



**General Council  
Committee on Subsidies and Countervailing Measures  
Committee on Trade and Development**

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**A CASE FOR REBALANCING THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (ASCM) – POLICY SPACE TO PROMOTE INDUSTRIALISATION IN DEVELOPING COUNTRIES**

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; MALAWI; MALI; MAURITANIA; MAURITIUS; MOROCCO; MOZAMBIQUE; NAMIBIA; NIGER; NIGERIA; RWANDA; SENEGAL; SEYCHELLES; SIERRA LEONE; SOUTH AFRICA; TANZANIA; TOGO; TUNISIA; UGANDA; ZAMBIA AND ZIMBABWE)

The following communication, dated 22 May 2023, is being circulated at the request of the African Group.

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## 1 INTRODUCTION

1.1. This submission is submitted as a follow-up to the Africa Group submission tabled in the General Council held on 8-9 March 2023 titled "Policy space for industrial development - a case for rebalancing trade rules to promote industrialisation and to address emerging challenges such as climate change, concentration of production and digital industrialisation" (WT/GC/W/868, G/C/W/825, WT/COMTD/W/270, IP/C/W/695, WT/WGTTT/W/33). It is a contribution to the discussions and negotiations towards the reform of the WTO agreed by Ministers at MC12.

1.2. Subsidies are a critical instrument in the toolbox that national governments use to address market failures and achieve a variety of policy goals. The Agreement on Subsidies and Countervailing Measures (ASCM) contains multilateral rules that discipline the type and scope of allowable subsidies or limits within which subsidies may be provided by a Member. The Agreement also regulates the actions that members can take to counter the effects of subsidies which can be enforced either through the WTO dispute settlement mechanism or through the imposition of countervailing duties or measures.

1.3. Members, as entailed in Article 27 of the ASCM, recognise that subsidies may play a role in economic development of developing country Members and agreed on provisions on Special and Differential Treatment of Developing Country Members. However, some of these flexibilities had transitional periods and have since expired. The world economy is confronted with compounding global challenges today, including the on-going effects of the COVID-19 pandemic, climate crisis and economic consequences of geopolitical tensions, global food and energy crises, causing the cost-of-living crisis and rising debt burdens in many countries. In this context, it is important to consider how flexibilities, not only in the context of S&D as provided for in Article 27, can be availed to developing countries to provide them with the requisite tools to respond to the polycrisis.

1.4. Subsidies in developing countries aimed at achieving "legitimate development goals", including support for regional growth, technology research and development, production diversification, and development and implementation of environmentally sound methods of production should not have to face countervailing measures or other actions from other governments. Yet, it is instructive in

this regard that developing countries have been the main targets of countervailing measures by developed economies.

1.5. The African Group therefore calls for flexibilities to be granted to developing countries so as to provide requisite flexibilities to developing countries to respond to the polycrisis and to drive their structural transformation, industrial development and diversification. The ASCM disciplines need to be recalibrated and rebalanced to infuse certainty and equity in the multilateral trading system.

1.6. This paper aims to provide a non-exhaustive list of issues that can be considered by Members to rebalance trade rules to enable industrialisation within the framework of the ASCM to enable sustainable economic transformation in developing countries and in particular Africa. This is important in light of the relevance of subsidy disciplines to emerging policy orientations increasingly adopted by many Governments.

## 2 RELEVANCE OF WTO ASCM RULES AND DISCIPLINES TO CURRENT CHALLENGES

2.1. The scale of the polycrisis confronting the global economy, inequality and disparities in levels of development of countries and regions, highly concentrated patterns of production, and the lack of sufficiently diversified economies in developing countries calls for urgent action at a multilateral level to devise rules that are fit for purpose. With the world economy still emerging from the COVID-19 pandemic, it is today confronted with a confluence of global challenges among them the ongoing climate crisis, a global food and energy crises which is causing the cost-of-living crisis and rising debt burdens in many developing countries.

2.2. In the context of this "polycrisis", Governments, most notably in developed economies are implementing industrial policies as a viable option for accelerating sustainable economic growth as a means of advancing national economic priorities, including the de-risking of supply chains. Industrialisation is an indispensable factor in the development process and is critical in the process of the enhancement and expansion of productive capacities to achieve economic diversification. Many developing countries struggle to diversify their economies and it is important to explore how WTO rules can facilitate the industrialisation efforts of Members. For example, Africa's growth trajectory is limited by its dependence on production and exports of agricultural and extractive primary commodities which leaves it vulnerable to global shocks.

2.3. Between 1995 and 2021, there has been a level of convergence in the degree of export diversification among the Americas, Asia, and Europe (*see Annex A - Figure 1*). However, a breakdown among income groups highlights that the export diversification gap between (i) low-income countries, which include mainly African countries, and (ii) upper-middle- and high-income countries remains wide (*see Annex A- Figure 2*). Over the last three decades, Africa recorded only a slight improvement in export diversification, that is, a 0.03 points decrease in the export diversification index.

2.4. Developing economies seeking to develop their economies from a relatively much lower base are also contending with ambitious carbon reduction and mitigation targets, in line with their nationally determined contributions (NDCs) as negotiated under the Paris Agreement. The increasing adoption of decarbonization targets with extraterritorial application imposed through trade measures by their main export markets also underscores the urgency to diversify their economies and integrate into environmentally-friendly and high value manufacturing value chains as key producers and suppliers of products in the green economy, e.g. electric vehicles and their components such as energy storage systems, domestic solar and wind energy products, etc.

2.5. UNCTAD points out in its 2023 Technology and Innovation Report that "Developing countries now have opportunities to catch up, reduce poverty, and at the same time help tackle climate change and set the world on a more sustainable course"<sup>1</sup>. Significantly, the report further highlights and acknowledges the critical role of WTO trade rules towards this ideal, such as the disciplines under the ASCM, including local content requirements and public procurement and the need for their review to bring them in sync with the Paris Agreement.

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<sup>1</sup> Technology and Innovation Report 2023 - Opening Green Windows: Technological opportunities for a low-carbon world : <https://unctad.org/publication/technology-and-innovation-report-2023>.

2.6. Further, research and development (R&D) is critical to industrialisation, including promoting green mobility and, with that, renewable energy solutions, as well as structural transformation into new, or more sustainable industrial activities. The importance of public-private cooperation in R&D to enhance research activities and translate research outcomes into a production plan for commercial use is well-documented. In developing countries, private companies alone are unlikely to have sufficient incentives and capacities. The constraints imposed by disciplines in the ASCM can hamper public sector support for R&D purposes that is necessary for developing countries to develop their nascent industries, keep up with the pace of technological advances at competitive levels, and undermine efforts to harness or benefit from their natural resources to move up production value chains or decarbonise existing and future production capacities.

2.7. The expiry of the carve-outs contained in Article 8 of the ASCM which allowed for non-actionable subsidies of up to 75 percent of industrial research or no more than 20 percent of costs of adaptation to new environmental requirements or regulations, unfortunately stifles this ambition to industrialise, whilst also placing existing exports at risk of noncompliance with increasingly stringent sustainability standards<sup>2</sup>. It is in fact also argued that the thresholds in the expired carve-outs are too conservative for the climate change response necessary to decarbonise<sup>3</sup>.

2.8. The prohibitions contained in Article 3 of the ASCM on local content requirements presents a further constraint to the ability of developing countries to structurally transform and diversify their productive sectors. Even with the flexibilities provided for in Article 27.3 of the ASCM which have since lapsed on 31 December 1999 and 31 December 2002, the uncertainties with respect to this provision in view of the restriction in the Agreement on Trade-Related Investment Measures (TRIMS) on the domestic content requirement created ambiguity and uncertainty on its practical applicability<sup>4</sup>.

2.9. Capital and research-intensive industries (e.g. automotive sector) require economies of scale in production which are often impossible to realize through domestic markets alone. The development of domestic capacities along a value chain and promoting sustainable regional value chains in such cases would require flexibilities with respect to eligibility criteria for Annex VII countries and the prohibition of local content requirements. The levels or degree of production and export diversification could serve as an additional objective criterion.

### **3 DEVELOPMENT DIMENSION IN THE ASCM – ADAPTING SUBSIDIES RULES TO ADVANCE SUSTAINED AND SUSTAINABLE INDUSTRIALIZATION OF DEVELOPING COUNTRIES**

3.1. In view of the polycrisis and the need for Governments to respond in the interests of all, consideration should thus be given to extend flexibilities required within the context of the ASCM to enable developing countries to grant subsidies, including complimentary localization initiatives to promote regional growth, industrial development and structural transformation, production diversification and development, technology research and development funding, and the promotion of environmentally sound methods of production (i.e. green industrialization) and green industries to confront climate change, including freight rebates to mitigate against high transport costs.

3.2. The following in respect of the relevant provisions identified to pursue the above legitimate sustained and sustainable development goals is proposed:

- The criteria of determining prohibition of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 shall be revised with a view to, among others<sup>5</sup>
  - i. updating the threshold of GNP per capita of \$1,000 per annum, and ensuring re-inclusion of a Member when its GNP per capita falls back below the agreed threshold,

<sup>2</sup> The expiry of these permissible (or "green-light") subsidies toward research and development, regional development and environmental protection wiped out the policy space for Members to address technological, poverty and environmental challenges — all crucial issues for sustainable development.

<sup>3</sup> Kleimann, D. (2023) 'Climate versus trade? Reconciling international subsidy rules with industrial decarbonisation', Policy Contribution 03/2023, Bruegel.

<sup>4</sup> Whilst this submission will address the remedial steps to resolve this challenge within the ASCM, for coherence, the solutions to difficulties attendant to the Agreement on TRIMS will be explored in future submissions.

<sup>5</sup> These listed criteria are non-exhaustive and are without prejudice to any future negotiating positions.

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- ii. incorporating additional objective criteria to expand reach of the provision such as the level of export diversification, the global share of exports, etc., and
  - iii. taking account of regional investment needs to promote regional integration and achieving desired economies of scale.
- The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members and least developed country Members provided the use of domestic goods does not exceed the threshold to be agreed by Members.
  - In the case of actionable subsidies, the threshold for the termination of countervailing duty investigation of a products originating in a developing country Member shall be increased to x per cent of its value calculated on a per unit basis; The standard for negligibility should also be revised to be based on a market penetration test, rather than on imports as a percentage of total imports-test, i.e. if exports from an individual developing country is less than x% of the market where goods are being exported to, there should be no cumulation with imports from other countries.
  - 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. It is proposed that Article 8 of the ASCM be reinstated 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. In hindsight, the scale of the climate change crisis and subsequently ambitious multilateral commitments to urgently respond to this global challenge seem to have been underestimated when Article 8 reforms were adopted. Its reinstatement must be coupled with an increase in applicable thresholds respectively in relation to R&D, and the cost of adaptation to new environmental requirements imposed by law and/or regulations.
  - Article 27 of the ASCM on *Special and Differential Treatment of Developing Country Members* is further proposed for consideration on the following elements:
    - i. remedies to be considered by developing countries,
    - ii. increasing the de minimis margins,
    - iii. revising the standard for negligibility and cumulative assessment of the effects of imports to be based on market penetration,
    - iv. increasing the volume of negligible volume of imports,

3.3. The applicability of the flexibilities and subsidies envisaged above, including their duration, shall be contingent on criteria and procedures to be agreed, taking due regard of the objective of fostering resilient and sustained development. Without prejudging nor predetermining the thresholds and timelines, the architecture could be borrowed and adapted from the tests and procedures applicable to Article 27.5 and Article 27.6 of the ASCM, including other relevant and objective criteria to be negotiated and agreed (e.g. share of global exports, level of export diversification, etc).

## 4 CONCLUSION

4.1. 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.

4.2. 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*. Improving the flexibilities in the ASCM could assist in this regard.

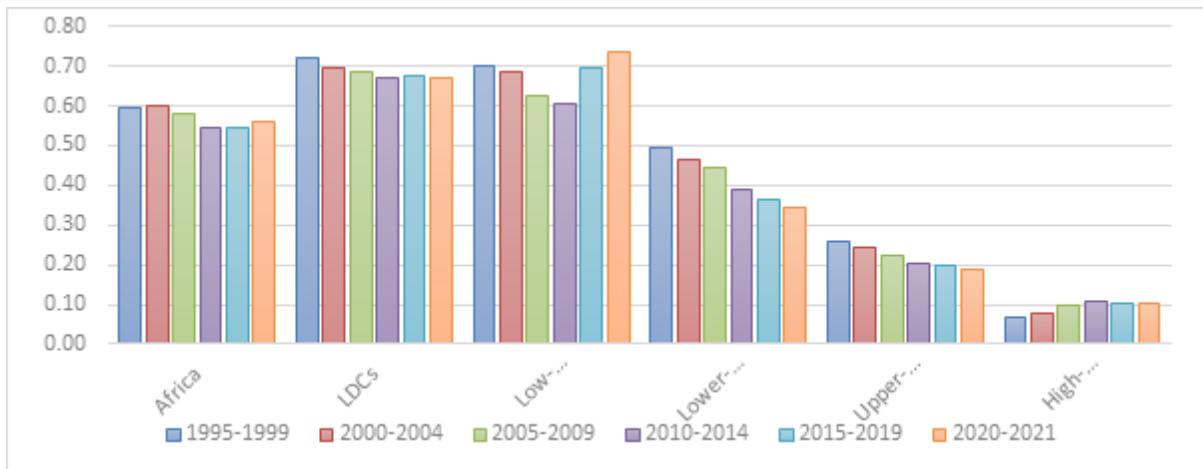
4.3. The African Group, therefore calls for focused discussions by Members to address the constraints inherent in certain WTO agreements which limit the policy space to drive industrialization, economic diversification and structural transformation programmes, including the ability to respond to emerging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

4.4. The African Group reserves the right to identify further issues for clarification and improvement and to complement its position in the relevant WTO bodies where this issue is discussed.

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**ANNEX A**

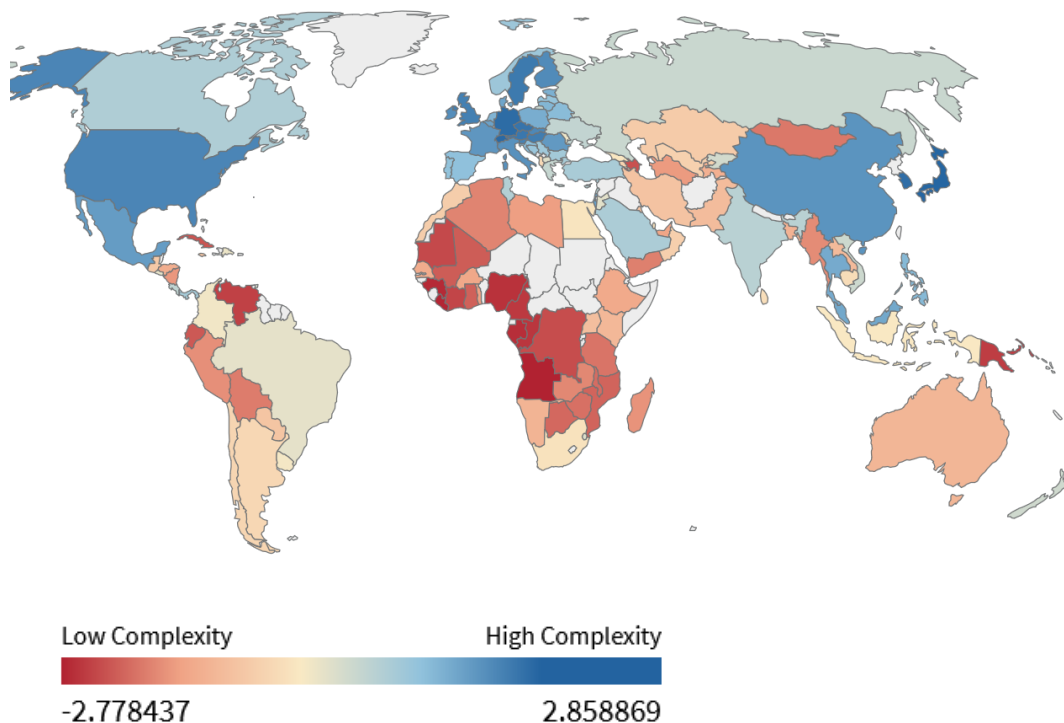
**Figure 1: Export Diversification by Income Groups (1995-2021)**



Source: UNCTAD calculations based on UNCTADStat.

Note: The diversification index measures how similar the product composition of exports of a country or region is to the world average. The index ranges between 0 and 1 and a smaller figure indicates higher similarity and thus more diversified exports.

**Figure 2: Economic Complexity Index (2020)**



Source: Atlas of Economic Complexity, Harvard Growth Lab, Centre for International Development, Harvard University, <https://atlas.cid.harvard.edu/rankings>