International Economic Law Clinic

CTEI Policy Brief 03

WHAT HOLDS BACK AFRICAN LDC EXPORTS?

Translating Global Trade Alert Data Into a Positive Trade Agenda for Africa*

December 2017, Geneva and Buenos Aires

Pamela Anne Bayona, Vincent Beyer and Olayinka Oladeji

TradeLab

International rules on cross-border trade and investment are increasingly complex. There is the WTO, World Bank and UNCTAD, but also hundreds of bilateral investment treaties (BITs) and free trade arrangements ranging from GSP, EU EPAs and COMESA to ASEAN, CAFTA and TPP. Each has its own negotiation, implementation and dispute settlement system. Everyone is affected but few have the time and resources to fully engage.

TradeLab aims to empower countries and smaller stakeholders to reap the full development benefits of global trade and investment rules. Through pro bono legal clinics and practica, TradeLab connects students and experienced legal professionals to public officials especially in developing countries, small and medium-sized enterprises and civil society to build lasting legal capacity. Through 'learning by doing' we want to train and promote the next generation of trade and investment lawyers. By providing information and support on negotiations, compliance and litigation, we strive to make WTO, preferential trade and bilateral investment treaties work for everyone. More at:

https://www.tradelab.org

* This policy brief is the outcome of a TradeLab Clinic Project organized at the Graduate Institute of International and Development Studies in 2017. The authors would like to acknowledge the contribution of Joost Pauwelyn, Simon Evenett, Diego Gutierrez, Theresa Carpenter and Piotr Łukaszuk to this policy brief. This research and its presentation at the Think Conference and other side events during the WTO 11th Ministerial Conference in Buenos Aires has been possible thanks to the Ministry for Foreign Affairs, Sweden

Abstract

Global Trade Alert (www.globaltradealert.org) has been described as the world's most comprehensive database of crisis-era trade distortions. This policy brief builds on Global Trade Alert (GTA) data and analyses trade distortive measures that affect the 26 African Union Least Developed Countries (AU LCDs) that are parties to the WTO. GTA records different types of trade distortive measures. A weighted ranking based on the number of AU LDCs affected, tariff lines covered and frequency of the measures yields the more salient trade distortive policy instruments that become the focus of this report:

- Export incentives in the form of tax-based export incentives and trade finance;
- Tariff measures, including generalized systems of preferences and rules of origin of four major export markets of African products;
- Public procurement domestic content requirements; and
- Export taxes.

Whereas there are few WTO rules applicable to AU LDCs on the latter two types of measures, enforceable rules exist on export subsidies and applied tariffs exceeding bound rates. This report finds that disciplines on subsidies, especially agricultural subsidies, are difficult to enforce due to the lack of information and the widespread failure to notify existing subsidy programs by WTO Members. The report concludes with a series of recommendations to AU LDCs in order to put forward a positive agenda in future trade negotiations, WTO specialized committees and trade policy reviews of those WTO members found to be introducing trade distortive measures affecting AU LDCs. These include:

- Joining existing proposals on strengthening transparency in subsidies notifications after appropriate adjustments have been made to take into account AU LDCs difficulties in meeting these obligations;
- Incorporating Nairobi disciplines on agricultural subsidies into members schedules;
- Incorporating disciplines on trade finance developed at Nairobi into the Agreement on Agriculture;
- Requiring broadening the coverage of Generalized Systems of Preferences mechanisms to ensure that top African exports are covered while simultaneously relaxing Rules of Origin requirements; and
- Further reducing tariff bindings as AU LDCs continue to be negatively impacted.

1. Introduction

This report draws on the strengths of the Global Trade Alert (GTA) database to shed light on trade-distortive measures (TDMs) adversely affecting African Union Least Developed Countries (AU LDCs) enacted in the period from 2009 to 2017. GTA data suggests that AU LDCs are most affected by the following TDMs: (1) distortive export incentives, in the form of tax-based export incentives and trade finance, (2) increased import tariffs and restrictive Generalized Systems of Preferences (GSP), including narrow duty free quota free (DFQF) market access and stringent rules of origin (ROOs), (3) public procurement localization, and (4) export taxes. The findings in this report inform a positive trade agenda that may be pursued by AU LDCs in future trade negotiations and in the context of WTO specialized committees and the Trade Policy Review of those WTO members affecting African LDC exports.

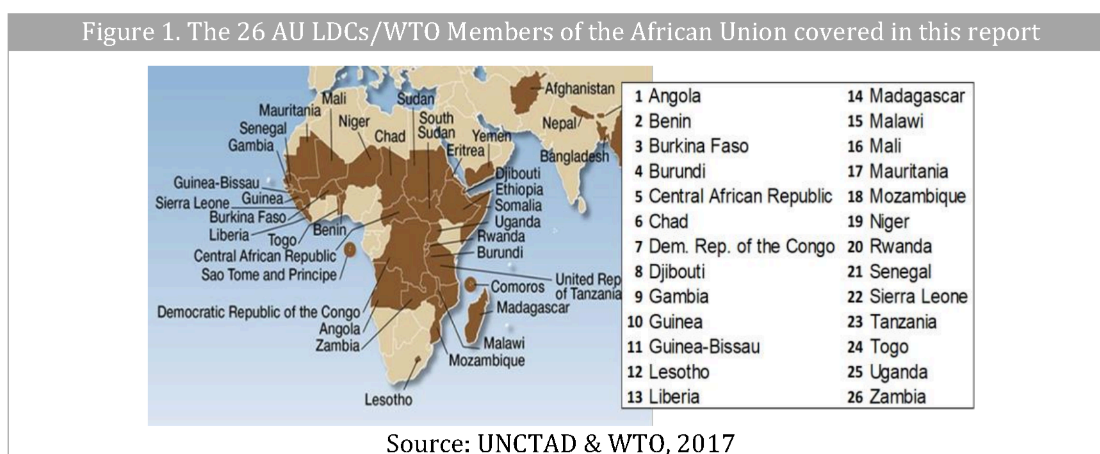
Global Trade Alert

Since the aftermath of the global financial crisis, governments around the world have adopted trade-distortive measures despite the “no protectionism” pledge made by the G20 members at their November 2008 meeting in Washington. In fear of this, the Global Trade Alert database was launched in 2009 to record protectionist policies (www.globaltradealert.org). This report makes its findings based on information obtained through the GTA database, the world’s “most comprehensive coverage of crisis-era trade distortions” according to the International Monetary Fund.

African Union Least Developed Countries

Trade-distortive measures, a major obstacle to international trade, are of critical concern to importers and exporters in the African Union Least Developed Countries located in Sub-Saharan Africa. AU LDCs comprise the poorest and weakest segment of the international community, comprising approximately 880 million people, or 12% of world population, but accounting for less than 2% of world GDP and about 1% of global trade in goods. The AU contributes less than 3% to global exports while LDCs as a whole (from both Africa and other regions) comprise less than 1%.

Figure 1. The 26 AU LDCs/WTO Members of the African Union covered in this report



Source: UNCTAD & WTO, 2017

AU LDCs contributed around a fifth (22% or US$97.5 Billion) of overall AU exports in 2015, of which two-thirds are unprocessed Angolan crude petroleum fuels (HS270900). Other top exports include copper, gold, iron ore, coffee and tobacco.

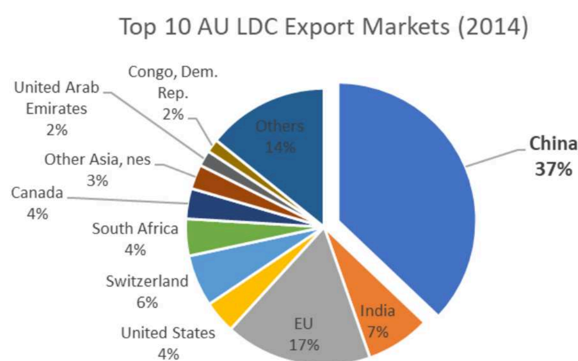
Figure 2. Breakdown of major non-petroleum AU LDCs export products

Percent	Product	HS2	Major Exporter
30.2%	copper	74	Zambia
16.6%	gold	71	Burkina Faso
7.2%	iron ore	26	Mauritania
5.2%	coffee	09	Uganda
4.7%	tobacco	24	Malawi
2.5%	raw nickel	75	Madagascar
2.3%	sesame seeds	12	various
2.1%	molluscs, non-fillet fish	03	Mauritania
2.0%	cashew nuts	08	various
1.7%	raw sugar	17	various
1.7%	excavation machinery	84	various
1.6%	other oils	15	various
1.5%	dried legumes	07	various
1.3%	calcium phosphates	25	various
1.3%	sulfuric acid, phosphoric acid	28	various
1.2%	wheat flours	11	various
1.1%	cereals	10	various
1.1%	knit apparel	62	various
1.0%	non-knit apparel	61	various
1.0%	raw cotton	52	Burkina Faso
12.7%	others	n/a	various
100%	**total**	-	-

Source: UN COMTRADE & WEF, 2017

While trade flows to advanced economies (the United States and the EU mainly) represented close to 90% of AU LDCs exports in 1995, they now comprise only around 20% of export flows. Today, almost half of AU LDCs exports (including petroleum) go to emerging markets such as China and India (44%). Chinese trade with the continent as a whole has surged, comprising almost two-fifths (37%) of all African exports, increasing by 83% from 2009 to 2011 alone, and hitting nearly US$200 Billion in 2012. India is a far second single-country export destination with 7% of African exports, while South Africa, with 4%, remains the only intra-regional trading partner among the top export markets for AU LDCs.

Figure 3. Top export markets for AU LDCs (including petroleum)

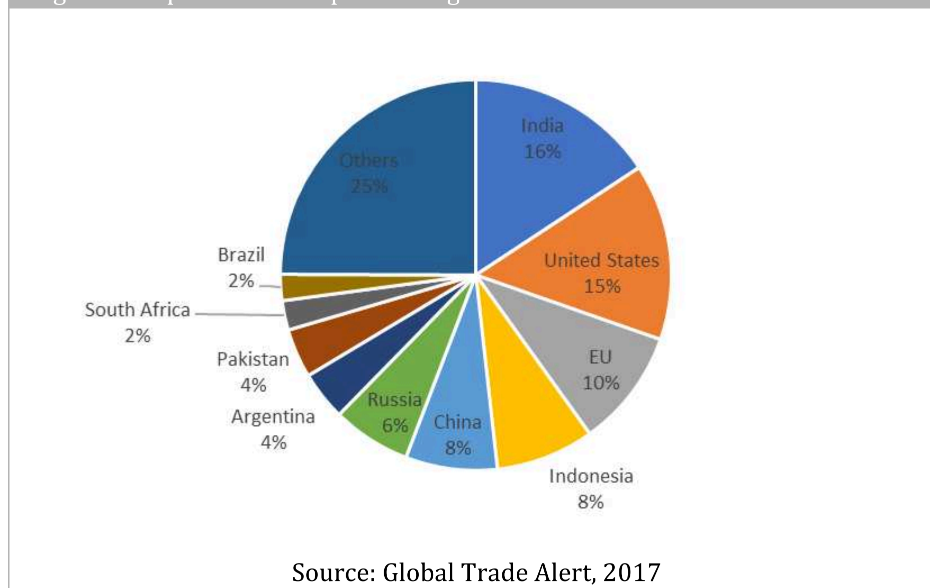


Source: UN COMTRADE 2017

Trade-Distortive Measures

India (16%), The United States (15%), the European Union (10%), Indonesia (8%), and China (8%) are the main implementers of TDMs affecting AU LDCs according to GTA data. The pie chart below shows the contribution per implementer country to the 369 measures affecting AU LDCs recorded by GTA.

Figure 4. Top countries implementing trade distortive measures based on GTA



Source: Global Trade Alert, 2017

The remainder of this policy brief is based on the most relevant TDMs affecting AU LDCs as captured by GTA based on the following criteria:

a) number of individual **TDMs** adopted by a government;
b) number of **AU LDCs affected** by each measure; and
c) number of affected **tariff lines** at the 6-digit HS code level.

The number of TDMs, AU LDCs and tariff lines affected are used in the construction of a **weighted index score,** using the ratio of 2:1:1 for each of these three criteria, to find out which types of TDMs have a larger impact on AU LDCs and therefore become the subject of this report. In summary, based on GTA, there are 369 different trade distortive policies that affect AU LDCs; this translates into 1,625 instances in which an AU LDC is affected. In total, these 369 measures affected 7,408 6-digit HS tariff lines. Notably, import tariffs, tax-based export incentives, trade finance measures, public procurement localization and export taxes have the highest index scores.

Table 1. GTA trade distortive measures affecting AU LDCs

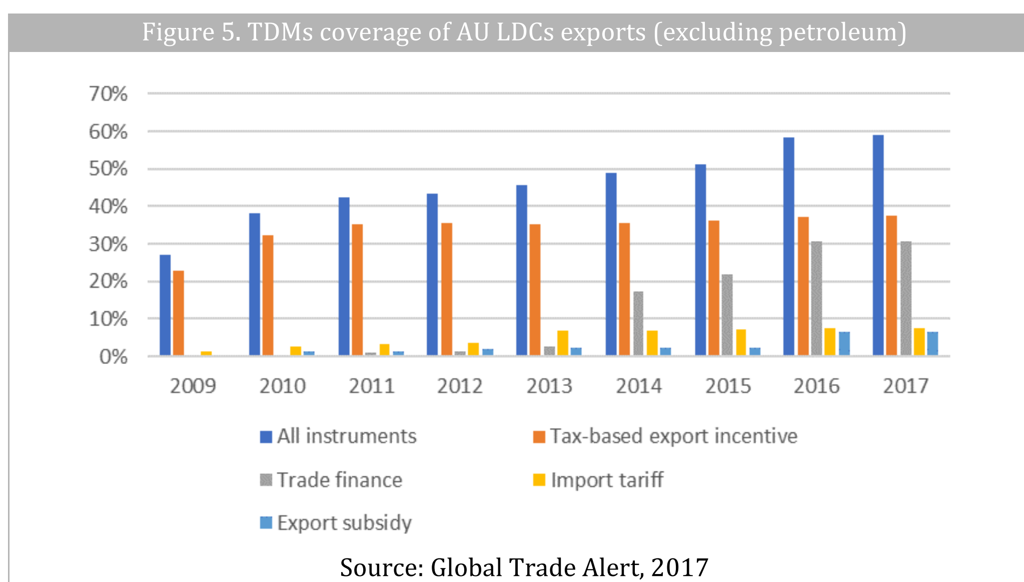
	Top 10 GTA Trade distortive measures affecting AU LDCS	State policies	Recorded instances	# of affected tariff lines	Weighted index
1	Import tariff	83	387	5,614	36.15
2	Tax-based export incentive	38	350	684	12.84
3	Trade finance	23	148	404	6.76
4	Public procurement localization	39	42	46	6.09
5	Export 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

(*) GTA reference to "export subsidy" does not automatically imply it is an export subsidy within the legal definition contained in the WTO SCM Agreement

Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) measures are hardly ever recorded by the GTA database even though they typically rank high in other TDMs reports such as the country-wide Non-Tariff Measures (NTMs) Business Surveys conducted by the International Trade Centre (ITC). While GTA does not record them as the WTO has a dedicated and comprehensive database, it is also likely that exporters will have more familiarity with SPS/TBT measures simply because, like import tariffs, they directly interact with these policy instruments in their compliance with export procedures. The transparency of SPS/TBT measures' and import tariffs can be contrasted with other TDMs such as export incentives, the trade distortive effect of which may be less evident for individual exporters although they may significantly impact trade. Therefore, this report seeks to shed light upon the relevance of export incentives for AU LDCs, among other TDMs. Additionally, a number of other TDMs are excluded from the GTA database, most notably, measures aimed at protecting public morals, human animal or plant health or life as well as measures for the conservation of natural resources or wildlife protected by an international treaty.

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 LDCs 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 5. TDMs coverage of AU LDCs exports (excluding petroleum)



Source: Global Trade Alert, 2017

Scope of the Policy Brief

As a consequence of the factual findings based on Global Trade Alert data, and the salience of measures as captured by both the weighted index and the shares of exports affected by TDMs, the report focuses on the legal and policy insights of the following TDMs affecting AU LDCs: export incentives (in the form of tax-based incentives and trade finance), import tariffs (with an additional focus on GSP/DFQF and ROOs), public procurement localization, and export taxes.

2. Export Incentives

Box 1: The Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture

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. 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 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.

Transparency on Subsidies
Unlike SPS or TBT measures, which exporters are generally aware of, the difficulty with trade finance (and tax subsidies) is that African exporters may not know why their products are losing to competitors in third-country markets. Hence, it is of utmost importance to increase transparency in this respect. Only 31 Members met their notification obligations under the SCM Agreement in 2017. Looking back at past periods an equally bleak picture emerges: more than half of all WTO Members routinely fail to meet their obligations to notify. It is, hence, unsurprising that WTO Director General Azevêdo noted with respect to trade finance specifically that ‘official international statistics are lacking and it is therefore important to improve the monitoring of trade finance provision.’

Tax-based Export Incentives

Tax-based export incentives (TBEI) for 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.

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. Several other countries employ TBEIs to promote their exports according to GTA such as Argentina, Brazil, Indonesia, Malaysia, Pakistan, South Africa and Uruguay.

India's 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. However, since they 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).

Box 2: Illustration of India's Merchandize 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.

Moreover, 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.

China's VAT Rebate System on exports
The Value-Added Tax (VAT) rebate system in China allows exporters to be refunded in full, partially, or not-at-all, for the VAT paid on inputs. Refunds of VAT rates (ranging from 0% to 17%) are frequently adjusted upwards and downwards, 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. This VAT rebate could 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). 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 (not including cellphones or textiles).

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.

Trade Finance

A US American apparel producer who sells his products, for example, to an EU-based company generally wants to be paid upon shipment whereas the EU importer would like to ascertain the quality and quantity of the product first and then pay. This time gap is generally bridged with trade finance instruments. At times governments are involved in the provision of such trade finance through, for example, export-import banks or export credit agencies. It is possible that these state entities seek to boost their countries' exports through the provision of trade finance on preferential terms. If this is the case, African apparel producers who may not have access to

the same preferential trade finance terms will have to compete with subsidized US products in the EU market. To avoid this imbalance in competitive opportunities the SCM Agreement and the AoA seek to discipline certain types of trade finance.

Furthermore, lack of trade finance can prevent AU LDCs from integrating into the trading system and accessing trade opportunities as WTO Director General Azevedo highlighted in a speech delivered at a meeting of the WTO Working Group on Trade, Debt and Finance. African exports are in great need of access to trade finance. The African Development Bank conservatively estimated in 2014 that the unmet demand for bank-intermediated trade finance in Africa amounted to US$110 billion in 2012. Other, less conservative estimates put the gap for sub-Saharan Africa alone at US$225 billion per year. Almost two thirds of firms in Africa consider access to trade finance to constitute a major obstacle to trade, with almost one third of all requests for trade finance in Africa being rejected by banks.

However, lack of trade finance is not the focus of this report but rather the flood of trade finance available to exporters in developed and developing countries to the detriment of exports from AU LDCs. GTA identifies trade finance as precisely one of the governmental policies that have the greatest impact on exports from AU LDCs. Hence, it is of particular importance to ensure that all WTO Members observe their obligations in this respect.

The SCM Agreement

Items (j) and (k) of the illustrative list of export subsidies contained in Annex I of the SCM Agreement establish a cost-to-government test for pure cover measures and official financing support respectively. As developing and least-developed countries generally have higher costs of borrowing, governments of richer countries have a structural advantage under the cost-to-government test. There could be situations where export finance is offered to an importer from, for example, the United States by the German and Beninese government. The former can borrow more cheaply on international financial markets and, thus, could offer better terms while complying with Annex I. In light of this, it is important to notice that the general test under Article 1 in conjunction with Article 3, the benefit-for-recipient test, continues to apply.

Furthermore, a safe haven exists with respect to financing support for non-agricultural products that is provided in accordance with the OECD Arrangement on Officially Supported Export Credits. However, it is important to bear in mind that trade finance provided in accordance with the Commercial Interest Reference Rates of the OECD Arrangement is only covered by the safe haven where provided for 1) direct credit/financing and refinancing as well as interest rate support 2) with a repayment term of two years or more and 3) at a fixed interest rate.

Export Subsidies for Agricultural Products

With respect to agricultural products items (j) and (k) are generally applicable by analogy with the exception of the safe haven. Additionally, the Nairobi ministerial decision establishes a maximum repayment term of 18 months. The obligations with respect to maximum repayment terms shall apply as of the last day of 2017 for developed country members. A number of countries currently have programs in place that fail to observe this commitment, including Australia, Canada, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Hungary, Latvia, Poland and Japan. Due to light reporting obligations and poor reporting performance it is largely unknown if the trade finance programs of WTO members are self-financing, as required by WTO rules on export subsidies.

3. Import Tariffs, Generalized System of Preferences and Rules of Origin Issues

GTA identifies 83 different import tariff measures, resulting in 387 instances in which AU LDCs were affected, with an impact on a total of 5,614 tariff lines. Import tariff measures are only recorded by GTA if there have been or currently are actual trade flows between affected and implementing countries with respect to the specific product in question.

Box 3. Generalized System of Preferences, Duty-free Quota-Free and Rules of Origin

Generalized System of Preferences (GSP)
Developing countries have been granted preferential tariff treatment (an exception to the MFN principle) in the markets of developed and other developing countries under a number of arrangements, such as the Generalized System of Preferences (GSP): a unilateral offer of a preferential tariff system to assist developing countries in their exports and development efforts.

Duty-free Quota-free (DFQF) market access
Moreover, in order to promote trade from LDCs, WTO members agreed in Hong Kong (2005) to deepen the preferential tariff treatment granted to LDCs by further providing them with duty-free quota free market access.

Rules of Origin (ROOs)
Rules of origin are used to determine the country of origin of a product and are an essential component of any GSP scheme. In order to qualify for preferential tariff treatment under a GSP scheme, products from exported preference-receiving countries need to fulfil the rules of origin of the respective preference-giving countries. Cumulation (or accumulation) of rules of origin is the possibility for different countries to jointly comply with the relevant rules of origin provisions imposed by the preference-giving countries.

For the purposes of this report a number of countries were chosen for a more detailed analysis, namely, Argentina, Brazil, China, the European Union, India, Indonesia, and the United States, based on their position as top export markets for AU LDCs, the number of AU LDCs trading with them, and the number of tariff lines affected by their measures. For the seven economies surveyed, the following table shows in how many instances applied rates seem to exceed bound rates for each of the selected countries:

Table 2. Summary of applied tariffs in excess of WTO bound rates by top export markets for AU LDCs

Export Market	Number of applied rates in excess of bound rates
USA	45
China	39
India	26
EU	25
Indonesia	19
Argentina	18
Brazil	12
TOTAL	**184**

Of these 184 instances where applied rates exceed bound rates, nine are included in the top 200 export products from AU LDCs at the 6-digit HS level. Even though they contribute minimally to AU LDCs exports, it is still interesting how three import tariffs out of these nine are not covered by existing GSP/DFQF schemes. However, the assessment of import tariffs under GSP/DFQF systems does not take into account any ROOs considerations that may further restrict AU LDCs export products' eligibility for access to the GSP/DFQF preferential rates.

Table 3. Summary of applied tariffs in excess of WTO bound rates affecting top 200 HS6 AU LDC exports

Country	HS6	Max Applied AV Rate	Bound rate	Product description	% exports	Covered by GSP
China	100640	65	10	Broken rice	0.20%	No
China	110319	10	5	Groats and meal of cereals	0.20%	No
China	120799	20	10	Oil seeds and oleaginous fruits	0.20%	Yes
China	410390	14	9	Raw hides and skins, fresh or preserved,	0.10%	Yes
China	854449	12	0	Electric conductors; < 80 volts	0.20%	Yes
India	840710	7.5	3	internal combustion piston engines	0.10%	No
EU	440729	2.5	0	Tropical wood thicker than 6mm	0.20%	Yes
USA	410390	3.7	3.3	Raw hides and skins, fresh or preserved	0.10%	Yes
USA	854449	5.3	3.5	Electric conductors < 80 volts	0.20%	Yes

Generalized Systems of Preferences

The four GSP schemes analyzed are those of AU LDCs main exporting markets. Namely, the **African Growth and Opportunity Act (AGOA)** of the US, the **Everything But Arms (EBA)** scheme of the EU, the **Special and Preferential Tariff Scheme** for LDCs of China**,** and the **Duty-Free Tariff Preference (DFTP)** of India**.**

- **African Growth and Opportunity Act (AGOA) of the USA:** The AGOA is a regional scheme of the United States that provides DFQF treatment for goods originating in 23 of the 26 Sub-Saharan African countries covered in this report. The Central African Republic, the Democratic Republic of Congo and Gambia are excluded from AGOA but can avail themselves of the normal US GSP scheme for LDCs. The AGOA excludes agricultural products such as textiles, leather products and footwear, dairy products, sugar, cocoa, and cotton, while some other products are included but subject to Tariff Rate Quotas (TRQs). For the "imports sensitive" textile and apparel sectors, so-called Apparel Provisions apply: while a Special Rule for LDCs allows DFQF access for apparel made from fabric originating anywhere in the world, this is subject to a cap of 3.5% of US apparel imports in the preceding year, filled on a "first-come, first served" basis. For apparel made with regional or third country fabrics, a regional cap limits AGOA imports to 7% of all US apparel imports. Likewise, not all AU LDCs can avail themselves of these since beneficiaries must adopt an efficient visa ("tracking") system to prevent unlawful transhipments. A 2011 study by the University of London found the AGOA to have a positive impact on apparel exports from a small number of Sub-Saharan African countries, but little or no impact in other sectors.

- **Everything But Arms (EBA) scheme of the EU:** The EBA scheme grants DFQF market access for all LDCs to the EU Single market for all products except arms and munitions. The EBA was originally criticized by developing countries for the very stringent ROOs requirements it entailed, with the EU eventually committing itself to dealing with this issue in recent years.

- **Special and Preferential Tariff Scheme of China for LDCs:** China's preferential scheme covers 97% of all 8-digit HS tariff lines as of 2015, and benefits 24 of the 26 AU LDCs to varying degrees. Burkina Faso and Gambia are excluded from the scheme. Excluded goods include automobiles, paper and timber products, as well as 47 8-digit HS tariff line products subject to TRQs including chemical fertilizers, corn, raw cotton, rice, sugar, wheat, wool and wool fibre. 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. However, only 50% of agricultural products enter China DFQF. Moreover, ROO requirements are 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 final goods come from countries that maintain diplomatic relations with China.

- **Duty-Free Tariff Preference (DFTP) Scheme for LDCs of India:** The DFTP scheme currently benefits 16 of the 26 AU LDCs affecting 98.2% of all tariff lines as of 2015. Angola, Benin, Chad, Democratic Republic of Congo, Djibouti, Guinea, Guinea-Bissau, Mauritania, Sierra Leone, and Togo are eligible for but currently do not avail themselves of the scheme. Several important AU LDCs exports such as cotton, cocoa, aluminum, 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. Furthermore, the scheme does not allow for regional cumulation amongst beneficiary countries. It is not clear if the system has had a positive impact on LDCs.

With the exception of the EU, GSPs do not cover 97% of the top 200 AU LDCs exports, leaving, in some instances 90% of AU LDCs exports excluded from preferential market access. The table below summarizes the percentage coverage of the top 200 AU LDCs export products in existing GSP/DFQF schemes implemented by the United States, the EU, China and India.

Table 4. GSP/DFQF coverage of top 200 AU LDC exports

GSP/DFQF-giving	Coverage of top 200 AU LDCs exports
European Union	100%
China	69%
United States	40%
India	10%

The table below shows the top 20 AU LDCs' exports, their product description, share of total AU LDCs exports, coverage ("Yes" if covered under existing GSP/DFQF schemes, or the maximum applied tariff rate in the case the product is not covered - e.g. "40% for HS520100-Cotton products for China"). For India, either the MFN rate (if the product is not covered in the scheme) or the "discounted" rate—called the "DFTP Applied Rate"— (if the good is covered) is specified.

Table 5. 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		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	40	Yes	0
10	271019	Petroleum oils (other than crude)		2.5%	Yes	Yes	Yes	No	5
11	270740	Naphthalene	23%	2.5%	Yes	Yes	Yes	No	2.5
12	240120	Tobacco, partly or wholly stemmed/stripped		2.2%	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	5	No	5
20	261210	Uranium ores & concentrates		1.3%	0	Yes	Yes	No	2.5
		TOTAL	**84%**	**59%**					

4. Further Measures affecting AU LDC exports

Public Procurement Localisation

Public procurement domestic content requirements are rules, which require the use of domestic materials when governments purchase goods. GTA recorded 39 national measures that affect AU LDCs in 43 instances. Further research shows that the US is responsible for 35 out of 39 of these measures, and 31 of those are based on the same piece of legislation. 31 different grants were awarded under the Buy-American rules in the procurement of iron, steel, and other materials in transportation projects. This measure directly affects imports of iron and steel from Zambia and is, thus, recorded by GTA. In light of this, the actual negative impact of government procurement domestic content requirements is probably lower than suggested by the evidence obtained through GTA. Furthermore, as no LDCs are currently party to the Agreement on Government Procurement, no effective discipline exists in the WTO. Moreover, there is no Free Trade Agreement that establishes non-discrimination obligations with respect to public procurement to which AU LDCs and developed countries are both parties.

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. Accession protocols and Free Trade Agreements are the main instruments to discipline resort to export taxes. However, the AU LDCs identified by GTA as affected by export taxes do not have any trade agreement in place with a commitment to eliminate or bind export taxes with the implementing countries. 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.

5. Conclusions

Main findings

- **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. This increasingly includes export incentive schemes of developing countries.
- **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.

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.