supply costs are yet to return to pre-pandemic levels. This environment has also led to notable tensions and disputes.

19. For example, local content requirements were the main reason for the different WTO disputes that have taken place since 2010 on subsidies for renewable energy. In these disputes, local content requirements were always challenged under Article III of GATT, under the TRIMS agreement, and under the SCM agreement. The challenges related to policy interventions by both developed and developing countries. This clearly demonstrates the increasing interests by Members across the board to make use of this policy tool for what they deem legitimate objectives.

20. It is pertinent to explore the degree of a threshold that can be applied to determine the fairness and proportionality of policy responses that Members choose to adopt to achieve these legitimate policy ends. Any system that does not respond to the challenges confronting its Members and adopts a rigid interpretation is bound to fail or suffer from a crisis of credibility and legitimacy, or lead to trade tensions. A multilateral framework is required that to open policy space especially to developing countries to use local content requirements and other measures as policy tools to enable and incentivize the strategic development and maintenance of domestic and regional capacities. Acquiring such, allows developing countries to make good on the benefits arising from trade, alongside achieving their industrial diversification, climate goals and digital transformation.

3.2 Agreement on Subsidies and Countervailing Measures (ASCM)

21. The Agreement on Subsidies and Countervailing Measures contains multilateral rules on whether or not a subsidy may be provided by a Member. These measures are enforced through the WTO dispute settlement mechanism or through the imposition of countervailing duties or measures. It is instructive in this regard that developing countries are the main targets of countervailing measures by developed economies.

22. The expiry in 2000 of Article 8 of the ASCM that used to provide some policy space for Members to address technological, poverty and environmental challenges — all crucial issues for sustainable development - is an issue that Members need to reconsider in view of emerging global challenges. Article 8 of the SCM provided cover for non-actionable (green-light) subsidies toward research and development, regional development and environmental protection. Some nations took advantage of these provisions, but their full potential had not yet been realized when Article 8 expired in 2000.

23. The Doha Declaration provides the opportunity to negotiate reinstatement and expansion of these subsidies, especially where subsidies are used to correct the numerous distortions in the global trading system. The tension between multilateral trade rules and the demands of domestic firms, the market and societies, within an unfolding polycrisis, are becoming more pronounced. These tensions are increasingly driving many Members to act unilaterally resulting in an unpredictable trade environment that continues to disadvantage developing countries, especially African countries. There has been extensive use of subsidies by many Members, yet the political systems that deliver the subsidies, the substantive meaning of subsidies in those systems, and the forms those subsidies take differ. While developed countries can afford to act unilaterally, developing countries are limited by various factors in doing so. Not least geopolitical and uneven market power dynamics that render developing countries vulnerable to wide-ranging punitive and retaliatory actions. In order for the multilateral trading system to be just and equitable, a multilateral framework that provides policy space and certainty to developing countries to implement legitimate policy measures is urgently required.

24. Given the centrality of subsidies to both conflict and stability going forward, the WTO needs to find a way to accommodate and manage them. Consideration should be given to flexibilities required within the context of the ASCM to enable developing countries to grant subsidies, including through complimentary localization initiatives, for industrial development and structural transformation, including technology research and development funding, production diversification and development and to allow measures to promote green industrialization to confront climate change and freight rebates to mitigate high transport costs. This could be in the form of a "Greenbox, which would include revisiting the policy space and tools that were phased out in the course of implementation of the ASCM post the Uruguay Round.

3.3 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and Technology Transfer

25. Technology and technical know-how are essential for improving productivity and enhancing firm-level and sector competitiveness, promoting export growth and realizing the development aspirations of developing countries, especially in Africa. There is a need for the WTO to ensure that trade rules provide a better balance between protection and incentives to promote research and innovations on the one hand and the unfolding needs of society on the other. The COVID-19 pandemic has exposed this imbalance.

26. Technology transfer is therefore an important policy tool to narrow the technological and productivity gap, as seen in the widening digital divide. Technology transfer allows for the promotion of meaningful integration of developing countries in global trade. Article 8 of the TRIPS provides that members may take steps to safeguard the public interest in economic and technological development. Articles 7 and 8 of the TRIPS express the intention of the drafters of the TRIPS agreement to allow countries to pursue measures protecting their societal interests. However, Members have not developed mechanisms to achieve these objectives.

27. In addition, Article 66.2 of the TRIPS Agreement places a positive obligation on developed countries to provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base. LDCs have expressed reservations about the extent to which this obligation has been fulfilled.

28. The WTO needs to develop a framework for technology transfer, including a set of appropriate channels for technology transfer to ensure that it is affordable and accessible to developing countries. There is an urgent need to facilitate digital and green technology transfers to enable African countries to structurally transform. The TRIPS Council and the Working Group on Technology Transfer could be tasked within their mandates to consider this issue.

4 THE IMPORTANCE OF MULTILATERALISM AND THE NEED TO ADDRESS UNILATERALISM

29. The global economy is witnessing significant policy shifts in the advanced countries such as near-shoring that have huge implications for developing countries. The pandemic, supply-chain disruptions, and geo-political tensions have exposed the risks of concentrating market power and production, among a few, at the expense of the many. Such a situation will undoubtedly introduce and highlight the tensions between trade rules and the requisite policy space Members require to address emerging challenges that necessitate that Members take action to protect their legitimate interests.

30. Unilateral and punitive measures implemented by some result in "beggar thy neighbour" policies that change the terms of competition, lock-in technology advances; carrying great economic costs, especially for developing countries. In the context of current global challenges, a multilateral framework to rebalance trade rules to promote domestic and regional production must be developed urgently. This will provide developing countries the policy tools to respond in a fair and balanced manner.

5 WAY FORWARD

31. There is a balance of interests that needs to be arrived at in the multilateral trading system to enable predictability of trade rules whilst simultaneously allowing Members the requisite policy space to achieve their development objectives. Such a balance requires that Members are provided the flexibility to implement legitimate policy measures to address common contemporary and future challenges such as climate change, uneven industrial and economic development, job creation, improvement of living standards inter alia. Some of these legitimate policy objectives underscore the notion that trade is not an end in and of itself as outlined in the preamble of the Marrakesh Agreement, but rather an avenue towards the advancement of human and social progress.

32. The African Group, therefore calls for focused discussions by Members to address the constraints inherent in certain WTO agreements which limit the policy space to drive industrialization, economic diversification and structural transformation programmes, including the ability to respond to

emerging challenges such as climate change. In the context of growing impulses of unilateralism and beggar-thy-neighbour policies coupled with inevitable trade tensions and litigation, this submission further underscores the importance and relevance of multilateralism as a means through which trade rules can be adapted to respond to this unfolding polycrisis. Whilst the General Council shall conduct and oversee the policy discussions at a policy level, it may delegate, as appropriate, discussions to the Committee on Trade and Development, or any such WTO body relevant to the issue at hand. Members could also submit specific proposals in the relevant WTO bodies in relation to recalibrating trade rules to provide policy space for industrial development.
