
International Economic Law Clinic

BACKGROUND REPORT

**WHAT HOLDS AFRICAN LDC EXPORTS BACK?
TRANSLATING GLOBAL TRADE ALERT DATA INTO A POSITIVE TRADE AGENDA FOR
AFRICA**

10 January 2018, Geneva

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Acknowledgements

The authors would like to acknowledge the contribution of Joost Pauwelyn, Simon Evenett, Diego Gutierrez, Theresa Carpenter, Piotr Łukaszuk and Panagiotis Kyriakou to this report. This research and its presentation at the Think Conference during the WTO 11th Ministerial Conference in Buenos Aires has been possible thanks to the Swedish Ministry for EU Affairs and Trade.

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Abbreviations

The following abbreviations are used:

AB	Appellate Body
AoA	Agreement on Agriculture
AU	African Union
AV	Ad Valorem
COMTRADE	Commodity Trade Statistics Database
DFQF	Duty-Free, Quota-Free
EU	European Union
FTA	Free Trade Agreement
G20	Group of 20
GDP	Gross Domestic Product
GSP	Generalized System of Preferences
GST	Goods and Services Tax
GTA	Global Trade Alert
HS6	Harmonized System 6-digit level
IMF	International Monetary Fund
ITC	International Trade Centre
LDC	Least Developed Countries
UN MAST	UN Multi-Agency Support Team
MC6, MC10, MC11	6 th , 10 th and 11 th WTO Ministerial Conference
MEIS	Merchandise-Exports-from-India-Scheme
NTB	Non-Tariff Barrier
NTM	Non-Tariff Measure
ROO	Rules of Origin
SPS	Sanitary & Phytosanitary
SSA	Sub-Saharan Africa
TBT	Technical Barriers to Trade
TRM	Trade-Restrictive Measure
UNCTAD	United Nations Conference on Trade and Development
WEF	World Economic Forum
WTO	World Trade Organization

Executive Summary

TRMs are a key challenge for AU LDCs

After the 2008 global crisis and the recent wave of populism-driven protectionist trade policies in developed economies, trade-restrictive measures (TRMs) have emerged as growing obstacles to international trade. TRMs particularly concern importers and exporters in African Union Least Developed Countries (AU LDCs) located in Sub-Saharan Africa, which suffer from region-specific issues such as inadequate transport infrastructure, landlocked lack of access to sea freight trade routes, lack of export diversification, political conflicts, and institutional challenges.

Import tariff measures, tax-based export incentives, and trade finance measures implemented by top developing country markets affect AU LDCs the most

Based on the GTA database, almost 400 (386) different trade-restrictive state policy measures affect AU LDCs. These are implemented by mostly developing country top export markets for AU LDCs including India (24% of all TRMs), China (12%), Indonesia (8%), Argentina (8%), and the United States (7%). From a weighted index score of 2:1:1 based on: 1) the number of different measures; 2) their frequency of occurrence across AU LDC countries; and 3) the number of affected HS6 tariff lines, the most frequently encountered TRM types are import tariff measures, tax-based export incentives, trade finance measures, public procurement localisation and export taxes. However, the GTA excludes TBTs and SPS measures that are formally justifiable as serving public interests, which are typically the most commonly cited as the biggest obstacles to trade.

Tax-based export incentives affect 38% of African LDC exports (excluding petroleum)

Tax-based export incentives hurt AU LDCs exports as they hinder their competitive opportunities in third-country markets. However, fiscal incentives are difficult to enforce due to the lack of information and the widespread failure to notify existing subsidy programs by WTO Members.

Trade finance affects 31% of African LDC exports (excluding petroleum).

Trade finance negatively impacts AU LDCs in two ways. First, subsidized trade finance available to others negatively impacts competitive opportunities in third-country markets. Secondly, the lack thereof hinders export opportunities of African products. The lack of transparency with respect to many trade finance programs allows countries to potentially circumvent WTO rules in this respect.

Increases in import tariffs negatively impact AU LDCs. GTA reports a significant number of import tariff increases since 2008 in major African LDC export markets. However most of these remain WTO-legal, implying that African LDCs would greatly benefit from lower tariff bindings, especially in the more restrictive export markets of China and India. Likewise, even under MFN terms, there exist 184 instances in which applied rates exceed bound rates in the seven top AU LDCs export markets: Argentina, Brazil, China, EU, India, Indonesia and the United States. Nine of these are included in the top 200 AU LDC exports, and three of these nine products are not covered by any existing GSP/DFQF schemes.

GSP/DFQF schemes exclude significant African LDC exports, a situation worsened by additional layers of restrictive rules of origin

For the top 20 AU LDC exports comprising 60% of exports (excluding petroleum), duty free access to major export markets is 100% for the EU, 75% for the United States, and 85% for China but only 5% for India. The US, China and India restrict DFQF access to a significant number of agriculture products that are competitively produced in AU LDCs, while other goods are subject to Tariff Rate Quotas (TRQs) and - especially for apparel and textiles - complex ROOs. Likewise, full access to and product coverage under GSP/DFQF schemes and the complex ROOs accompanying them pose significant barriers to entry. Thus, the negative impact of WTO-inconsistent import tariff measures on current AU LDC exports is minimal but exists; GSP/DFQF schemes mitigate this with preferential access but these are hampered by eligibility and coverage technicalities and restrictive ROOs.

Policy Recommendations

- Request increased transparency:
 - Improved reporting on export incentives: tax-based export incentives and trade finance. Consider giving support to current proposals on strengthening notification at the WTO with appropriate adjustments for LDCs and certain developing countries.
 - Mandatory reporting templates that are developed along the lines of the requirements of the SCM Agreement and the Agreement on Agriculture.

- Request increased focus on tax-based export incentives and trade finance in WTO Trade Policy Reviews.
- Transposition of Nairobi commitments into members' schedules at the earliest moment possible.
- Incorporate Nairobi disciplines on trade finance into the Agreement on Agriculture as foreseen in Article 10.2.
- Seek increased eligibility for GSP/DFQF schemes and preferential ROOs. African LDCs should analyze their exports to ensure that top exports are covered by existing schemes.
- Request a strengthened and more transparent notification process for import tariff rates and GSP/DFQF schemes.
- Further reduce tariffs bindings as AU LDCs continue to be negatively affected by increased but legal applied rates.

1. Rationale

1.1 Purpose

Given the particular vulnerabilities of African Union Least Developed Countries (AU LDCs) and the growing importance of Trade-Restrictive Measures (TRMs) in international trade, this report uses the strengths of the Global Trade Alert (GTA) database as the world's "most comprehensive coverage of crisis-era trade distortions"¹ to identify and analyse discriminatory government policies that adversely affect AU LDCs over the period 2009 to 2017.

1.2 Outcome

The substantive outcomes of the project include:

1. Identifying core types of trade restrictive measures affecting AU LDCs and their main implementers; and
2. Making a legal assessment on these measures.

1.3 Policy Implications

Importantly, this document can be directly useful for trade officials planning to engage in:

1. Analysing the impact of trade-restrictive measures on AU LDCs;
2. Trade negotiations for advancing AU LDC interests at the WTO or other plurilateral forums; and
3. Conducting the Trade Policy Reviews of the top implementers of TRMs mentioned in this report.

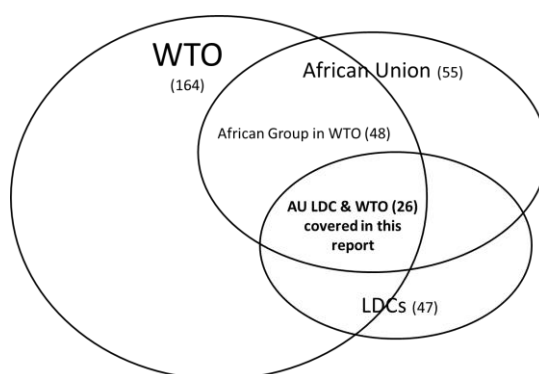
¹ Evenett, Simon and Fritz, Johannes. Will Awe Trump Rules? The 21st Global Trade Alert Report. CEPR Press, 2017.

2. Economic Context

2.1 Scope and Definition of Terms

The **African Union (AU)** is an economic community of 55 African countries established in 2002.² Importantly, the majority (72% or 34 out of 47) of all LDCs are members of the AU located in Sub-Saharan Africa (SSA). Of these, the 26 that are both LDC and WTO members are the focus of this report. The figure below provides a breakdown of these membership configurations.

Figure 1: The 26 LDC / WTO members of the African Union



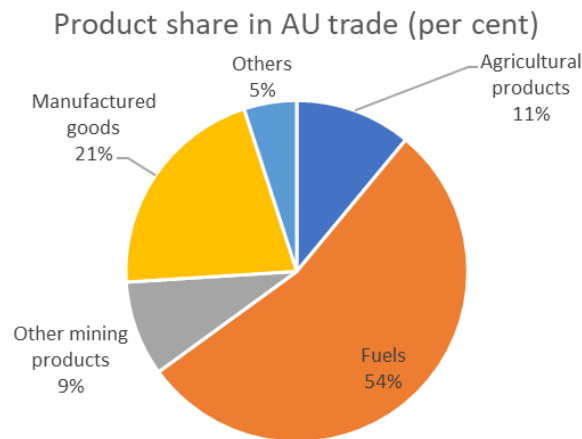
Source: UNCTAD & WTO, 2017

The AU region is highly diverse, with major exporter categories falling under either oil (Angola, Chad, Equatorial Guinea, and Sudan) or minerals (Democratic Republic of Congo, Guinea, Mali, Mauritania, Mozambique and Zambia). The biggest export is petroleum fuels – typically making up more

² Hruby, Aubrey (2015). Diversifying African Trade: The Road to Progress. Atlantic Council.

than half of all AU exports (54%) – followed by manufactured goods (21%) and agricultural products (11%).³

Figure 2: Breakdown of African Union’s merchandise trade, 2014



Source: World Trade Report 2016.

Least Developed Countries (LDCs) are classified by the United Nations (UN) based on their low Gross Domestic Product (GDP) per capita, weak human resource base and low level of economic diversification.⁴ They represent the poorest and weakest segment of the international community, comprising about 880 million people or 12 per cent of world population but generally accounting for less than 2 per cent world GDP and about 1 per cent of global trade in goods.⁵ This makes their trade policy role in global development both critical and strategic.

2.2 Development in African LDCs

Economic growth in AU LDCs has been steeply declining since 2012, and is closely linked with their high dependence on exports of raw materials, which comprise a small number of low value-added commodities such as fuels,

³ World Trade Statistical Review 2016. World Trade Organization. https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf

⁴ The Least Developed Countries Report 2016. The Path to Graduation and Beyond: Making the Most of the Process. UNCTAD 2016. http://unctad.org/en/PublicationsLibrary/ldc2016_en.pdf

⁵ About LDCs. UN Office of the High Representative for the Least Developed Countries, Landlocked Developing countries and Small Island Developing States. 2017. <http://unohrrls.org/about-ldcs/>

minerals or agricultural products.⁶ Likewise, given the steady erosion of primary commodity prices over the years – including the recent 60 per cent global oil price shock that severely depressed African petroleum exports in 2015⁷ – this makes the lack of export diversification in AU LDCs a persistent and highly relevant issue to address. China’s recent economic slowdown has also been detrimental to African exports, with Chinese investment in and imports from the region falling more than 40 per cent in 2015 over the previous year.⁸

To react to this critical juncture point of weak external demand for commodities, the IMF currently recommends for African economies to make progress in filling the infrastructure gap, lowering tariff and nontariff barriers, and improving the business climate and access to credit, while continuing to enhance education outcomes.⁹ At the multilateral level, the so-called “LDC Package” (discussed in depth later) first tabled at the 6th WTO Ministerial Conference in Hong Kong in 2005 appears to be the most concerted multilateral trade policy approach to assisting LDCs.

In corollary, Sub-Saharan Africa (SSA) as a region is particularly geographically vulnerable because it is both farther away from economic markets than other regions of the world and suffers from inadequate transport infrastructure as well as landlocked lack of access to sea freight trade routes. Interestingly, more than 80 per cent of Sub-Saharan African trade is outside of its own region, indicating both the global nature of commodity trade value chains and the absence of localized intra-regional trade linkages.¹⁰

⁶ Ben-Ari, Nirit (2002). Poverty is Worsening in African LDCs. Africa Recovery. Global Policy Forum. Retrieved from: <https://www.globalpolicy.org/component/content/article/211/44530.html>

⁷ World Trade Statistical Review 2016. World Trade Organization. https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf

⁸ Hruby, Aubrey (2015). Diversifying African Trade: The Road to Progress. Atlantic Council.

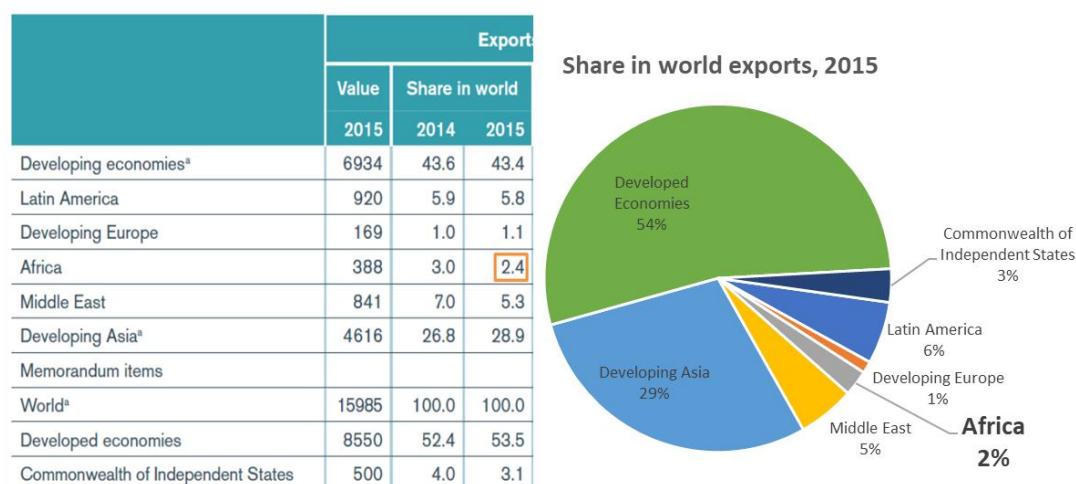
⁹ Allard, Celine, et. al. Trade Integration and Global Value Chains in Sub-Saharan Africa. International Monetary Fund, 2016. <https://www.imf.org/external/pubs/ft/dp/2016/afr1602.pdf>

¹⁰ Manners, P. and Behar A (2009). Trade in Sub-Saharan Africa and Opportunities for Low Income Countries. Washington DC: World Bank. <https://openknowledge.worldbank.org/handle/10986/9242>

2.3 Trade Statistics

These structural idiosyncrasies are starkly visible in the bigger picture of global trade. The AU contributed less than 3% (2.4%) of global exports worth US\$16 Trillion in 2015,¹¹ while LDCs as a whole (from both Africa and other regions) comprised less than 1% (0.97%, not shown).

Figure 3: Global trade market shares for major regions

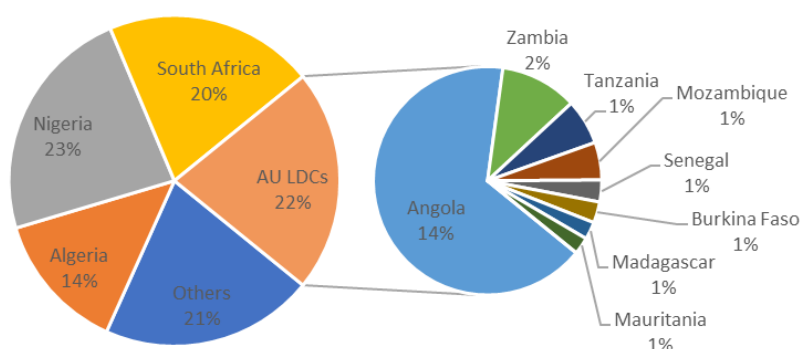


Source: World Trade Report 2016

Broken down intra-regionally as well as by subgroup, AU LDCs contributed around a fifth (22% or US\$97.5 Billion) to overall AU exports in 2015, registering a significant contraction of 30 per cent from the previous year. This was mainly due to declines in trade from oil exporters (Angola, Chad, Equatorial Guinea and Sudan).

¹¹ World Trade Statistical Review 2016. World Trade Organization.
https://www.wto.org/english/res_e/statis_e/wts2016_e/wts2016_e.pdf

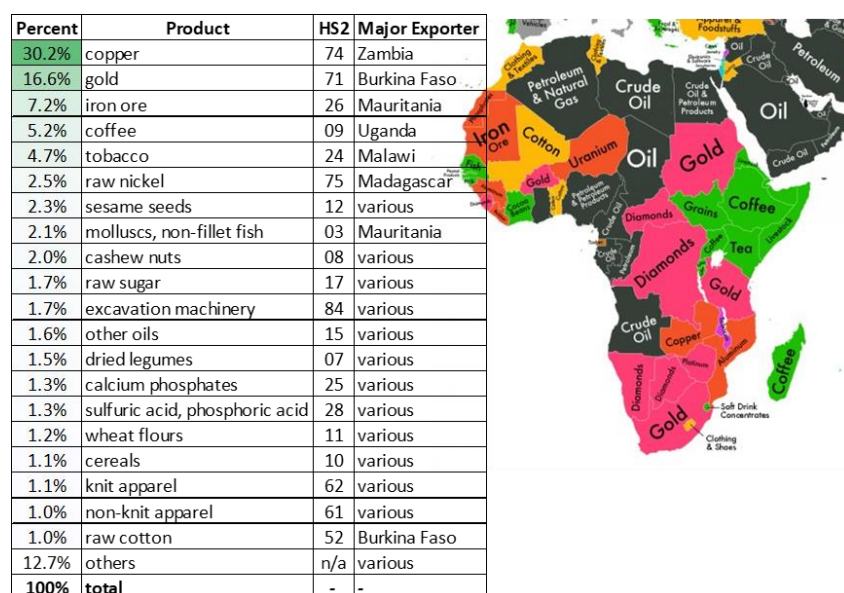
Figure 4: AU exports by region and sub-group (2014)



Source: UN COMTRADE, 2017

Within the AU LDCs sub-group exports are similarly skewed, with around two thirds (14% in the chart above) of total exports taking the form of largely unprocessed Angolan crude petroleum fuels (HS270900). Excluding petroleum, the table below shows a 2014 list of other top export products, their percentage share in AU LDC exports excluding petroleum, their HS2 code, and an indicative listing of the major exporter country involved.¹²

Figure 5: Breakdown of major non-petroleum AU LDC export products

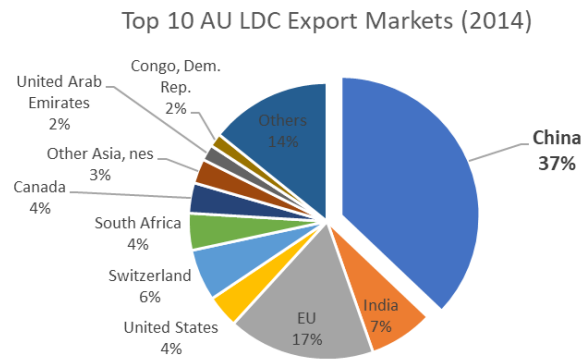


Source: UN COMTRADE & WEF, 2017

¹² Note: With the exception of this section, petroleum is included in all other trade data shown in this paper, unless otherwise specified.

Lastly, the map below shows the top export markets of the AU LDC sub-group as a whole. Notably, almost two-fifths (37.1%) of all exports go to China.

Figure 6: Top export markets for AU LDCs, including crude petroleum



Source: UN COMTRADE, 2017

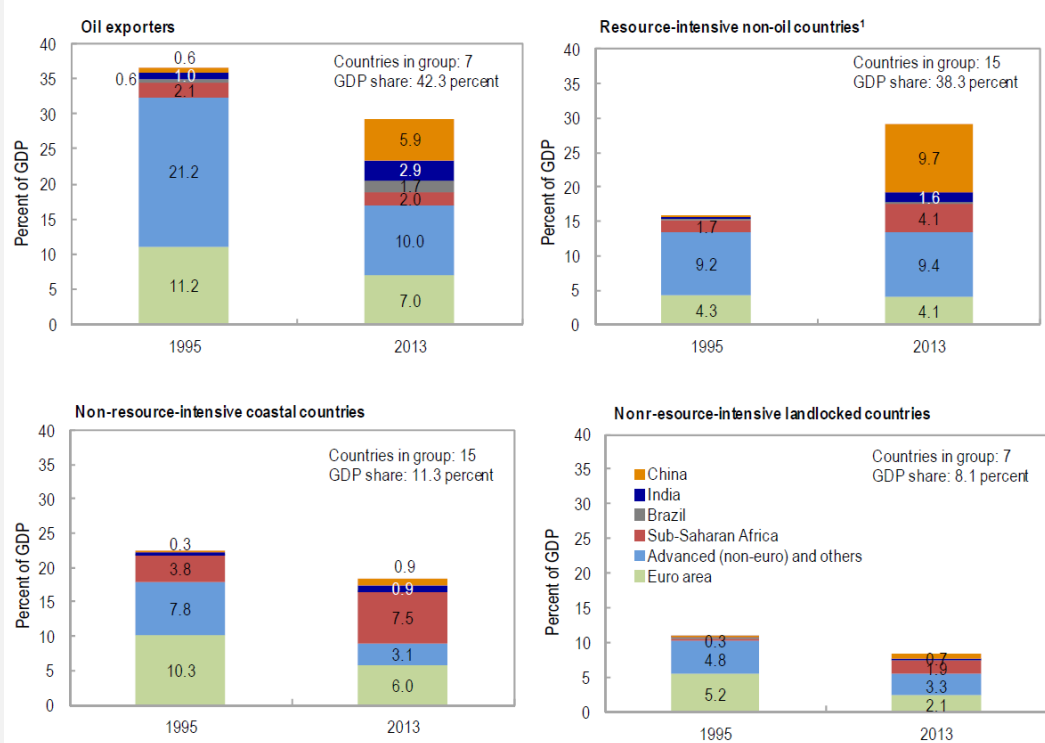
While the European Union and the United States remain major trade partners, Chinese trade with the continent as a whole has surged, increasing by 83% from 2009 to 2011, and hitting nearly US\$200 Billion in 2012.¹³ India is a far second with 7.5% of exports, while South Africa with 4.3% remains the only intra-regional trading partner.

¹³ Hruby, Aubrey (2015). Diversifying African Trade: The Road to Progress. Atlantic Council.

Box 1: The structural [d]evolution of AU LDC export markets

The destination of Sub-Saharan Africa exports has changed significantly in the past thirty years, especially following the global crisis. While trade flows with advanced economies (the United States and EU) represented close to 90% of exports in 1995, they now comprise only around 20% of export flows and almost half (44%) of the region's exports now go to **emerging markets in China and India**. The figure below shows the changes in export shares between 1995 and 2013 among oil exporters, resource-intensive non-oil exporters, and coastal non-resource exporters versus landlocked non-resource-intensive exporters in the region. New natural resource exporters such as Chad and Sierra Leone have seen their export shares increase substantially, while longtime commodity exporters such as Angola, Equatorial Guinea, and Zambia have declined—underscoring the difficulty to broaden the export base in countries with a longtime dependence on commodities.

Figure 1. Exports of Goods Shares by Partner, 1995–2013



Source: IMF, 2016.

Reference: Allard, Celine, et. al. *Trade Integration and Global Value Chains in Sub-Saharan Africa*. International Monetary Fund, 2016. <https://www.imf.org/external/pubs/ft/dp/2016/afr1602.pdf>

2.4 International Regulatory Framework

WTO

This report exclusively focuses on the 26 AU LDCs that are also WTO Members. Thus, for the subsequent legal analysis the applicability of WTO rules can be assumed.

Regional Trade Agreements

The 26 AU LDCs that are the focus of this report are members in a variety of customs unions and free trade areas. However, the majority of these have been concluded between African countries such as the Southern African Customs Union (SACU), the Economic Community of West African States or the Economic and Monetary Community of Central Africa. There are a limited number of exceptions such as the Agreements the SACU has with MERCOSUR and the EFTA countries as well as a limited number of FTAs between the EU and certain African customs unions that are either being negotiated or already entered into force. As African countries are not among the top implementers of harmful measures identified by GTA the regional trade agreements are for the purposes of this report of lesser importance. Annex X (not yet included) contains a list of regional trade agreements AU LDCs are parties to.

2.5 GTA Database

Global Trade Alert (GTA) is an online database that tracks government policies that affect world commerce, classified in the website as government interventions that are either:

- **“Red”** – interventions that have been implemented and almost certainly discriminate against foreign commercial interests;
- **“Amber”** – interventions that have been implemented, almost certainly include discrimination against foreign commercial interests but cannot be documented with an official source, or have been announced or are under consideration and would, if implemented, almost certainly involve discrimination against foreign commercial interests; and

- **“Green”** – interventions that benefit foreign commercial interests by liberalising market access.

This report focuses on trade-restricting measures affecting AU LDCs that are classified by the GTA as either “Red” or “Amber”.

Likewise, GTA contains information on state acts whose dominant motive is commercial. It includes only state acts that are currently in force or are about to be enacted. It does not include acts pending in the legislative process or statements of intent. Importantly, *unless there is compelling evidence* that the rationale provided for the state act is false, GTA also excludes state acts that serve public interests such as:

- protection of public morals;
- protection of human, animal or plant health or life;
- acts taken in pursuance of foreign policy or national security goals;
- achievement of the monetary policy mandate;
- protection of artistic, historical or archaeological treasure; and
- conservation of natural resources or wildlife protected by international treaty.

This point is significant because these are the trade-restrictive measures (TRMs) that typically comprise Sanitary & Phytosanitary (SPS) measures or Technical Barriers to Trade (TBTs), which are the measures that are most commonly cited as the biggest obstacles to exports.¹⁴ Their exclusion from GTA means that the focus of the report is automatically shifted to the measures that are captured in the database. Furthermore, when assessing the impact of a measure on a specific country GTA utilises data on current and past trade flows. The assessment thus does not make a statement about potential trade flows. For instance, if China imposes a regulation on coffee affecting Zambia but does not currently have any coffee trade with this country, then this measure will not be recorded in the database.¹⁵

¹⁴ UN International Trade Centre (UN ITC) Non-Tariff Measures (NTMs) Business Surveys, 2017.

¹⁵ For a list of measures that are included in the GTA database see Figure 7 below.

3. Identification of Most Harmful Measures

3.1 Methodology

Prior to the legal analysis and actual drafting of the report, the Team downloaded, compiled and analyzed raw data from the GTA website and tabulated the number of trade-restrictive measures based on the GTA's official categorization of them as "Red" or "Amber" harmful policies.

In parallel, the team also surveyed the trading environment around the 26 AU LDC countries included in the report, downloading COMTRADE data on exports as well as economic reports to complement and contextualize the GTA information. Additional basic economic information and graphs generated included market shares for top export products and markets for AU LDCs.

After identifying major trends in the data, the team generated summary Data Analysis results and prioritized the most harmful measures according to a weighted index score.

3.2 Data Analysis Findings

The TRMs affecting AU LDCs were characterised based on the:

- a) Count of individual trade-restrictive **state policies** or measures;
- b) **Recorded instances** of how many times each measure is recorded in GTA across all AU LDCs; and
- c) **Number of affected tariff lines** at the HS6 level,

along with a **weighted index score** using the ratio of 2:1:1 for each of these three criteria.

In summary, there were 386 different state policies or measures, recorded over 1,625 instances across all AU LDCs, affecting 7,408 HS6 tariff lines (see Figure 7 below). To illustrate, 83 different import tariff measures were recorded over 287 separate instances as affecting AU LDCs and covering 5,614 tariff lines.

Figure 7: GTA trade restrictive measures affecting AU LDCs

Top 10 GTA Trade Restrictive Measures Affecting AU LDCs		State Policies	Recorded Instances	# of Affected Tariff Lines	Weighted Index
1	Import tariff	83	387	5,614	36.15
2	Tax-based export incentive	38	350	684	12.84
3	Trade finance	23	148	404	6.76
4	Public procurement localisation	39	42	46	6.09
5	Export tax	18	121	88	4.60
6	Tax or social insurance relief	15	78	63	3.45
7	Export subsidy	11	63	57	2.65
8	Financial grant	11	37	20	2.13
9	Production subsidy	10	39	39	2.09
10	State loan	11	19	18	1.84
11	Export licensing requirement	8	38	25	1.75
12	Import-related non-tariff measure, nes	9	22	15	1.61
13	Export-related non-tariff measure, nes	7	29	15	1.45
14	Export ban	7	19	9	1.27
15	Local sourcing	6	16	61	1.27
16	Competitive devaluation	5	28	46	1.26
17	Other export incentive	3	31	65	1.10
18	Import tariff quota	5	25	12	1.10
19	Import ban	6	14	12	1.07
20	Import licensing requirement	5	13	10	0.91
21	FDI: Treatment and operations, nes	5	11	0	0.85
22	Bailout (capital injection or equity participation)	5	7	6	0.81
23	Loan guarantee	4	13	9	0.77
24	Export quota	5	5	5	0.77
25	Instrument unclear	4	8	7	0.69
26	Import quota	3	7	8	0.54
27	Public procurement access	3	4	11	0.51
28	Internal taxation of imports	2	10	12	0.47
29	Sanitary and phytosanitary measure	2	7	9	0.41
30	Interest payment subsidy	2	5	7	0.37
31	Public procurement preference margin	2	5	6	0.37
32	Financial assistance in foreign market	2	5	3	0.36
33	Local operations	2	2	0	0.30
34	In-kind grant	1	7	13	0.29
35	Local labour	1	2	2	0.17
36	Trade payment measure	1	2	2	0.17
37	FDI: Entry and ownership rule	1	2	0	0.17
38	Safeguard	1	1	2	0.16
39	Import monitoring	1	1	1	0.15
40	Localisation incentive	1	1	1	0.15
41	Technical barrier to trade	1	1	1	0.15
Total		369	1,625	7,408	100

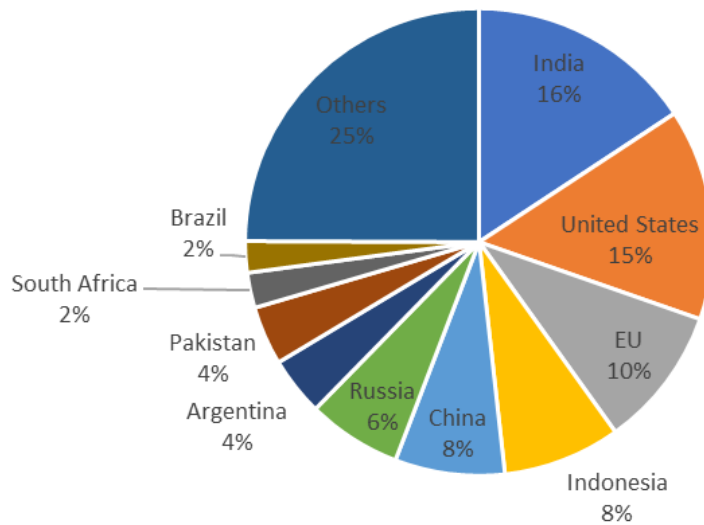
Source: Global Trade Alert, 2017

Notably, import tariffs, tax-based export incentives, trade finance measures, public procurement localisation and export taxes have the highest index scores. While the latter four are more complex policy instrument for countries to implement in the context of the current wave of populism-driven protectionist trade policies, the first (import tariffs) are a surprising result given that tariffs are a very basic trade-restricting mechanism that can easily be detected.

As noted previously, one can see that TBTs and SPS measures hardly appear in the GTA database and are thus given a very low weighted index score, even though they typically rank very highly in other TRM reports such as the country-wide NTMs Business Surveys conducted by the UN ITC. While the justification for their exclusion in GTA is sound, it is not difficult to imagine that exporters would have more familiarity with SPS/TBT measures simply because they directly interact with these policy instruments in their compliance with export procedures. This can be starkly contrasted to more “arms-length” TRMs such as subsidies, the trade restrictive effect of which will often be felt by individual exporters without them being able to identify the source of the problem. This lack of awareness on the part of African exporters could be one of the reasons why subsidies are rarely mentioned as export impediments.

In terms of implementing countries, the table below shows the number of trade-restrictive state policies implemented by each country, as well as their percentage contribution to the 1,625 total measures counted. Mostly developing countries top the list including India, China, Indonesia, Argentina along with the United States, with China (37.1%), India (7.5%) and the United States (3.8%) included in the top six export markets of AU LDCs as a whole (see previous map).

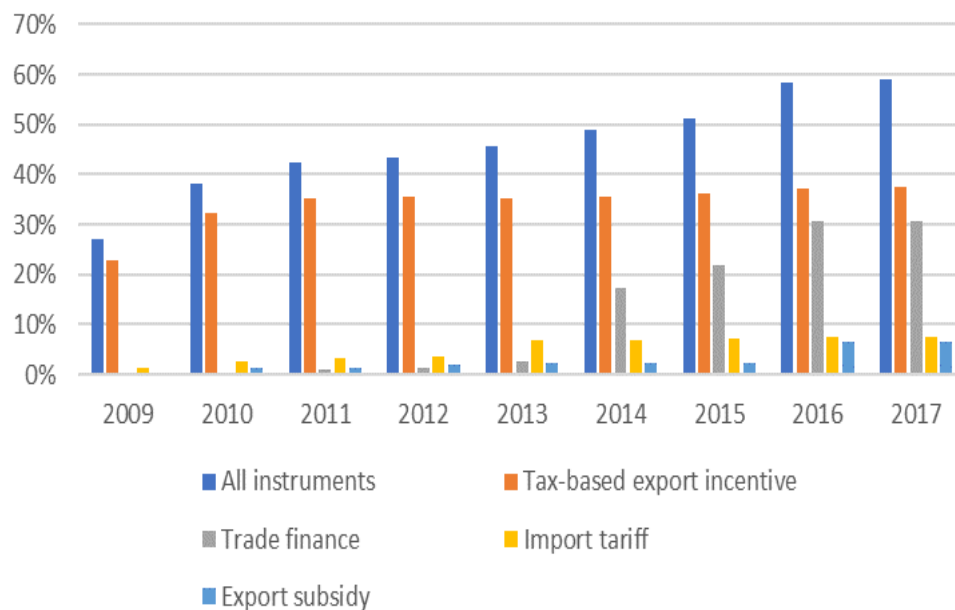
Figure 8: Top implementer countries for GTA measures



Source: Global Trade Alert, 2017

Finally, another indicator computed by GTA to measure the impact of TDMs on AU LDCs is the amount of AU LDC exports affected by TDMs. In 2017, all measures recorded by GTA affected around 60% of AU LDC exports (excluding petroleum), with tax-based export incentives (38%) and trade finance (31%) responsible for the largest share, trailed by import tariffs (8%) and other subsidies relating to exports (6%).

Figure 9: TDMs coverage of AU LDC exports, excluding petroleum



Source: Global Trade Alert, 2017

3.3 Conclusion on Data Analysis

Based on these initial Data Analysis findings and the Scope of the report discussed previously, the Legal Analysis included in the report is focused on:

- import tariffs, export tax-based export incentives, trade finance, public procurement localisation, and export taxes.
- For import tariffs, a focus on the seven implementing economies of Argentina, Brazil, China, the European Union, India, Indonesia and the United States based on the number of affected AU LDC countries and tariff lines, as well as a consideration of the major export markets for AU LDCs.

4. Import Tariffs

Import tariffs (or customs duties) are taxes imposed on imported goods and services, and – as opposed to more “modern” or sophisticated trade-restrictive measures (TRMs) – have traditionally been the simplest and most basic policy tool for trade restriction used by governments. Tariffs give a price advantage to locally-produced goods over similar imported goods, and raise revenues for governments.

GTA recorded 83 different import tariff measure types, recorded over 387 instances in which AU LDCs were affected, with an impact on 5,614 tariff lines. Notably, import tariff measures are only recorded if there have been or are actual trade flows between affected and implementing countries in the specific product in question.

Based on these statistics, import tariff measures were given the highest weighted index score of 36.15, placing them at the top of the priority list of identified “red” and “amber” policy measures for AU LDCs.

4.1 Rules on Tariffs

In the WTO there is no legally binding agreement setting targets for tariff reductions. However, individual WTO members list their commitments to cut and bind tariffs on their goods schedules as part of the Uruguay Round Agreements. Tariffs are covered under *Article II of the GATT 1994: Schedules of Concessions*, which requires Members to refrain from imposing ordinary customs duties *in excess of* those provided by their bound rate commitments in their schedules. This treatment must be granted unconditionally, unless otherwise exempted by “terms, conditions or qualifications” in the schedule limiting such a concession.

4.2 Tariff Technicalities¹⁶

Given the technicality of the discussions in this section, several basic definitions are required upfront:

¹⁶ Caveat: This information was validated in November 2017 but may have changed since.

- **Generalized Systems of Preferences (GSPs)** are unilateral trade systems that grant non-reciprocal trade preferences to exports of beneficiary countries. An AU LDC may thus enjoy lower tariff rates from a GSP-granting country than the WTO's bound tariff rates.
- **Duty-Free, Quota-Free (DFQF)** means market access that is exactly that: duty-free and quota free. An AU LDC thus does not have to pay duties or comply with quotas for goods eligible for China's GSP scheme if it is a beneficiary of this system.
- **Rules of Origin (ROO)** are the criteria used to determine where a product is made, making them central in setting the conditions under which products can avail of preferential treatment. AU LDCs may be ineligible for exporting products under GSPs because they do not fulfil ROO requirements, such as:
 - **Substantial transformation**, which means either a change in tariff heading or that the value of non-originating parts used in the manufacture of the good does not exceed a certain percentage of the value of the product; or
 - **Cumulation**, which allows countries that are part of a preferential trade agreement to share production and jointly comply with ROO requirements.

For instance, if an AU LDC only processes (and does not really manufacture) semiconductor chips, and exports them without either 1) an appropriate change in tariff heading from "semiconductor parts" to "semiconductor", or the parts are just tiny handles glued onto the semiconductor and represent less than 1% of its value; or 2) if Zambia sources yarns from Gambia to share a production network to produce sweaters but these are not considered "locally-originating" and thus ROO-compliant.

- **Tariff-Rate Quotas (TRQ)** allow a limited quantity of specified products into a country to be charged at lower "in-quota tariff rates" than those outside, which are charged at (higher) "out-of-quota tariff rates". For instance, after exporting the first 300,000 tons of rice to China duty-free, AU LDCs must pay a 20% tariff rate on the 300,001st ton.

4.2.1 Generalized Systems of Preference

Importantly, their development status allows most AU LDCs to benefit from the majority of GSP schemes conferred by more developed countries. These usually have different names and criteria under each implementing country. Some of the most prominent ones covering or specifically targeting AU LDCs include:

- **African Growth and Opportunity Act (AGOA) of the USA**

The AGOA is a regional scheme of the United States that provides duty-free treatment for goods from 23 of the 26 Sub-Saharan African countries in this report;¹⁷ comprise around 1% of all US total imports;¹⁸ and was recently renewed up to 2025. The AGOA also provides duty-free treatment on an additional 1,835 HS6 products than the regular US GSP scheme provided to LDCs,¹⁹ but still excludes²⁰ agricultural products that are competitively produced in AGOA countries such as textiles, leather products and footwear, dairy products, sugar, cocoa, and cotton,²¹ while some other agricultural products are included but subject to TRQs. Certain apparel and textile products are also duty-free but subject to quantitative limitations under the AGOA's "Apparel Provisions", and not all AU LDCs can avail of these since beneficiaries must adopt an efficient visa ("tracking") system to prevent unlawful transshipments. However, AGOA does have a third-country fabric rule, which for instance allows for a certain quantity of AU LDC apparel exports to be produced from yarns and fabrics of any origin (most commonly and cheaply from China). Unlike GSP, it also allows for AU LDCs to utilize

¹⁷ Eligibility is not a permanent state and is conferred on SSA countries that are making progress in economic, political, and development goals; it can also be revoked annually.

¹⁸ Primarily as crude oil imports from Angola, which have sharply fallen by 80% since 2011, but also automotive, chemicals and other manufactures from South Africa (a non-AU LDC country); apparel from Kenya, Lesotho, Mauritius, and Swaziland; cocoa from Cote d'Ivoire, and tobacco from Malawi. <https://fas.org/sgp/crs/row/R43173.pdf>

¹⁹ Carving out a DFQF deal in Nairobi. <https://www.ictsd.org/bridges-news/bridges-africa/news/carving-out-a-dfqf-deal-in-nairobi>

²⁰ Unfortunately, unlike for other GSP schemes in this report, a comprehensive listing of this exclusion list was not found to be available, so this listing is based on online reports.

²¹ Laird, Sam. Duty-free, quota-free market access: What's in it for African LDCs? ICTSD. 17 June 2013. <https://www.ictsd.org/bridges-news/bridges-africa/news/duty-free-quota-free-market-access-what%E2%80%99s-in-it-for-african-lDCs>

regional cumulation of yarns sourced from other African countries up to 35% of the value content of apparel goods, with the United States being able to contribute up to 15% of the 35%.²² In general, the AGOA has been found to have a positive impact on apparel exports from a small number of SSA countries, but little or no impact in other sectors.²³

- **Everything But Arms (EBA) scheme of the EU**

The EBA scheme grants duty free and quota free access for all LDCs to the EU Single market for all products except arms and munitions, with no expiry date. However, it can be withdrawn in exceptional cases such as serious and system violation of human and labour rights conventions.²⁴ The EBA was originally criticized by developing countries for the very stringent ROO requirements it entailed with the EU eventually committing itself to dealing with this issue in recent years.²⁵

- **Special and Preferential Tariff Scheme of China for LDCs**

China's preferential scheme covers 97% of all HS8 tariff lines as of 2015, and benefits 23 of the 26 AU LDCs in this report to varying degrees.²⁶ Excluded goods include automobiles, paper and timber products, as well as 47 HS8 products subject to TRQs including chemical fertilizers, corn, raw cotton, rice, sugar, wheat, wool and wool fibre.²⁷ In 2010, 98.7% of all imports from LDCs

²² Williams, Brock R. African Growth and Opportunity Act: Background and Reauthorization. 31 May 2017. <https://www.cbp.gov/trade/priority-issues/trade-agreements/special-trade-legislation/african-growth-and-opportunity-act>

²³ Condon N, Stern M (2011) *The effectiveness of African Growth and Opportunity Act (AGOA) in increasing trade from least developed countries: a systematic review*. London: EPPI-Centre, Social Science Research Unit, Institute of Education, University of London. <https://eppi.ioe.ac.uk/cms/Default.aspx?tabid=2959>

²⁴ Everything But Arms. <http://ec.europa.eu/trade/import-and-export-rules/import-into-eu/gsp-rules/everything-but-arms/>

²⁵ The result was mockingly called the EBP initiative: developing countries were allowed to export "everything but what they produce". They could export jet engines, supercomputers and computer chips, just not textiles, agriculture products, or processed foods (the goods they produced). Making a Travesty of Free Trade. 11 July 2006. <https://agoa.info/news/article/3834-making-travesty-of-free-trade.html>

²⁶ Several AU LDCs including Angola, Benin, Liberia, Niger, Rwanda, Togo and Zambia are considered part of the "LDC14" that have not completed beneficiary formalities and thus have duty-free coverage for only 95% of China's tariff lines, while Burkina Faso and Gambia are excluded entirely, and Equatorial Guinea graduated from LDC status in 2013 so had its eligibility expire in 2015.

²⁷ In-quota duties range from 1 to 15%, while out-of-quota MFN duties range from 38 to 65%.

(worth \$42 Billion) were covered by the scheme.²⁸ China is the largest export market for LDCs in general, with the largest shares going to fuel exporters such as Angola. However, a large proportion (81%) of the preferential trade from LDCs to China consists of non-agricultural primary products such as ores and crude petroleum that are already subject to zero tariffs under MFN treatment. Likewise, only 50% of agricultural products enter China duty-free. Therefore the “true” duty-free treatment granted to LDCs may still be low.²⁹ ROO requirements are also quite restrictive: non-originating parts cannot exceed 60% of the product value, while the final stage of processing must occur in the country of origin and the finished goods must enter China directly. Likewise, cumulation requirements are only satisfied if foreign materials used to produce the final good come from countries with diplomatic relations with China.³⁰

- **Duty-Free Tariff Preference (DFTP) Scheme for LDCs of India**

The DFTP scheme currently benefits 16 of the 26 AU LDCs covered in this report.³¹ The scheme covers 98.2% of all tariff lines as of 2015.³² Several important AU LDC exports such as cotton, cocoa, aluminium, copper and cane sugar are included in the scheme, while others such as milk and cream, whole milk powder, processed cashew nuts, coffee, tea, tobacco and cigarettes, wheat flour, beer, wine and spirits, spices and oilseeds (e.g. linseed and sesame), copper products (e.g. bars, rods, cathodes, waste and scrap) and some vegetables (e.g. apples and onions) are excluded. Also, the scheme does not allow for regional cumulation amongst beneficiary

²⁸ Handbook on the Special and Preferential Tariff Scheme of China for Least Developed Countries. UNCTAD 2016. http://unctad.org/en/PublicationsLibrary/itcdtsbmisc76_en.pdf

²⁹ Overview of China’s duty-free, quota-free market access programme for LDCs. UN Committee for Development Policy. 27 Dec 2016. <https://www.un.org/ldcportal/overview-of-chinas-duty-free-quota-free-market-access-programme-for-ldcs/>

³⁰ Overview of China’s duty-free, quota-free market access programme for LDCs. UN Committee for Development Policy. 27 Dec 2016. <https://www.un.org/ldcportal/overview-of-chinas-duty-free-quota-free-market-access-programme-for-ldcs/>

³¹ Preferential market access is not automatically granted. The requirement for LDC coverage is a formal request and information on signatories of ROO certification provided to the Indian government.

³² India’s DFTP Scheme for LDCs. http://commerce.nic.in/trade/international_tpp_DFTP.pdf

countries.³³ It is not clear if the system has had a positive impact on LDCs: exports from LDCs to India have increased in general after the implementation of the scheme, but they have increased even more for both LDCs that have not joined the scheme and for excluded products. Some reasons may be the exclusion of key export products, the prevalence of Indian NTMs, and restrictive ROO requirements such as the lack of cumulation conditions.³⁴

The figure below summarizes the percentage coverage of the top 200 AU LDC export products in existing GSP/DFQF schemes implemented by the United States, the EU, China and India.

Figure 10: GSP/DFQF Coverage of top 200 AU LDC Exports

GSP/DFQF Coverage of Top 200 AU LDC Exports:	
EU	100%
China	69%
USA	40%
India	10%

The EU's EBA program provides full 100% duty-free quota free coverage for the top 200 AU LDC exports, but reputedly restrictive ROO requirements might bring this down substantially. China comes second with almost three-fourths (69%) coverage, followed by the United States with less than half (40%) of AU LDC exports enjoying duty-free quota free access. Meanwhile, India has a special system which applies a percentage "discount" from the applied MFN rate for AU LDCs, ranging from values of 10% to 100%. This means that the 10% of AU LDC export products eligible for India's DFTP scheme are not automatically given duty-free access; instead, their MFN rate is multiplied by this "discount rate".

³³ Kumar, Pranav. India's Duty-Free Tariff Preference Scheme for LDCs: A Business Guide. International Trade Centre 2015.

<http://www.intracen.org/uploadedFiles/intracenorg/IndiaDutyFreeTariff.pdf>

³⁴ ICTSD analyses DFQF scheme of India. 2 Dec 2014. <https://www.un.org/ldcportal/ictsd-analyses-dfqf-scheme-of-india/>

The next figure shows the top 20 (of 200) AU LDC exports, their product description, percentage composition of total AU LDC exports, coverage (“Yes” if covered under existing GSP/DFQF schemes or the maximum applied tariff rate (e.g. “40% for HS520100-Cotton products for China”) under the case of no coverage). For India, either the MFN rate (if the good is not covered in the scheme) or the “discounted” rate—called the “DFTP Applied Rate”—(if the good is covered in the scheme) is specified.

Figure 11: GSP/DFQF Coverage of top 20 AU LDC Exports

Percentage of AU LDC Dollar-Value Exports Covered (excluding petroleum)					Percentage covered by GSP Regimes					
Top 200 products					almost 100%	40%	100%	69%	10%	
Top 20 products (excluding petroleum)					59%	75%	100%	85%	5%	
Count	HS6	Product Description	Percent	Percent	USA	EU	China	India	(India Only) MFN / DFTP Applied Rate	
1	270900	Petroleum oils, crude	61%	not included	Yes	Yes	Yes	No	0	
2	740311	Refined copper cathodes	23%	14.0%	Yes	Yes	Yes	No	5	
3	740319	Refined copper (other)		5.0%	Yes	Yes	Yes	No	5	
4	710812	Gold, non-monetary, other unwrought forms		4.7%	Yes	Yes	Yes	No	10	
5	710221	Unworked diamonds		3.5%	Yes	Yes	Yes	No	10	
6	710812	Gold, in unwrought forms		3.4%	Yes	Yes	Yes	No	10	
7	760410	Bars, rods & profiles, of aluminium, not alloyed		2.9%	Yes	Yes	Yes	No	5	
8	710813	Gold, in semi-manufactured forms		2.6%	Yes	Yes	Yes	No	10	
9	520100	Cotton, not carded/combed		2.5%	Yes	Yes	Yes	40	Yes	0
10	271019	Petroleum oils (other than crude)		2.5%	Yes	Yes	Yes	No	5	
11	270740	Naphthalene		2.5%	Yes	Yes	Yes	No	2.5	
12	240120	Tobacco, partly or wholly stemmed/stripped		2.2%	Yes	Yes	Yes	10	No	30
13	260112	Iron ores & concentrates, agglomerated		2.0%	Yes	Yes	Yes	No	2.5	
14	710813	Gold, non-monetary, other semi-manufactured forms		1.9%	Yes	Yes	Yes	No	10	
15	090111	Coffee (not decaffeinated)		1.8%	0	Yes	Yes	No	100	
16	750210	Nickel (not alloyed)		1.6%	0	Yes	Yes	No	2.5	
17	260600	Aluminium ores and concentrates		1.6%	0	Yes	Yes	No	2.5	
18	261690	Ores, slag and ash (other)		1.6%	Yes	Yes	Yes	No	2.5	
19	270400	Retort carbon		1.3%	0	Yes	Yes	5	No	5
20	261210	Uranium ores & concentrates		1.3%	0	Yes	Yes	No	2.5	
TOTAL				84%	59%					

The full listing of this table for the top 200 HS6 AU LDC exports is provided in Annex 2.

4.2.2 The LDC Package

At the 2005 WTO Ministerial Conference (MC6) in Hong Kong, Members proposed to improve on GSPs through a preferential **LDC Package** that was eventually negotiated during MC9 in Bali and subsequently extended during MC10 in Nairobi to facilitate LDC exports to developed countries’ markets. The LDC Package includes:

- 1) For developed-country Members and developing-country Members declaring themselves in a position to do so, commitments to extend existing GSPs and provide preferential market access on at least 97% of products under the **Duty-Free, Quota-Free (DFQF)** market

access for LDCs. With the exception of South Africa, all of the top ten export markets of AU LDCs now provide DFQF access:

Figure 12: Duty-Free, Quota-Free regimes open for AU LDCs

Country	Duty-free coverage and exclusions	Number of Dutiable lines (national tariff lines)
Australia	100 per cent	None
Canada	98.8 per cent (dairy, eggs and poultry)	93
EU	99.3 per cent (arms and ammunitions, rice and sugar)	63
Japan	95.6 per cent (rice, sugar, fishery products, articles of leather, some textile articles, footwear, etc.)	393
New Zealand	100 per cent	None
Norway	100 per cent (except roses)	1
Switzerland	99.9 per cent (some sugar and cheese items)	6
United States	82.4 per cent (dairy products, sugar, cocoa, articles of leather, cotton, articles of apparel and clothing, other textiles and textile articles, footwear, watches, etc.)	1,834

DFQF access for LDC products in selected developing countries	
Country	Duty-free coverage
China	60 per cent of all tariff lines are currently covered, with gradual phasing-in of up to 95 per cent
India	85 per cent of tariff lines to be covered under duty-free access by 2012

Source: WTO LDC Portal, 2017

2) [Non-enforceable] Guidelines for a simplified preferential ROO system to allow easier market access for LDC exports. While each importing developed country is still allowed to have its own methods for evaluating ROO qualifications, it should “endeavour” to provide easier criteria for LDCs based on these guidelines; and

3) A “**services waiver**” allowing LDCs preferential access to richer countries’ services markets until 2030.

Criticism for the first two elements of the LDC package (as services are not covered in this report) lies firstly in the marginal difference between “97% coverage” and full coverage for LDC preferential access, since the 3% of excluded tariff lines could still potentially cover between 90 to 98% of all LDC exports. The United States’ AGOA scheme especially comes under fire in this regard, with MFN duties on AGOA-excluded products reportedly averaging

over 30%.³⁵ Likewise, preferential ROO schemes for LDCs remain as “non-enforceable guidelines” for GSP/DFQF-granting countries. Operationally, this lack of harmonization and transparency can only pose difficulties for AU LDCs attempting to utilize preferential ROO treatment as a competitive edge.

Nevertheless, given the overwhelming prevalence and availability of these preferences for AU LDCs, it is easy to imagine that a remarkable degree of the discriminatory import tariff measures flagged by GTA will be simultaneously covered by existing GSPs and DFQF schemes. This is very relevant to note given that these preferential tariff rates cannot be individually checked and referenced by the GTA before each measure is recorded in the database.

Also, methodologically, given that import tariff measures have been systematically identified as the biggest priority for AU LDCs based on this report’s weighted index scoring system *without* GSP and DFQF considerations, it might seem prudent at this stage to mentally re-evaluate their priority status with this in mind. Regardless, the analysis of import tariff measures is included in this report and yields non-trivial results.

4.3 Import Tariff Data Results

As a caveat, there was initial difficulty in obtaining the information on individual import tariff measures from the GTA website. All the measures only generally indicate a particular “increase in tariffs” for broadly defined products in a certain year and country [thus “discriminating” against the previous year’s lower tariff rate] and redirect to the WTO Tariff Download Facility, which then makes it impossible to know which tariff lines were actually covered by the measure, and whether the affected tariff line now exceeds its bound rate. Thus, while the GTA database was very useful and comprehensive in alerting stakeholders to the presence of trade restrictive import tariff measures, it was unable to provide specific information on the affected products and bound rates covered. As an alternative data source, current applied and bound rates

³⁵ Laird, Sam. Duty-free, quota-free market access: What’s in it for African LDCs? ICTSD. 17 June 2013. <https://www.ictsd.org/bridges-news/bridges-africa/news/duty-free-quota-free-market-access-what%E2%80%99s-in-it-for-african-lDCs>

for relevant economies were downloaded from the WTO website for this report.

In light of this, the countries chosen for analysis were Argentina, Brazil, China, the European Union, India, Indonesia, and the United States, based on their position as top export markets, the number of AU LDCs affected, and the number of tariff lines affected.

The bound and maximum ad valorem (AV) applied tariff data for the HS6 products of each of the seven countries were downloaded and individually compared to determine if applied import tariffs were within bound rates. If an applied tariff for a product was found to exceed its bound rate, it was compared to the report's listing of current major AU LDC export products and determined to be either a) a major AU LDC export product experiencing discrimination in main export markets or b) if not, included in a separate listing of potential export products flagged as subject to market access restrictions for AU LDCs in main export markets (see Annex 1). Additionally, the GSP/DFQF schemes of four major AU LDC export markets (United States, EU, China and India) were individually checked to see if the resulting violations were covered under preferential rates for these schemes and thus not subject to the MFN-violating tariff rates.

For the seven economies surveyed, the following figure shows in how many instances applied rates of selected countries exceed their bound rates. It was generated by comparing the bound and applied rates of each economy's listing of around 5,400 HS6 products:

Figure 13: Summary of WTO import tariff violations

Economy	Number of Applied Rates in Excess of Bound
USA	45
China	39
India	26
EU	25
Indonesia	19
Argentina	18
Brazil	12
Total	184

Clearly, there remain minimal though extant violations of WTO bound rates.

Of these 184 violations (representing 3.4% of around 5,400 total HS6 product lines), only nine (9) products were found to be directly included in the listing of the top 200 exports for AU LDCs at the HS6 level (excluding petroleum products), in particular in Cereals (Ch 10 &11), Seeds (Ch 12), Raw Hides (Ch41), Misc. Electrical Conductors (Ch 85), Aircraft Engine Parts (Ch84), and Tropical Wood (Ch44). Even though they contribute very minimally to AU LDC exports, it is still highly interesting how 3 out of 9 of these were still officially found to *not* be covered by existing GSP and DFQF regimes, given that GSP/DFQF regimes profess a 97% coverage of all HS6 lines. Additionally and importantly, GSP/DFQF coverage does not and cannot take into account any restrictive Rules of Origin (ROO) considerations that may invalidate AU LDC export products' eligibilities for preferential rates. Given the ROO discussions above, it is not difficult to imagine that the actual AU LDC subscription rate for GSP/DFQF preferential access is substantially lower than the professed 97%.

These products and their HS codes, applied and bound rates, descriptions, percent contribution to AULDC exports, and GSP coverage status are provided below:

Figure 14: Summary of import tariff violations affecting top 200 HS6 AU LDC exports

Count	Economy	HS6	Max Applied AV Rate	Bound Rate	Applied <= Bound?	In AU LDC exports list?	Product Description	% of Exports	Covered by GSP?
1	China	100640	65	10	No	Yes	Broken rice	0.20%	No
2	China	110319	10	5	No	Yes	Groats and meal of cereals (excl. wheat and maize)	0.20%	No
3	China	120799	20	10	No	Yes	Oil seeds and oleaginous fruits, whether or not broken (excl. edible nuts)	0.20%	Yes
4	China	410390	14	9	No	Yes	Raw hides and skins, fresh, or salted, dried, limed, pickled or otherwise	0.10%	Yes
5	China	854449	12	0	No	Yes	Electric conductors, for a voltage <= 1.000 V, insulated, not fitted with cc	0.20%	Yes
6	India	840710	7.5	3	No	Yes	Spark-ignition reciprocating or rotary internal combustion piston engine, l	0.10%	No
7	EU	440729	2.5	0	No	Yes	Tropical wood, sawn or chipped lengthwise, sliced or peeled, whether or	0.20%	Yes
8	USA	410390	3.7	3.3	No	Yes	Raw hides and skins, fresh, or salted, dried, limed, pickled or otherwise	0.10%	Yes
9	USA	854449	5.3	3.5	No	Yes	Electric conductors, for a voltage <= 1.000 V, insulated, not fitted with cc	0.20%	Yes

A more comprehensive listing of affected products at the H6 level for the 184 violations is provided in Annex 1.

5. Export Subsidies

The Agreement on Subsidies and Countervailing Measures (SCM Agreement).

The SCM Agreement defines subsidies as a financial contribution that confers a benefit. This includes tax revenue that is foregone and potential transfers of funds, for example, in the case of loan guarantees. These subsidies are prohibited where they are contingent in law or in fact on export performance.

A subsidy is contingent in law upon export performance where the condition of exportation is set out expressly on the face of the law, regulation or other legal instrument. For example, in February 2010, India announced duty free import of inputs for copper products in the Advance Authorization Scheme through a change in the tax legislation for exporters.³⁶ This measure potentially constitutes a subsidy contingent in law upon export performance because it was initiated by a legal instrument to incentivize export performance. A subsidy contingent in fact on export performance, on the other hand, is inferred where the condition to export is clearly, though implicitly, in the instrument comprising the measure³⁷.

Furthermore, Annex I of the SCM Agreement contains an illustrative list of export subsidies. The items of Annex I deal with an array of subsidies and cover amongst others remission of direct and indirect taxes, duty drawback systems, and trade finance provided below cost.

The Agreement on Agriculture (AoA)

Export subsidies for most agricultural products, excluding fish, are regulated in the AoA. The prohibition of export subsidies for agricultural products is largely interpreted analogous to that contained in the SCM Agreement despite the difference in language and the absence of the illustrative list of Annex I of the SCM Agreement. However, the AoA allows members to subsidize exports of agricultural products to the extent provided for in their goods schedules. Currently, 18 members are permitted to provide export subsidies on

³⁶ <http://www.globaltradealert.org/state-act/9118>

³⁷ *Canada – Autos (2000)*,

agricultural products. At MC10 in Nairobi it was agreed to end all export subsidies. Additionally, certain disciplines on trade finance were agreed upon. These commitments, however, are merely contained in the soft instrument of a ministerial decision and are most likely not enforceable in WTO dispute settlement proceedings. It is important to bear in mind that it was already agreed at MC6 in Hong Kong (2005) to eliminate all export subsidies by 2013. No consequences flowed from the widespread failure to observe this commitment.

5.1 Tax-based Export Incentives

5.1.1 Introduction

Tax-based export incentives are fiscal deductions, exclusions, exemptions or deferrals from a tax liability offered exclusively to exporters while not available for products that are sold domestically.³⁸ Tax-based export incentives (TBEI) granted to exporters, in the form of lower taxes on inputs and rebates, lessen the overall tax burden on export income, thereby enabling domestic exporters to charge lower prices for their goods without reducing their net profit and therefore harming competitors in their home or third markets. In effect, tax-based export incentives hurt AU LDCs exports as they hinder their competitive opportunities in third-country markets.

For instance, where Argentina exempts an exporting/manufacturing company from paying company income tax or grants tax refunds to such exporting company without making such incentive available for products sold domestically, those measures provided by the Argentine Government constitute export subsidies limiting the competitive advantage of AU LDCs exports in other markets.

5.1.2 Methodology

We identified tax-based export incentive as one of the top trade distortive measures (TDMs) affecting AU LDCs. The weighted ranking places it as the second most harmful measure affecting AU LDCs with an incidence of 38

³⁸ <http://www.businessdictionary.com/definition/tax-incentive.html>

measures, affecting 684 tariff lines. Tax-based export incentives affect 38% of African LDC exports (excluding petroleum).

Furthermore, some of the tax based export incentives TDMs implemented by Argentina, Pakistan and Uruguay affected agricultural products, regulated by the Agreement on Agriculture and similarly impacted by the 2015 Nairobi Ministerial Declaration on Export Competition.

Figure 15: Top implementers of tax-based export incentive TRMS

	Implementing Country	No. of Measures	Affected Tariff Lines
1	India	13	285
2	China	12	166
3	Brazil	3	74
4	Pakistan	3	43
5	South Africa	2	91
6	Argentina	2	9
7	Indonesia	1	8
8	Uruguay	1	6
9	Malaysia	1	2

Since both China and India, according to GTA, represent the largest share of TBEI affecting AU LDCs, both in absolute terms and with regard to number of tariff lines affected, the report looks at two of their TBEI for illustrative purposes; the Merchandize Exports Incentive Scheme (MEIS) introduced by India, and China’s VAT Rebate System on exports. These examples shed light on the nature of TBEI, the complexity of the assessment of TBEI’s legal compliance with WTO law, and the importance of having any TBEI notified at the WTO so members can be aware of their existence.

For a proper assessment of the legal compliance of the identified measures with WTO Law, this report relied on information available on the national websites of implementing countries, WTO’s trade policy reviews on implementing countries in addition to data sourced from the GTA website. The latter, however does not provide specific details on the nature of the taxes or measures implemented by countries.

5.2 India's Fiscal Incentive Schemes

This section will discuss some fiscal incentives in India, which negatively impact AU LDCs exports in third country markets. In India, tax-based export incentives are in the form of refunds of excise duties paid on final products, exemption of custom duties and duty drawbacks. For instance, India grants custom duties exemption to exporters through her Advance Licence / Duty Exemption Entitlement Scheme (DEEC) on locally produced goods which are final products while she implements a duty drawback scheme through Merchandize Exports Incentive Scheme (MEIS)

(i) Advance Licence / Duty Exemption Entitlement Scheme (DEEC)

India has an Advance Licence / Duty Exemption Entitlement Scheme (DEEC) which precludes exporters from paying customs duties on imported raw materials and other components used in the manufacture of goods produced in the free trade zones which are destined for exportation.³⁹ For instance, an exporter in India stands a better chance of selling his electronic products in third country markets like the US as he is entitled to duty free exemption on imported raw materials. In comparison, a similar exporter in Zambia (an AU LDC) who produces the same electronic product without incentives from his own government is unlikely to produce goods to adequately compete in third country markets.

Duty drawbacks on the other hand explain situations where taxes paid on imported materials are paid back to the exporter when the goods or products made with those materials are exported again.

(ii) Merchandize Exports Incentive Scheme (MEIS)

Under this export promotion scheme, India grants so-called 'duty credit scrips' to its exporters. The scrips have a value of 2% to 5% of the recipients' export turnover. These scrips are in principle intended to be credits to offset custom duties paid for imports employed in the production of goods to be exported. The objective of India's Merchandise Exports from India Scheme (MEIS) as per Indian Foreign Trade Policy 2015-20 (FTP 2015-20) is to offset

³⁹ India's Trade Policy Review 2016.

infrastructural inefficiencies and associated costs involved in export of goods/products, which are produced/manufactured in India, especially those having high export intensity, employment potential and thereby enhancing India's export competitiveness.⁴⁰

The Duty Credit Scrips can be used for the following purposes:

- (i) Payment of customs duty for import of inputs /goods including capital goods, except items listed in Appendix 3A of the MEIS Schedule.
- (ii) Payment of excise duty on domestic procurement of inputs or goods, including capital goods as per Department of Revenue (DoR) notification.
- (iii) Payment of service tax on procurement of services as per DoR notification.

The MEIS grants duty credit scrips to exporters for notified goods exported to notified markets listed in Annex 3 to this report⁴¹. This measure covers a wide range of notified goods affecting about 139 third country markets (divided into Categories A, B, and C). Therefore, in a situation where India incentivizes a wide range of notified goods exported to these 139 countries all over the globe, an AU LDC like Tanzania is unable to compete effectively well against products originating from India in the German market.

Another major defect to the MEIS is that since the duty credit scrips are transferable, if the exporter does not use them as intended, they may be transferred to any Indian importers to pay for custom duties, or other excise duties or service taxes within the validity period (18 months). This structure potentially offends the verification procedure required in Annex II & III of the SCM Agreement requesting a government providing drawback of import charges to implement a system for determining inputs consumed in the production of the exported product and in what amounts. A transferable duty credit scrip which the Indian government is incapable of monitoring or

⁴⁰ <http://howtoexportimport.com/MEIS-Merchandise-Exports-from-India-Scheme-under-F-1535.aspx>

⁴¹ Extracted from <http://dgft.gov.in/exim/2000/highlight2015.pdf>

verifying its implementation procedure, raises a strong case of export subsidy⁴².

Box 2: Illustration of India's Merchandise Exports Incentive Scheme (MEIS)

Indian exports of textiles to Japan: An Indian exporter sells textiles to Japan worth \$100,000. The exporter would obtain in this hypothetical example approximately \$4,000 worth of scrips. As the exporter does not rely on foreign inputs and does not produce for the domestic market, she sells the scrips for \$3,500 to another Indian producer who uses foreign inputs. The scrip, thus, essentially constitutes a subsidy to the first producer contingent on export performance.

On 1st of July 2017, India consolidated all multiple cascading taxes in the form of excise duties, customs duties, value added tax, service tax into **the Goods and Services Tax**. In spite of this consolidation of all duties and taxes into a single tax structure, the various fiscal incentives that previously accrued to exporters in India in the form of exemption from all duties available under Advance Licence /Duty Exemption Entitlement Scheme (DEEC) and duty drawback schemes such as Merchandise Exports from India Scheme (MEIS) still exist⁴³. AU LDCs exports are still negatively impacted in every sense discussed above.

5.3 Violations of WTO Rules

The possibility of violation or otherwise will be considered from two standpoints namely; 1) whether the measure satisfies the cumulative conditions in Article 1 and Article 3 of the SCM Agreement and; 2) whether it constitutes a prohibited export subsidy under paragraphs (e), (f), (g), (h), (i) of the illustrative list of export subsidies applicable to fiscal incentives. The compliance of the Indian and Chinese measures with WTO Rules will now be examined respectively.

(i) Merchandise Exports Incentive Scheme

The provision of duty credit scrips by India reveal the existence of a financial contribution by the government. India foregoes the collection of government

⁴² See Section II Paragraph 3 Annex III to the SCM Agreement.

⁴³ Central Board of Excise and Customs: GST Sectoral Series; available at <http://www.cbec.gov.in/resources/htdocs-cbec/gst/sectoral-booklets>

revenue, in form of custom duties, which are otherwise due from exporters, under the MEIS. This financial contribution confers benefits on Indian exporters through a duty drawback (non-payment of taxes) of a specified amount in the scrip. The measure satisfies the requirement of Article 3 SCM Agreement as it is contingent on export.

Furthermore, this measure is a duty drawback scheme under paragraph (i) of the Illustrative List of Export Subsidies. Pursuant to paragraph (i), drawback schemes constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. The concept of "excessive" remission or drawback of import charges involves a comparison between the import duties levied on inputs consumed in the production of an exported product, on the one hand, and the amount of the remission or drawback granted on the other.

In *European Union - Countervailing Measures on Certain Polyethylene Terephthalate from Pakistan (DS486)*, the panel held that the implementing country must provide a reasoned and adequate explanation why the entire amount of remitted duties, found to be the financial contribution was in excess of those which have accrued within the meaning of footnote 1 of the SCM Agreement. Item (i) is the only one in the Illustrative List that deals with the remission of import charges, but it is specific to imported inputs. To prevent disguised subsidization, such substitution drawback system must satisfy three conditions: I) the quantity of domestic and imported inputs should be equal; II) domestic and imported inputs should have the same quality and characteristics; III) and the import and corresponding export operation should both occur within a reasonable period of time not exceeding two years.

For instance, for a measure to satisfy the requirements of paragraph (i) of the Illustrative List, if an Indian exporter who pays an aggregate of \$ 2,500 as import duties on inputs consumed in the production of textiles worth \$100,000 exported to Japan claims \$4,000 worth of scrips on the said exportation to Japan, this amounts to an excessive drawback of import charges, the scrip constitutes an export subsidy prohibited under WTO Law.

In addition to the above, since India's per capita national income (GNP) has exceeded \$1,000 per year for three years straight (2013, 2014 and 2015), India cannot rely on the special and differential provisions contained in Art. 27.2(a) in conjunction with Art. 3.1(a) of the SCM Agreement (exemption from adoption of subsidies contingent upon export performance) and should therefore end its export subsidies program, including MEIS.

In conclusion, there is a violation or a case of non-compliance with WTO Rules by India by its continued implementation of the MEIS.

(ii) China's VAT Rebate System on exports.⁴⁴

The Value-Added Tax (VAT) rebate system in China allows exporters to be refunded in full, partially, or not-at-all, for the value added tax (VAT) paid on inputs. However, rates of VAT refunds in China are not static. They are frequently adjusted upwards and downwards (ranging from 0% to 17%), affect the domestic availability (and prices) of certain products. This is done to promote certain industries at any given moment.

One may consider the hypothetical example of an exporter of cell phones who obtains a full refund of VAT paid on inputs such as batteries and antennas whereas exporters of textiles may not receive a full refund for VAT paid. In view of the fluctuation described above, an assessment of this VAT rebate system can be approached from two angles. On the one hand, one could consider it a subsidy contingent on export performance as only exporters of certain products receive the VAT rebate (the cellphone producer in the example above).

As an export subsidy, the VAT rebate system satisfies the conditions listed in Article 1 & 3 of the SCM Agreement. Remission of value added tax to Chinese exporters constitutes a financial contribution because government revenue, otherwise due, is foregone or not collected from exporters. Furthermore, the rebate confers benefits on the exporters. The measure also satisfies the requirement of Article 3 SCM Agreement since it is tied to actual or anticipated exportation or export earnings.

⁴⁴ <http://www.globaltradealert.org/state-act/215>

Furthermore, this measure falls under paragraph (g) of the Illustrative List of Export Subsidies as it affects the remission, exemption or deferral of indirect tax (VAT) within the meaning of footnote 58 of the SCM Agreement. To the extent that VAT rebates paid on inputs such as batteries and antennas used in the production of cellphones which are destined for exportation exceed those levied with respect to the production and distribution of similar cellphones sold for domestic consumption, this measure constitutes an export subsidy.

On the other hand, the failure to rebate the VAT on textiles, in the example above, could be considered an export tax levied on textiles. In that case, China would be in violation of its Accession Protocol, which prohibits almost all export taxes with very few highly detailed exceptions (cellphones or textiles are not included).

The reasons for prohibiting such export taxes are economically sound as they may be equivalent to an indirect subsidy to higher-value-added manufacturing or processing industries. Export taxes imposed on products produced in significant quantities (for example batteries for cellphones) may lower the price of such products domestically. As a result, exporters have access to comparatively cheaper inputs when manufacturing cellphones. This way, they gain a competitive advantage in third country markets, potentially adversely affecting AU LDCs. China will further violate its obligations under WTO Law as long as the implementation of the VAT Rebate system continues.

Conclusively, fiscal incentives are difficult to determine and establish them. This problem is exacerbated by lack of information and the widespread failure to notify existing subsidy programs by WTO Members. As a consequence, AU LDCs should push for more access to information on fiscal incentives implemented by WTO members as well as a more transparent notification or reporting system which allows AU LDCs identify possible areas of violation and adopt necessary measures in response.

6. Trade Finance

6.1 Introduction

When goods are shipped, for example, from Namibia to Canada much can go wrong on such a long journey. Thus, it is no surprise that there are competing interests of the Namibian exporter who wants to be paid as soon as the goods leave his factory and the Canadian importer who would first like to ascertain the quality and quantity of the product. This resulting gap is bridged by means of credits or payment guarantees, so-called trade finance measures that is provided either by private parties or government agencies. Trade finance has been identified by GTA in third place in the weighted ranking adopted for the purposes of this memorandum. Before providing more information on practical issues as well as with respect to the applicable legal framework, some background is offered to facilitate ease of understanding.

Although the total number of individual measures recorded by GTA, 23, is relatively low, their impact is considerable. They affect AU LDCs in 148 instances with a direct impact on 404 tariff lines. It is important to bear in mind that these numbers exclusively relate to existing trade flows and do not consider *potential* exports of AU LDCs. One trade finance measure adopted by the government of Russia, for example, may make Russian agricultural products more attractive to US American importers. This measure may negatively impact the competing exports of multiple African countries, meaning one measure affects LDCs in multiple instances. Furthermore, this measure may not only apply to one tariff line but provide official trade finance support across multiple HS chapters and, hence, affect a large number of tariff lines. GTA records all three of these numbers. However, GTA's data is based on existing trade flows. It is, thus, unable to consider cases where African LDCs are unable to establish themselves as new exporters of a certain product as subsidised exports of other countries hold back their potential. Considering the manner in which trade finance measures operate, it can generally be assumed that the negative impacts on products originating in AU LDCs can largely be observed in third country markets, in this example, the US market.

Trade finance comprises an array of measures that depending on their design and implementation may be completely legal and desirable, as evidenced by the fact that approximately 80 percent of world trade is financed by credit or credits insurance.⁴⁵ On the other hand, when implemented with governmental support and in disregard of the disciplines imposed by the WTO covered agreements, trade finance measures may have very direct and considerable trade-distortive effects.⁴⁶ One should further bear in mind that the absence of WTO-compliant trade finance for traders from AU LDCs may at times be just as harmful as non-compliant trade finance offered to exporters of competing goods or services.

Small and medium sized firms (SMEs) as well as companies located in developing and least developed countries often face considerable difficulties in obtaining such credit or payment guarantees. The African Development Bank conservatively estimated in 2017 that the demand of unmet bank-intermediated trade finance in Africa amounted to US\$91 billion in 2014.⁴⁷ Other, less conservative estimates put the gap for sub-Saharan Africa alone at US\$225 billion per year.⁴⁸ Almost two thirds of firms in Africa consider access to trade finance to constitute a major obstacle to trade.⁴⁹ Furthermore, the World Economic Forum identified access to trade finance as the greatest obstacle to exports in Africa.⁵⁰ Therefore, even where export credits are granted or guaranteed through measures that are entirely in accordance with WTO rules, trade distortive affects may arise that often result in considerable

⁴⁵ WTO, Trade Finance and SMEs (WTO Publishing 2014), p. 6.

⁴⁶ Panel, Canada - Aircraft (Article 21.5 - Brazil), para 5.137.

⁴⁷ African Development Bank, Trade Finance in Africa: Overcoming Challenges, 2017 at <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/Trade_Finance_in_Africa_Survey_Report.pdf> (accessed on 09 January 2018), p. 35.

⁴⁸ Oumar Seck *et al*, Feasibility Study of an ACP Investment Bank Project, 2013 at <<http://acp.int/sites/acpsec.waw.be/files/ACP%20BANK%20-%20EXECUTIVE%20SUMMARY.pdf>> (accessed on 9 January 2018), p. 16.

⁴⁹ Centre for the Promotion of Imports - Dutch Ministry of Foreign Affairs, Access to Trade Finance: First-hand perspectives on bottlenecks and impacts for SME exporters in the South, 2013 at <https://www.cbi.eu/sites/default/files/market_information/researches/policy-study-access-to-trade-finance-2013.pdf> (accessed on 9 January 2018), p. 23.

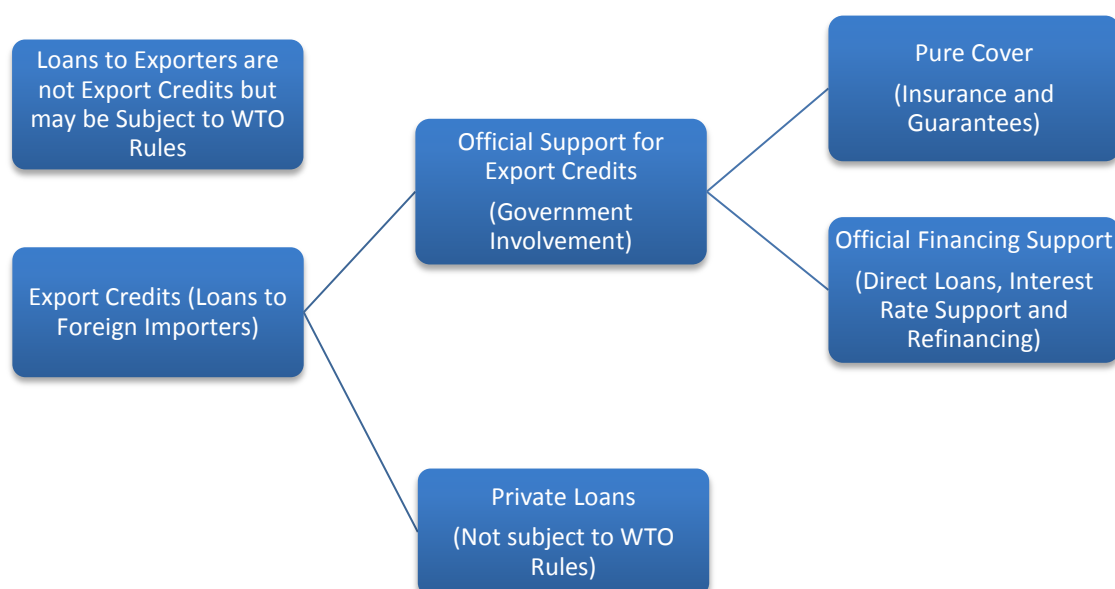
⁵⁰ World Economic Forum, The Africa World Competitiveness Report, 2013 at <http://www3.weforum.org/docs/WEF_Africa_Competitiveness_Report_2013.pdf> (accessed on 9 January 2018), p. 54.

disadvantages to exports from developing and least developed countries. In light of this, it does not come as much of a surprise that DG Azevêdo recently highlighted these difficulties in a speech addressed to the WTO Working Group on Trade, Debt and Finance.⁵¹

6.2 Export Credits - Overview

Before analysing the legal framework some background on trade finance and the various forms it can take is necessary. Whereas export credits are only a sub-category of trade finance instruments, most trade distortive effects are observed with respect to subsidies provided through such export credits. Thus, the following analysis focuses on export credits. Additionally, export credits are the only trade finance instrument regulated by WTO law. Export credits can generally speaking be understood as loans to foreign buyers with the aim of promoting national exports.

Figure 16: Overview of Export Credits



The Panel in *Korea – Commercial Vessels* broadly defined export credits as credits provided to foreign buyers (importers) and, thus, excluded

⁵¹ WTO, DG Azevêdo: Lack of trade finance a major obstacle for SMEs, 2016 at <https://www.wto.org/english/news_e/news16_e/dgra_31may16_e.htm> (accessed on 9 January 2017).

stand-alone credits to exporters from this definition.⁵² Export credits can either be extended by the seller directly or be provided by a financial or governmental institution to the buyer. There is a large share of export credits, which do not include any type of government involvement, for example, in the case of long-term relationships between seller and buyer and in situations that involve short-term lending. Especially in the latter case the risk is generally considered to be minimal.⁵³ Problematic are, however, those segments of the market which are marked by information asymmetries or where private actors otherwise do not exhibit rational behaviour.

In such situations official support for export credits, meaning the involvement of governments, most commonly through exports credit agencies (ECAs), can be observed. Generally, one can distinguish between two broad types. On the one hand, governments or their ECAs may provide official financing support through direct loans to importers, interest rate support,⁵⁴ and refinancing of export credits (provided by exporters or private financial institutions), tied to the condition that products are imported from the country that finances the measure. On the other hand, governments may provide 'pure cover', defined by the OECD as an export credit guarantee or insurance only.⁵⁵ The distinction between pure cover and official financing support will be of relevance when assessing the conditions under which both may be granted in accordance with the SCM Agreement.

⁵² Panel Report, *Korea – Commercial Vessels*, WT/DS273/R, para 7.323-324; This is not to say that stand-alone credits may not be subsidies in the sense of the SCM Agreement. They are merely not of interest to this discussion of trade finance measures.

⁵³ See, ICC, Trade Register Report: Global Risks in Trade Finance, 2016 at <<https://cdn.iccwbo.org/content/uploads/sites/3/2016/12/ICC-Trade-Register-Report-2016.pdf>> (accessed on 9 January 2018), p. 22, where it was found that default rates for short-term trade finance range, depending on the financial product in question, from 0.08 to 0.21 percent and in case of default on average more than half of the loss is recovered through sale of the underlying asset.

⁵⁴ Defined by the OECD Arrangement, 2017, Annex VX, item h) as 'an arrangement between a government and banks or other financial institutions which allows the provision of fixed rate export finance at or above the CIRR [commercial interest reference rates]'.

⁵⁵ *Ibid*, item n)

6.3 Types of Export Credits Covered by WTO Law

Generally a large share of trade finance instruments is subject to the discipline imposed by the WTO covered agreements, more specifically the SCM Agreement and the Agreement on Agriculture. Before considering the specific provisions potentially regulating trade finance measures of WTO members it is important to bear in mind certain caveats.

WTO Law only applies to governments. Difficulties arise where multilateral or regional bodies such as regional development banks provide access to trade finance.⁵⁶ The SCM Agreement requires a financial contribution by 'a public body *within the territory of a member*'.⁵⁷ The WTO Secretariat observed in this respect that 'it is not entirely clear whether or not the Agreement applies where the subsidizing entity is not within the territory of the Member whose goods are allegedly being subsidized.'⁵⁸ Similar observations were made in dicta by the Panel in *EC and certain member States - Large Civil Aircraft*.⁵⁹ Generally there seems to be agreement that development aid provided by multilateral institutions lies outside the scope of the SCM Agreement.⁶⁰ However, it appears conceivable that multilateral institutions provided export finance under favourable terms that would constitute an export subsidy in the sense of the SCM Agreement. It is difficult to see why LDCs should be prevented from challenging such measures where their exports are being reduced or displaced in third country markets.⁶¹

One of the measures recorded by GTA may serve to illustrate this. The measure concerns a revolving loan facility of a multilateral development bank,

⁵⁶ See, for example, the following measure recorded by Global Trade Alert, Kazakhstan: Eurasian Development Bank and Eurasian Resources Group signed a US \$95 million revolving loan facility agreement at <<http://www.globaltradealert.org/intervention/55867>> (accessed on 9 January 2018).

⁵⁷ SCM Agreement, Article 1.1(a)(1) [emphasis by author].

⁵⁸ WTO, Expert Group Meeting on Trade Financing, WT/GC/W/527, 16 March 2004, para 21.

⁵⁹ See, for example, *EC and Certain Members States - Large Civil Aircraft*, WT/DS316, para 7.888, the Panel's reasoning on "a government or any public body" was later overturned by the AB.

⁶⁰ WTO, *supra* 89.

⁶¹ The European Bank for Reconstruction and Development, for example, operates in Poland, a country with a per capita GDP of US\$12.372 in 2016 according to the World Bank.

the Eurasian development bank.⁶² This is not to say that these loans are prohibited by WTO rules but rather highlights the fact that if national governments were seeking to do so, they could easily circumvent the WTO covered agreements by relying on multilateral institutions.

Secondly, although of limited importance for the present analysis, it should be mentioned that LDCs and certain other countries are exempted from the prohibition to adopt export subsidies contained in the SCM Agreement.⁶³ This does not, however, mean that such subsidies may not be subject to unilateral remedies in the form of CVDs or multilateral challenge of such subsidies as actionable subsidies. This insight is important to the extent that it informs the potential future course of action of LDCs and developing countries.

6.4 Export Subsidies under the SCM Agreement

6.4.1 The General Prohibition under Art. 1 in conjunction with Art. 3(1)(a)

This section does not seek to reiterate the general rules on export subsidies explained above. Instead, some of the aforementioned points are supplemented to reflect the specificities that arise in the context of export credits.

1. The financial contribution by a government, as scrutinized above, includes not only direct but also potential transfers,⁶⁴ meaning not only official financing support but also pure cover measures are subject to the discipline of the SCM Agreement.
2. The analysis of the benefit-to-recipient requirement applies as explained above. In addition, it is necessary to bear in mind that a benefit also arises where the recipient could not have obtained an export credit on comparable terms on the private market. According to

⁶² Global Trade Alert, *supra* 89.

⁶³ SCM Agreement, Annex VII.

⁶⁴ SCM Agreement, Art 1.(a)(1)(i).

the Appellate Body in *Brazil-Aircraft* the recipient of the financial contribution is not necessarily the recipient of the benefit.⁶⁵

3. Export contingency is easily established as the provision of the export credit is tied to the purchase of foreign goods.

Furthermore, two items of the illustrative list of export subsidies contained in Annex I of the SCM Agreement are of direct relevance, items (j) and (k).

6.4.2 Item (j)

item (j) of the illustrative list of export subsidies contained in Annex I of the SCM Agreement provides for a cost-to-government test and prohibits:

The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

The provision is, thus, concerned with 'pure cover' trade finance measures. Where the complaining member can show that the support program does not cover long-term operating costs 'the programme as a whole constitutes a prohibited export subsidy'.⁶⁶

To prove this one needs to provide:

1. Quantitative evidence, where no 'particular basis for calculation and ... a precise quantification of the difference between premiums and long-term operating costs and losses' is required;⁶⁷ or
2. Qualitative evidence, such as rates below the premium rates established in the OECD Arrangement on Officially Supported Export

⁶⁵ Appellate Body Report, *Brazil-Aircraft*, WT/DS46/AB/R.

⁶⁶ Panel Report, *Korea - Commercial Vessels*, WT/DS273/R, para 7.204.

⁶⁷ Appellate Body Report, *US-Upland Cotton*, WT/DS267/R, para 665.

Credits.⁶⁸ Compliance with the OECD Arrangement, however, does not constitute a non-refutable defence. Thus, it may well be that the minimum premium rates of the OECD Arrangement are insufficient to cover long-term operating costs and losses. A ‘more likely than not’-test to prove a violation of item (j) was established,⁶⁹ thus, requiring a fairly low standard of proof.

An example of such a measure impacting six AU LDCs is insurance coverage provided by the Russian Agency for Export Credit and Investment Insurance (EXIAR).⁷⁰ The commercial VTB Bank provided a US\$100 million loan to one of the largest Russian fertiliser producers, which in turn was insured by EXIAR. The premiums for the insurance are not publicly available, meaning no assessment of the measures legality can be made. However, the case illustrates the importance of item (j) as well as the importance of increased transparency in this respect. More generally, access to information is crucial in this regard. AU LDC exporters may find it difficult to compete in third country markets without necessarily being aware of the subsidies competitors rely on to outperform them.

6.4.3 Item (k)

Item (k) of the illustrative list of export subsidies contained in Annex I of the SCM Agreement equally establishes a cost-to-government test and prohibits:

The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or

⁶⁸ OECD, Arrangement on Officially Supported Export Credits, 19 September 2017, TAD/PG(2017)8, Art. 23ff.

⁶⁹ ABR, *US-Upland Cotton (Article 21.5)*, para 321.

⁷⁰ Russian Federation: EXIAR insurance coverage for exports of Russian mineral fertilisers, <http://www.globaltradealert.org/intervention/13605>

financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

The term 'used to secure a material advantage' has been interpreted to require a comparison between the 'export credit terms available under the measure at issue and some other "market benchmark"'.⁷¹ It is important to note that the 'material advantage' requirement should not be equated with the 'benefit' requirement of Article 1.1(b),⁷² elaborated upon above. One example of such a market benchmark can be found in the Commercial Interest Reference Rates (CIRR) established by the OECD Arrangement on Officially Supported Export Credits. So as to avoid making the safe haven provision of the second paragraph redundant, the Appellate Body allows other benchmarks in case the CIRR do not reflect the state of the market.⁷³

The safe haven of the second paragraph of item (k) applies *the interest rate provisions* of the OECD Arrangement.⁷⁴ Thus, the CIRR constitute a lower limit for official financing support with three important limitations:

1. the minimum interest rate provisions only apply to official financing support,⁷⁵ defined as direct credit/financing and refinancing and interest rate support;⁷⁶
2. only official support with a repayment term of two years or more is covered;⁷⁷
3. only fixed rate loans are covered.⁷⁸

In conclusion, trade finance measures need to comply with the cost-to-government test established in items (j) and (k) of Annex I of the SCM

⁷¹ Appellate Body Report, *Brazil-Aircraft (Article 21.5)*, WT/DS46/AB/RW, para 61.

⁷² Appellate Body Report, *Brazil - Aircraft*, WT/DS46/AB/R, para 179.

⁷³ Appellate Body Report, *Brazil-Aircraft (Article 21.5)*, WT/DS46/AB/RW, para 64.

⁷⁴ Appellate Body Report, *Brazil-Aircraft*, WT/DS46/AB/R, paras 179-182; Panel Report, *Canada Aircraft (Article 21.5)*, WT/DS70/RW, paras. 5.82-92.

⁷⁵ OECD, *Arrangement on Officially Supported Export Credits*, 19 September 2017, TAD/PG(2017)8, Article 19.

⁷⁶ *Ibid*, Article 5(a)(2).

⁷⁷ *Ibid*, Article 5.

⁷⁸ *Ibid*, Article 19.

Agreement. Additionally, they are required to comply with the general benefit-to-recipient test as established under Article 1.1 in conjunction with Article 3.1(a). It is important, that the illustrative list does not replace the general test. Developed countries are generally able to obtain loans on international financial markets on better terms than poor nations with bad credit ratings. Hence, the cost-to-government test favours rich nations when re-lending these funds. Therefore, it is important to bear in mind that trade finance may not provide a benefit to the recipient, the exporter, except in situations where the government complies with the safe haven of item k).

6.5 Export Subsidies on Agricultural Products

Subsidies provided for agricultural products as defined in Annex 1 of the Agreement on Agriculture (AoA) are additionally subject to the disciplines imposed by said Agreement.⁷⁹ The relationship between the SCM Agreement and the AoA continues to be somewhat unclear despite limited guidance that was provided by Panels and the Appellate Body in previous reports.⁸⁰ The AB observed quite generally, however, that ‘the WTO-consistency of an export subsidy for agricultural products has to be examined, in the first place, under the Agreement on Agriculture.’⁸¹ An example of a trade finance measure identified by GTA that specifically targets agricultural products is a refinancing scheme of the State Bank of Pakistan that was opened up to brown rice so as to increase exports of said product.⁸² According to GTA, ‘[t]he scheme provides short-term financing to exporters of the stated product at a concessionary rate.’⁸³ Producers in AU LDCs such as Liberia and Burkina Faso that equally grow brown rice are negatively affected by this measure as they may see domestic sales decline or have to compete in third country markets with such subsidised products.

⁷⁹ The definition generally covers all agricultural products but notable excludes fish and fish products.

⁸⁰ See generally on different ways of potential interaction, Li Xiaoling, *Expired Peace Clause: Claims under WTO's Agreement on Subsidies & Countervailing Measures and Agreement on Agriculture*, 3 *Peking U. J. Legal Stud.* 53 (2012).

⁸¹ Appellate Body Report, *Canada-Dairy (Article 21.5)*, WT/DS103/AB/RW, para 123.

⁸² Global Trade Alert, *Pakistan: Export of brown rice included under Export Finance Scheme* at <<http://www.globaltradealert.org/intervention/19211>> (accessed on 9 January 2018).

⁸³ *Ibid.*

The following section considers the prohibition of export subsidies contained in the AoA, the legal status of the commitment to end almost all export subsidies, as well as the provisions of the AoA on export finance.

Export subsidies are generally described in Art. 1(e) as subsidies contingent upon export performance. This requirement of export contingency was interpreted to be identical to the one contained in the SCM Agreement and, thus, includes *de facto* and *de jure* export contingency.⁸⁴ Furthermore, those subsidies contained in Article 9 of the AoA, and subject to reduction commitments where inscribed in a members schedule, are deemed to be included in the definition of export subsidies. The AoA does not, however, contain an illustrative list similar to Annex I of the SCM Agreement. Therefore, it can generally be said that export subsidies provided for products not contained in a member's schedule as well as those exceeding the commitments entered into are prohibited by the AoA's Articles 3.3, 8 and 10.1.

At the 10th Ministerial Conference in Nairobi in 2015 it was agreed to end all export subsidies for agricultural products with a number of exceptions.⁸⁵ This does not, however, mean that export subsidies, including those which up to 2015 were merely subject to reduction commitments are now prohibited by the Agreement on Agriculture.⁸⁶ As a matter of fact, it was already agreed at the sixth ministerial conference in 2005 to eliminate all export subsidies by 2013.⁸⁷ No consequences flowed from the failure to observe this commitment.⁸⁸ As has been stated elsewhere, ministerial decisions 'do not generate specific rights and obligations for WTO Members, which can be enforced through WTO dispute settlement.'⁸⁹ At best, they

⁸⁴ Appellate Body Report, *US - FSC (Article 21.5)*, WT/DS108/AB/RW, para 192; Appellate Body Report, *US-Upland Cotton*, WT/DS267/AB/R, para 571.

⁸⁵ WTO Ministerial Decision of 19 December 2015, WT/MIN(15)/45 and WT/L/980, para 6.

⁸⁶ Article 8 of the Agreement on Agriculture provides "[e]ach Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule."

⁸⁷ WTO Ministerial Declaration of 18 December 2005, WT/MIN(05), para 6.

⁸⁸ WTO Ministerial Declaration of 7 December 2013, WT/MIN(13)/40 and WT/L/915, para 2.

⁸⁹ Peter van den Bossche and Werner Zdouc, *The Law and Policy of the World Trade Organization* (Cambridge 2017, 4th edition), p. 54.

constitute subsequent agreements in the sense of Art. 31(3)(a) of the Vienna Convention on the Law of Treaties that can be relied upon to interpret the provisions of the WTO covered agreements.⁹⁰ However, the reduction commitments on agricultural subsidies inscribed in the members' schedules constitute an integral part of the WTO covered agreements.⁹¹ These enforceable commitments could hardly be interpreted in a manner that would conform to the Nairobi declaration. Thus, from the perspective of the WTO dispute settlement body, the ministerial declaration is not enforceable in the same manner as any of the covered agreements. An amendment to the schedules of the 25 members in question should be sought at the earliest possible to enhance the enforceability of the Nairobi commitment.

With respect to export finance, Article 10.2 of the AoA explicitly provides:

'Members undertake to work toward the development of internationally agreed disciplines to govern the provision of export credits, export credit guarantees or insurance programmes and, after agreement on such disciplines, to provide export credits, export credit guarantees or insurance programmes only in conformity therewith.'

The Appellate Body stated in *US-Upland Cotton* that this provision cannot be understood as exempting export finance subsidies from the obligations on export credits contained in the AoA.⁹² Instead, it set out the following requirements to challenge trade finance measures.

1. The trade finance measures must contain a subsidy component and;
2. the complaining party needs to show that the measure is 'applied in a manner that results in, or threatens to lead to, circumvention of the responding party's export subsidy commitments within the meaning of Article 10.1' of the AoA.⁹³

⁹⁰ As was affirmed by the Appellate Body in *US-Clove Cigarettes*, WT/DS406/AB/R, paras 260-267.

⁹¹ Agreement on Agriculture, Art. 3.1.

⁹² Appellate Body Report, *US-Upland Cotton*, WT/DS267/AB/R, para 626.

⁹³ *Ibid.*

To establish the existence of a subsidy, it appears generally permissible to rely by analogy on the illustrative list contained in Annex I of the SCM Agreement as done in *US-Upland Cotton*.⁹⁴ Interestingly enough, the fact that items (j) and (k) of the illustrative list of Annex I of the SCM Agreement were contained in an earlier draft of the AoA and later replaced with the current language of Article 10.2 did not stop the Appellate Body from doing so.⁹⁵ Furthermore, it appears that the benefit-to-recipient test as developed under the SCM Agreement applies in addition to the cost-to-government test under items (j) and (k) of the illustrative list.⁹⁶

As stated above, Article 10.2 obliges the WTO Members to develop rules on export finance instruments without specifying the manner in which these rules need to be recorded. In the Nairobi ministerial decision of 2015 an agreement was reached on export credits, export credit guarantees and insurance programs. It is unclear if and to what extent the mandate of Article 10.2 has been complied with by the ministerial decision. However, under the decision export financing may not be provided with a repayment term exceeding 18 months and for 'pure cover' measures the obligations stipulated in item (j) of Annex I of the SCM Agreement formally apply.⁹⁷ With respect to the maximum repayment term a number of countries maintained programs in the past that did not observe this commitment including Australia, Canada, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Hungary, Latvia, Poland and Japan. Due to poor reporting on this matter it is unclear if these countries continue to provide export finance for agricultural products with repayment terms exceeding 18 months.

It should further be noted that the ministerial decision explicitly excludes the safe haven provision of the second paragraph of item (k), discussed above.⁹⁸ This was not strictly necessary for two reasons:

⁹⁴ Ibid, para 658ff.

⁹⁵ Ibid, para 620.

⁹⁶ Both are explained above in the section on the SCM Agreement.

⁹⁷ WTO Ministerial Decision of 19 December 2015, WT/MIN(15)/45 and WT/L/980, para 15.

⁹⁸ Ibid, para 13, footnote 6.

1. The OECD explicitly excludes agricultural products from its scope.⁹⁹
2. The Arrangement only applies to official support with repayment terms of two years or more, as stated above, thus, exceeding the 18-month maximum stipulated in the ministerial decision.

However, this pre-emptive exclusion of the safe haven may constitute insurance against future changes in the scope of the OECD Arrangement as the second paragraph of item (k) also covers any successor agreement.

On the other hand, the term 'material advantage' in the first paragraph of item (k) was interpreted by the Appellate Body to call 'for a comparison between the export credit terms available under the measure at issue and some other "market benchmark"'.¹⁰⁰ The Appellate Body identified the Commercial Interest Reference Rates (CIRR) contained in the OECD Arrangement as *one example* of an appropriate benchmark,¹⁰¹ allowing other benchmarks in case the CIRR do not reflect the state of the market.¹⁰² Thus:

1. interest rates below the CIRR will most likely constitute a material advantage in the sense of item (k) for the purposes of the AoA;
2. Interest rates equal to or above the CIRR may be challenged as constituting a subsidy where an alternative benchmark is better suited to reflect the actual state of the market.

In conclusion, it can be said that export credit measures for agricultural products need to comply with the obligations set out in the Nairobi decision, notably the prohibition to exceed maximum repayment terms of 18 months. Furthermore, compliance with the cost-to-government test under items (j) and (k), excluding the second paragraph of the latter, is required. Lastly, export credit measures are required to comply with the benefit-to-recipient test in order to not run afoul of the disciplines imposed by the AoA.

⁹⁹ OECD, Arrangement on Officially Supported Export Credits, 19 September 2017, TAD/PG(2017)8, Art. 5(c).

¹⁰⁰ Appellate Body Report, *Brazil-Aircraft (Article 21.5)*, WT/DS46/AB/RW, para 61.

¹⁰¹ Appellate Body Report, *Brazil-Aircraft*, WT/DS46/AB/R, para 181.

¹⁰² Appellate Body Report, *Brazil-Aircraft (Article 21.5)*, WT/DS46/AB/RW, para 64.

7. Public Procurement Localisation

Public procurement domestic content requirements have been identified in fourth place in the weighted ranking of this report. Global Trade Alert recorded a total of 39 national measures with 43 instances in which an AU/WTO LDC was affected, meaning that most measures only affect a single AU/WTO LDC. 35 of these measures were implemented by the United States of America and 31 of them are based on the same piece of legislation requiring the use of domestic iron and steel to be awarded a financial grant, thus, affecting imports of said product originating in Zambia.¹⁰³ In light of this, the actual negative impact of government procurement domestic content requirements is probably much lower than suggested by the weighted ranking. Furthermore, as no LDC is currently Party to the plurilateral Agreement on Public Procurement no effective discipline exists in the WTO. On basis of the limited data provided by GTA alone there might be little evidence of a significant negative impact, however, further scrutiny of such measures might be warranted.

¹⁰³ See, for example, Global Trade Alert, United States of America: \$20 million TIGER transportation grant in Michigan subject to Buy-American rules at <<http://www.globaltradealert.org/intervention/14754>> (accessed on 9 January 2018).

8. Export Taxes

GTA flags India, Argentina, Ukraine, Russian Federation, Egypt and Indonesia as top active implementers of export taxes affecting AU LDCs. For example, Ukraine increased export taxes on sugar from approximately \$50/ton to \$166/ton. Export taxes treat foreign buyers worse than domestic buyers in that they raise the price paid abroad and often lower the price paid domestically, which confers a cost advantage on the domestic firms' competitiveness. To illustrate the negative impact of export taxes one could imagine the hypothetical situation in which Brazil, the world's largest sugar producer imposes an export tax on sugar. This would be likely to simultaneously increase the world market price and lower domestic prices in Brazil. Consequently, Brazilian producers have access to cheap sugar to produce, for example, soft drinks while sugar importing countries are facing increased world prices.

WTO disciplines on export taxes are lax, for example export taxes are a legitimate instrument, and until recently Members were not expected to take any commitment on the maximum rates of export taxes as GATT Article II on Schedules of Concessions only covers import duties and charges¹⁰⁴. Accession protocols and Free Trade Agreements are the main instruments to discipline export taxes.

Generally, discriminatory export taxes (favouring selected importing countries) are in violation of Article I GATT 1994 (MFN) but can be justified under Article XX (general exception) and Article XXI (national security). Furthermore, under Article XXIV, export tax preferences are WTO consistent as long as they are granted to countries that share memberships in the same trade agreement. Most countries that apply bilateral export taxes do so in the framework of trade agreements.

What this Report finds is that the AU LDCs identified by GTA as negatively affected by export taxes do not have any trade agreement in place with a commitment to eliminate or bind export taxes with the implementing

¹⁰⁴ Olga Solleder: Three Essays on Export Taxes (2013) Ph.D thesis

countries. In some cases, most of the trade agreements between these AU LDCs and the implementing countries were obsolete, too generic in terms without any binding obligation. The findings suggest that there may not be a violation of WTO Rules as such. However, due to the harmful effect of export taxes on AU LDCs exports, it may be helpful to advocate for discussing rules in future trade negotiations. It is very important that AU LDC governments negotiate the regulation of export tax agendas in the context of regional and bilateral trade agreements.

9. Conclusions

There were 184 import tariff violations (representing 3.4% of HS6 product lines) found for the seven top export markets of Argentina, Brazil, the EU, China, India, Indonesia and the United States, with 9 of these violations included in the AU LDC top 200 export products at an HS6 product level, and 3 out of these 9 found to *not* be covered under existing GSP/DFQF systems for AU LDCs. Likewise, GSP/DFQF coverage does not and cannot take into account any restrictive Rules of Origin (ROO) considerations that may invalidate AU LDC export products' eligibilities for preferential rates.

Thus while GSP/DFQF systems currently tout an impressive 97% product coverage for LDCs, three points regarding this pronouncement are salient for AU LDCs:

- 1) Not all AU LDCs enjoy either full or partial coverage under these preferential schemes;
- 2) While contributing very minimally to AU LDC exports instances where applied rates exceed bound rates nevertheless show that 97% GSP/DFQF coverage still should not be enough for AU LDCs at the negotiating table; and
- 3) Existing restrictive Rules of Origin (ROO) requirements will continue to play a key role in preventing AU LDCs from maximizing the benefits of GSP/DFQF schemes.

Hence, a key recommendation for this report is that a concerted push for both 100% DFQF coverage and preferential ROO schemes for particularly AU LDCs should be made at MC11 in Buenos Aires and in related upcoming plurilateral or thematic trade negotiating forums.

For tax-based export incentives, WTO Rules will continue to be an important factor in shaping them as members will undoubtedly want to ensure that tax policy measures implemented by other members states do not infringe WTO rules. However, a major problem is that fiscal incentives are difficult to determine and establish them. This problem is exacerbated by lack of information and the widespread failure to notify existing subsidy programs by WTO Members. As a consequence, AU LDCs should push for more access to

information on fiscal incentives implemented by WTO members as well as a more transparent notification or reporting system which allows AU LDCs identify possible areas of violation and adopt necessary measures in response.

With respect to trade finance measures AU LDCs should push for the following:

- 1) Increased access to trade finance to improve participation in global trade;
- 2) Increased transparency on trade finance measures so as to enable AU LDC exporters to identify unfair competitive practices and lobby their governments to challenge these measures in WTO dispute settlement;
- 3) A binding commitment by means of incorporation in their respective schedules of the 25 members that are allowed to subsidize agricultural products to refrain from doing so; and
- 4) Ensure that the discipline on trade finance measures for agricultural products is enforceable in WTO dispute settlement.

ANNEX 2

The listing of GSP/DFQF scheme coverage and MFN rates for the top 200 HS6 AU LDC exports is provided below:

Count	HS6	Product Description	Percent	USA	EU	China	India	(India Only) MFN / DFTP Applied Rate
1	270900	Petroleum oils, crude	57.4%	Yes	Yes	Yes	No	0
2	740311	Refined copper cathodes	12.2%	Yes	Yes	Yes	No	5
3	740319	Refined copper (other)	4.4%	Yes	Yes	Yes	No	5
4	710812	Gold, non-monetary, other unwrought forms	4.1%	Yes	Yes	Yes	No	10
5	710221	Unworked diamonds	3.0%	Yes	Yes	Yes	No	10
6	710812	Gold, in unwrought forms	3.0%	Yes	Yes	Yes	No	10
7	760410	Bars, rods & profiles, of aluminium, not alloyed	2.5%	Yes	Yes	Yes	No	5
8	710813	Gold, in semi-manufactured forms	2.3%	Yes	Yes	Yes	No	10
9	520100	Cotton, not carded/combed	2.2%	Yes	Yes	40	Yes	0
10	271019	Petroleum oils (other than crude)	2.1%	Yes	Yes	Yes	No	5
11	270740	Naphthalene	2.1%	Yes	Yes	Yes	No	2.5
12	240120	Tobacco, partly or wholly stemmed/stripped	1.9%	Yes	Yes	10	No	30
13	260112	Iron ores & concentrates, agglomerated	1.8%	Yes	Yes	Yes	No	2.5
14	710813	Gold, non-monetary, other semi-manufactured forms	1.7%	Yes	Yes	Yes	No	10
15	090111	Coffee (not decaffeinated)	1.6%	0	Yes	Yes	No	100
16	750210	Nickel (not alloyed)	1.4%	0	Yes	Yes	No	2.5
17	260600	Aluminium ores and concentrates	1.4%	0	Yes	Yes	No	2.5
18	261690	Ores, slag and ash (other)	1.4%	Yes	Yes	Yes	No	2.5
19	270400	Retort carbon	1.2%	0	Yes	5	No	5
20	261210	Uranium ores & concentrates	1.1%	0	Yes	Yes	No	2.5
21	380290	Animal black (activated natural mineral products)	1.0%	Yes	Yes	10	No	7.5
22	080131	Cashew nuts in shell	1.0%	0	Yes	Yes	No	5
23	120740	Sesamum seeds	0.9%	0	Yes	Yes	No	30
24	760110	Aluminium, not alloyed, unwrought	0.9%	Yes	Yes	Yes	No	5
25	030379	Fish, frozen (nes)	0.8%	0	Yes	Yes	No	Not in Schedule
26	271011	Light petroleum oils & preparations	0.8%	Not in Schedule	Yes	0	No	Not in Schedule
27	271600	Electrical energy	0.7%	0	Yes	Yes	No	Non AV Duty: Rs.2000 Per 1000 Kwh
28	271111	Natural gas, liquefied	0.7%	0	Yes	Yes	No	5
29	240120	Tobacco, partly/wholly stemmed/stripped	0.7%	Yes	Yes	10	No	30
30	271121	Natural gas, in gaseous state	0.6%	0	Yes	Yes	No	5
31	030759	Octopus, other than live/fresh/chilled	0.6%	0	Yes	Yes	No	30
32	260900	Tin ores & concentrates	0.6%	0	Yes	Yes	No	2.5
33	090240	Other black tea (fermented)	0.6%	0	Yes	Yes	No	100
34	151190	Palm oil	0.6%	0	Yes	9	Yes	7.5
35	490700	Unused postage (print products)	0.5%	0	Yes	Yes	No	10
36	252329	Portland cement, whether/not coloured	0.5%	0	Yes	Yes	No	0
37	240110	Tobacco refuse, not stemmed/stripped	0.5%	Yes	Yes	10	No	30
38	280700	Sulphuric acid; oleum	0.5%	0	Yes	5.5	No	7.5
39	260300	Copper ores & concentrates	0.5%	Yes	Yes	Yes	No	2.5
40	260300	Copper ores & concentrates (other)	0.5%	Yes	Yes	Yes	No	2.5
41	252329	Other portland cement	0.5%	0	Yes	Yes	No	0
42	271019	Petroleum oils (nes)	0.4%	Yes	Yes	Yes	No	5
43	120740	Sesamum seeds, whether/not broken	0.4%	0	Yes	Yes	No	30
44	271012	Light oils and preparations (mineral fuels and oils)	0.4%	Yes	Yes	9	No	5
45	251010	Natural calcium phosphates, unground	0.4%	0	Yes	Yes	No	5
46	261400	Titanium ores & concentrates	0.3%	0	Yes	Yes	No	2.5
47	090710	Cloves, neither crushed nor ground	0.3%	0	Yes	3	No	35
48	740329	Other copper alloys, unwrought	0.3%	Yes	Yes	Yes	No	5
49	999999	Commodities not specified according to kind	0.3%	N/A	N/A	N/A	N/A	Not in Schedule
50	170199	Cane or beet sugar, in solid form (other)	0.3%	Yes	Yes	50	Yes	30
51	520100	Cotton, not carded or combed	0.3%	Apparel Provisions	Yes	40	Yes	0
52	100510	Maize (corn) seed	0.3%	0	Yes	20	No	50
53	170114	Other cane sugar	0.3%	Yes	Yes	50	Yes	30
54	240290	Cigars or tobacco substitutes (other)	0.3%	Yes	Yes	25	No	30
55	810590	Cobalt, including waste and scrap (other)	0.3%	Yes	Yes	Yes	No	10
56	210410	Soups & broths & preparations	0.3%	Yes	Yes	15	No	30
57	080131	Cashew nuts, in shell	0.3%	0	Yes	Yes	No	5
58	090510	Vanilla	0.3%	0	Yes	15	No	30
59	271600	Electrical energy	0.3%	0	Yes	Yes	No	Non AV Duty: Rs.2000 Per 1000 Kwh
60	260111	Iron ores, non-agglomerated	0.3%	0	Yes	Yes	No	2.5

Count	HS6	Product Description	Percent	USA	EU	China	India	(India Only) MFN / DFTP Applied Rate
61	180100	Cocoa beans, whole or broken, raw or roasted	0.3%	0	Yes	Yes	Yes	21.3
62	710399	Precious stones (otherwise worked)	0.3%	Yes	Yes	Yes	No	10
63	261590	Niobium, tantalum, vanadium or zirconium ores (other	0.3%	0	Yes	Yes	No	2.5
64	280920	Phosphoric acid & polyphosphoric acids	0.2%	0	Yes	5.5	No	7.5
65	252310	Cement clinkers	0.2%	0	Yes	Yes	No	10
66	170111	Cane sugar, raw, in solid form	0.2%	0	Yes	5	No	Not in Schedule
67	810520	Unwrought cobalt powder	0.2%	Yes	Yes	Yes	No	5
68	790112	Zinc, not alloyed, unwrought	0.2%	Yes	Yes	Yes	No	5
69	110100	Wheat or meslin flour	0.2%	Yes	Yes	65	No	30
70	110319	Groats and meal (other cereals)	0.2%	Yes	Yes	Yes	No	30
71	071360	Pigeon peas	0.2%	Yes	Yes	7	No	10
72	030433	Nile perch	0.2%	0	Yes	12	No	30
73	740811	Refined copper wire	0.2%	Yes	Yes	Yes	No	5
74	230120	Fish flours, meals & pellets	0.2%	0	Yes	Yes	No	5
75	030613	Shrimps & prawns, whether/not in shell, frozen	0.2%	0	Yes	Yes	No	Not in Schedule
76	030617	Frozen shrimps and prawns	0.2%	0	Yes	8	No	30
77	710391	Worked rubies, sapphires & emeralds	0.2%	0	Yes	Yes	No	10
78	030371	Frozen sardines	0.2%	0	Yes	Yes	No	Not in Schedule
79	843143	Parts of boring/sinking machinery	0.2%	0	Yes	Yes	No	7.5
80	611012	Cashmere jerseys, pullovers, etc., knitted or crocheted	0.2%	Apparel Provisions	Yes	Yes	No	Non AV Duty: 10% or Rs. 275 per piece, whichever is higher
81	330499	Beauty/make-up preparations	0.2%	0	Yes	6.5	No	10
82	100590	Maize (corn) (other)	0.2%	Yes	Yes	65	No	50
83	170310	Cane molasses	0.2%	Yes	Yes	Yes	No	10
84	260900	Tin ores and concentrates	0.2%	0	Yes	Yes	No	2.5
85	901580	Other surveying instrimts (nes)	0.2%	0	Yes	Yes	No	7.5
86	842959	Mechanical shovels, excavators and shovel loaders	0.2%	0	Yes	Yes	No	7.5
87	030489	Frozen fish fillets	0.2%	0	Yes	10	No	30
88	030269	Fresh or chilled fish (nes)	0.2%	3	Yes	Yes	No	Not in Schedule
89	230630	Sunflower seeds residues and waste	0.2%	Yes	Yes	Yes	No	15
90	151620	Vegetable fats and oils and their fractions	0.2%	Yes	Yes	25	No	80
91	630491	Other knitted or crocheted textile articles; (incl. rags)	0.2%	Apparel Provisions	Yes	Yes	No	10
92	560729	Other wadding, felt, yarns, twine, etc.	0.2%	Yes	Yes	Yes	No	10
93	670419	Wigs, of synthetic textile materials	0.1%	0	Yes	Yes	No	10
94	261400	Titanium ores and concentrates	0.1%	0	Yes	Yes	No	2.5
95	170113	Cane sugar	0.1%	Yes	Yes	50	Yes	30
96	440729	Tropical wood	0.1%	0	Yes	Yes	No	10
97	540834	Woven fabrics of artificial filament yarn, printed	0.1%	Apparel Provisions	Yes	10	No	Non AV Duty: 10% or Rs. 11 per sq. mtr., whichever is higher
98	240220	Cigarettes containing tobacco	0.1%	Yes	Yes	25	No	30
99	071310	Peas	0.1%	Yes	Yes	Yes	Yes	45
100	843143	Parts for boring or sinking machinery	0.1%	0	Yes	Yes	No	7.5
101	711299	Precious or semi-precious metals (others)	0.1%	0	Yes	Yes	No	10
102	071080	Other vegetables	0.1%	14.9	Yes	Yes	No	30
103	030319	Pacific salmon	0.1%	0	Yes	Yes	No	30
104	261510	Zirconium ores & concentrates	0.1%	0	Yes	Yes	No	2.5
105	721420	Iron and stee bars, containing deformations	0.1%	0	Yes	Yes	No	10
106	320120	Wattle extract	0.1%	0	Yes	6.5	No	7.5
107	701090	Other carboys, bottles, flasks, jars, etc.	0.1%	Yes	Yes	Yes	No	10
108	280200	Colloidal sulphur	0.1%	0	Yes	5.5	No	7.5
109	880212	Helicopters of an unladen weight >2000kg	0.1%	0	Yes	Yes	No	10
110	710310	Precious or semi-precious metals (unworked)	0.1%	Yes	Yes	Yes	No	10
111	854449	Other electric conductors	0.1%	Yes	Yes	Yes	No	7.5
112	120799	Oil seeds & oleaginous fruits	0.1%	0	Yes	Yes	No	30
113	842641	Other machinery, on tyres	0.1%	0	Yes	Yes	No	7.5
114	030219	Salmon, fresh or chilled (other)	0.1%	0	Yes	Yes	No	30
115	240310	Smoking tobacco	0.1%	Not in Schedule	Yes	25	No	Not in Schedule
116	392321	Sacks & bags (incl. cones), of polymers of ethylene	0.1%	Yes	Yes	10	Yes	5
117	030499	Other frozen fish	0.1%	Yes	Yes	Yes	No	30
118	160414	Tunas, skipjack and bonito	0.1%	Yes	Yes	Yes	No	30
119	410390	Other raw hides and skins	0.1%	Yes	Yes	Yes	No	0
120	340120	Soap (other)	0.1%	0	Yes	Yes	No	10
121	230210	Maize (corn) residue or waste	0.1%	0	Yes	Yes	No	30
122	621410	Silk shawls, scarves, etc., not knitted or crocheted	0.1%	Apparel Provisions	Yes	Yes	No	Non AV Duty: 10% or Rs. 390 per piece, whichever is higher
123	620342	Cotton trousers, etc., not knitted or crocheted	0.1%	Apparel Provisions	Yes	Yes	Yes	N/A
124	890399	Rowing boats & canoes	0.1%	Yes	Yes	Yes	No	25
125	271320	Petroleum bitumen	0.1%	0	Yes	Yes	No	5

Count	HS6	Product Description	Percent	USA	EU	China	India	(India Only) MFN / DFTP Applied Rate
126	100640	Broken rice	0.1%	Yes	Yes	65	No	80
127	410411	Tanned or crust hides and skins of bovine or equine ha	0.1%	Yes	Yes	Yes	No	10
128	120242	Shelled oil seeds and oleaginous fruits	0.1%	Yes	Yes	15	No	30
129	150810	Ground-nut oil, crude	0.1%	Yes	Yes	10	No	7.5
130	080300	Bananas, incl. plantains, fresh/dried	0.1%	Not in Schedule	Yes	Yes	No	Not in Schedule
131	261210	Uranium ores and concentrates	0.1%	0	Yes	Yes	No	2.5
132	721420	Bars & rods of iron/steel, containing deformations	0.1%	0	Yes	Yes	No	10
133	190190	Malt extract (nes)	0.1%	Yes	Yes	10	No	30
134	330129	Essential oils other than those of citrus fruit	0.1%	Yes	Yes	Yes	No	20
135	230610	Cotton seed residues and waste	0.1%	Yes	Yes	Yes	No	15
136	520300	Cotton, carded or combed	0.1%	Apparel Provisions	Yes	40	No	30
137	340119	Soap (other)	0.1%	0	Yes	Yes	Yes	5
138	030572	Fish heads, tails and maws	0.1%	0	Yes	16	No	30
139	870410	Dumpers designed for off-highway use	0.1%	0	Yes	Yes	No	20
140	090230	Black tea (fermented) , in packings not exceeding 3 kg	0.1%	0	Yes	Yes	No	100
141	030449	Other fresh or chilled fillets of fish	0.1%	0	Yes	12	No	30
142	100640	Broken rice	0.1%	Yes	Yes	65	No	80
143	880330	Other parts of aeroplanes or helicopters	0.1%	0	Yes	1	No	2.5
144	721041	Corrugated iron and steel	0.1%	0	Yes	Yes	No	10
145	611011	Knitted or crocheted wool jerseys, pullovers, etc.	0.1%	Apparel Provisions	Yes	Yes	No	Non AV Duty: 10% or Rs. 275 per piece, whichever is higher
146	071339	Beans (other)	0.1%	Yes	Yes	Yes	No	10
147	151800	Inedible animal or vegetable fats or oils (nes)	0.1%	Yes	Yes	Yes	No	30
148	400129	Natural rubber in other forms (other)	0.1%	0	Yes	20	Yes	N/A
149	180100	Cocoa beans, whole/broken, raw/roasted	0.1%	0	Yes	Yes	Yes	21.3
150	151221	Crude cotton-seed oil	0.1%	Yes	Yes	10	No	100
151	520300	Cotton, carded/combed	0.1%	Apparel Provisions	Yes	40	No	30
152	340600	Candles and tapers	0.1%	0	Yes	10	No	10
153	610990	Knitted or crocheted t-shirts, etc. (other textiles)	0.1%	Apparel Provisions	Yes	Yes	Yes	N/A
154	230230	Wheat residues and wastes	0.1%	0	Yes	Yes	No	30
155	721049	Other plated or zinc-coated iron and steel	0.1%	0	Yes	Yes	No	10
156	630533	Other polyethylene or polypropylene strip textiles	0.1%	Apparel Provisions	Yes	16	No	10
157	060240	Roses, grafted or not	0.1%	0	Yes	Yes	No	5
158	999999	Commodities not specified according to kind	0.1%	N/A	Yes	N/A	N/A	Not in Schedule
159	261100	Tungsten ores and concentrates	0.1%	Yes	Yes	Yes	No	2.5
160	310520	Fertilisers containing nitrogen, phosphorus & potassium	0.1%	0	Yes	50	No	5
161	843149	Other parts of machinery	0.1%	0	Yes	Yes	No	7.5
162	060210	Unrooted cuttings and slips	0.1%	Yes	Yes	Yes	No	5
163	190531	Sweet biscuits	0.1%	0	Yes	Yes	No	30
164	071331	Beans, Vigna mungo (L.) Hepper or Vigna radiata (L.) W	0.1%	Yes	Yes	Yes	No	10
165	090411	Pepper, neither crushed nor ground	0.1%	0	Yes	20	Yes	59.5
166	710231	Unworked diamonds	0.1%	0	Yes	Yes	No	10
167	030219	Fresh or chilled salmon	0.1%	0	Yes	Yes	No	30
168	110220	Maize (corn) flour	0.1%	Yes	Yes	40	No	30
169	230400	Oil-cake and other solid residues from soyabean oil	0.1%	Yes	Yes	Yes	No	15
170	670490	Wigs and other articles of human hair (nes)	0.1%	0	Yes	Yes	No	10
171	151219	Sunflower seed/safflower oil	0.1%	Yes	Yes	9	No	100
172	940429	Mattresses (other materials)	0.1%	Yes	Yes	Yes	No	10
173	440729	Other tropical wood	0.1%	0	Yes	Yes	No	10
174	100590	Maize (corn), other than seed	0.1%	Yes	Yes	65	No	50
175	530310	Jute and other textile bast fibres, raw or retted	0.1%	0	Yes	Yes	No	10
176	151190	Palm oil	0.1%	0	Yes	9	Yes	7.5
177	721391	Bars & rods, hot-rolled, of iron/non-alloy steel	0.1%	0	Yes	Yes	No	10
178	410621	Tanned or crust hides and skins of goats	0.1%	Yes	Yes	Yes	No	10
179	271210	Petroleum jelly	0.1%	0	Yes	Yes	No	5
180	630533	Sacks & bags, of polyethylene/polypropylene strip	0.1%	Apparel Provisions	Yes	16	No	10
181	610910	Cotton t-shirts, singlets and other vests, knitted or croc	0.1%	Apparel Provisions	Yes	Yes	No	Non AV Duty: 10% or Rs. 45 per piece, whichever is higher
182	120720	Cotton seeds, whether/not broken	0.1%	0	Yes	Yes	No	Not in Schedule
183	230230	Wheat bran, sharps & other residues	0.1%	0	Yes	Yes	No	30
184	220300	Beer made from malt	0.1%	0	Yes	Yes	No	100
185	440799	Wood, sawn/chipped lengthwise, of a thickness >6mm	0.1%	0	Yes	Yes	No	10
186	880211	Helicopters of an unladen weight not >2000kg	0.1%	0	Yes	Yes	No	10
187	440349	Topical wood	0.1%	0	Yes	Yes	No	5
188	060311	Fresh roses	0.1%	Yes	Yes	Yes	Yes	45
189	100630	Semi-milled/wholly milled rice	0.1%	Yes	Yes	65	No	70

Count	HS6	Product Description	Percent	USA	EU	China	India	(India Only) MFN / DFTP Applied Rate
190	100630	Semi-milled or wholly milled rice (other)	0.1%	Yes	Yes	65	No	70
191	080212	Almonds, shelled	0.1%	Yes	Yes	Yes	Yes	N/A
192	071320	Chickpeas (garbanzos)	0.1%	Yes	Yes	Yes	No	10
193	071390	Other dried leguminous vegetables, shelled	0.1%	Yes	Yes	Yes	No	10
194	392310	Boxes, cases, crates and similar articles	0.1%	3	Yes	Yes	Yes	5
195	110320	Wheat gluten pellets	0.1%	0	Yes	65	No	30
196	392490	Other plastic tableware, kitchenware, etc.	0.1%	Yes	Yes	Yes	Yes	5
197	840710	Aircraft engines	0.1%	0	Yes	2	No	7.5
198	870590	Other Special purpose motor vehicles	0.1%	0	Yes	Yes	No	10
199	520852	Woven fabrics, containing 85% more by weight of cotton	0.1%	Apparel Provisions	Yes	Yes	No	Non AV Duty: 10% or Rs. 23 per sq. mtr., whichever is higher
200	460199	Plaits & similar products	0.0%	Yes	Yes	Yes	No	10

ANNEX 3

Excerpts from Appendix 3B- MEIS Schedule Table 2

ITC (HS) code wise list of products with reward rates under Merchandise Exports from India Scheme (MEIS):

S.No	HS Code	ITC (HS) Code	Description of goods	MEIS- Reward Rate (%)		
				Country Group Code A	Country Group Code B	Country Group Code C
1	2	3	4	5	6	7
	3		Fish And Crustaceans, Molluscs And Other Aquatic Invertebrates			
	301		Live fish			
	3011		Ornamental fish			
	30111		Freshwater			
1		3011100	Freshwater Ornamental Fish	5	5	5
	30119		Other			
2		3011900	Other Ornamental Fish	5	5	5
	3019		Other live fish			
	30199		Other			
3		3019900	Other Live Fish	5	5	5
	302		Fish, fresh or chilled, excluding fish fillets and other fish meat of heading 0304			
	3021		Salmonidae, excluding livers and roes			
	30211		Trout			
4		3021100	Trout(Salmo Trutta, Oncorhynchus Mykiss Clarki, Aguabonita, Gilae Apache and chrysogstr)	5	5	5
	30219		Other			
5		3021900	Othr Salmonidae Excl Liver And Roes Frsh/Chld	5	5	5
	3022		Flat fish (Pleuronectidae, Bothidae, Cynoglossidae, Soleidae, Scophthalmidae and Citharidae), excluding livers and roes			
	30223		Sole (Solea spp)			
6		3022300	Sole(Soles Spp)Excl Liver And Roes Frsh/Chld	5	5	5
	30229		Other			
7		3022900	Othr Flat Fish Excl Livers And Roes Frsh/Chld	5	5	5
	3023		Tunas (of the genus Thunnus), skipjack or stripebellied bonito (Euthynnus (Katsuwonus) pelamis), excluding livers and roes			