



Policy Space For Industrial Development Part 2: The (surprise) potential return of Development Policy Space

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By

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Introduction

In an article entitled “The (surprise) return of development policy space...”, published in the *Review of International Political Economy* in January 2024, Kristen Hopewell argued that that policy space previously progressively restricted by WTO rules and procedures was now (surprisingly) being widened by the actions of developing countries in a new global context.

The article cited two specific cases:

- Indonesia had successfully warded off a challenge brought by the EU against regulations requiring specified levels of local beneficiation of nickel before export. Whilst the EU won a ruling against these measures in the initial process in the WTO, Indonesia effectively nullified it by filing an appeal to the Appellate Body, disabled by the US wary about possible challengers to tariffs and restrictions justified as matters of national security.
- India acted in a similar manner in respect of a ruling against the deployment of incentives for exports from its Special Economic Zones.

While such widening of policy space was the product of actions by particular developing countries, they were enabled and facilitated by prior actions of advanced industrialised countries, unilaterally and partially abandoning some of the trade and investment rules they themselves had so avidly foisted on the world during the era of unipolarity and hyperglobalization.



Purpose of Presentation

- This presentation will attempt to identify some of the emerging opportunities to enlarge policy space to support “green” industrialisation in the Global South in general, and Africa in particular.
- It will begin by identifying some of the major factors in the rapidly changing global political economy that underlie this trend.
- It will then argue that Africa faces the prospect of again being relegated to its colonially defined role as producer and exporter of raw materials in the accelerating transition to a lower carbon economy, unless it acts purposively to carve out a position as producer and exporter of value-added products.
- It will finally look at specific areas where precedents have already been set for a widening of policy space to support of “green” Industrial, Trade and Technology policies.




Section 1: The Fast Changing Global Context

- The period since the onset of the post 2008 Great Recession, that began as the 2007/8 Global Financial crisis, has been one in which the global political economy has been enmeshed in a progression of interlinked socio-economic and socio-political crises – now widely styled a poly crisis.
- Economic growth rates have remained depressed, and never really returned to pre 2008 levels in large parts of the world. More recently, in the aftermath of the Covid Great Lockdown recession, “stagflation” (stagnation coexisting with inflation) has provoked a cost of living crisis affecting many poor, working class and middle class people in both advanced and underdeveloped countries. The same event has increased the indebtedness in many poor countries. On top of this, inequality has manifestly increased with wages stagnating or falling in real terms in both developed and developing countries, while a few thousand dollar billionaires amass as much wealth as the poorest half of the world’s population combined. All of this has fuelled increasing discontent among populations in both the developed and developing world leading to a rejection of “centrist” neoliberal inclined governments in favour of right wing “populists” or in a few cases left wing alternatives.
- All of this forms the context within which a highly contested transition from the unilateral order with its single uncontested global hegemon established at the end of the Cold War to one that will be more multi-polar, though not necessarily at least immediately, more multilateral.
- The rise of China as a major economy and power together with increasingly evident decline of the USA and its “western” allies has clearly been the major factor underlying this transition, which has also seen the emergence of several regional powers along with two (or three if Russia is included) global powers.
- At the same time two mega-challenges have emerged 1. issues arising from the rapid advance of the “big data” digital industrial revolution (4th IR) towards the widespread roll out and application of Artificial Intelligence (AI) and 2. the imperative of responding to the threat of catastrophic climate change.



Recovery of ITT policy in the Global North and the Rise of China as a peer competitor

- In the context of these realities, the past decade or so has witnessed countries of the Global North unilaterally and partially disregarding and violating some of the trade and other global rules they themselves crafted and avidly promoted during the era of hyperglobalization and neoliberalism.
- Partly this has been prompted by the progressive recovery of industrial policy by countries in the Global North, which had earlier proclaimed its irrelevance and undesirability.
- Both the “big data” digital Industrial Revolution (4th IR) now rapidly advancing towards widespread application of AI, and the low carbon transition have depended on significant public policy interventions.
- The transition to a lower carbon economy, in particular, driven as it is by the threat of catastrophic climate change rather than arising as a direct outcome of a drive for profit maximisation means that it has depended on application of Net Zero commitments and other climate change regulations to promote it – with pursuit of profit being located in this context.
- The other major factor has been the rise of China as industrial power and peer competitor to the erstwhile global hegemon and its allies. Through the application of a suite of ITT policies Chinese companies have emerged as highly competitive in an increasing range of both digital and low carbon products and technologies.



“Containing China” as a matter of “national security”

- Indeed, Chinese firms have emerged as global leaders in several areas – beginning with 5G and now AI apps, or renewable energy components and now NEVs.
- China’s rise and the increasing competitiveness of its companies has provoked a response from the erstwhile global hegemon that has moved well beyond supporting its own national companies through typical ITT policies and even regular “protectionist” measures.
- In the context of the highly contested transition to a more multi-polar world system, the challenge posed by Chinese companies has been identified not just as a matter of economic competition but also of national security.
- This has led “national security” to being invoked to justify an increasing list of restrictions targeted at leading Chinese companies individually as well as a broader participation by Chinese companies in specific sectors.



Unilateral Departures from Established Trade Rules

- This trend became evident under the first Trump administration which began with a “national security” justified exclusion of Huawei from the roll out 5G network roll outs in the US (This was later followed by the EU). Next was the imposition of tariffs on steel and aluminium products directed at specific countries, whilst exempting others in like circumstances.
- Since such measures were potentially actionable in the WTO, the administration simultaneously, acted to disable the WTO Appellate Body, initially by refusing to agree to the appointment of replacements for members whose terms were expiring. This severely restricted the WTO’s capacity to make rulings and enforce its rules,
- None of these measures were reversed by the Biden administration, which added additional tariffs on Chinese digital goods and NEVs. It also used climate change mitigation to justify the introduction of ambitious digital and low carbon ITT policies (the Chips and Inflation Reduction Acts) in some cases including provisions at variance with WTO rules.
- The IRA notably included a subsidy for consumers buying electric vehicles with batteries manufactured in the US (in the form of a \$ 15.000 tax credit). Subsidies to support localisation in the private sector is likely not in conformity with the WTO’s Trade Related Investment Measures (TRIMS) and the departure was compounded when after complaints and threats by the EU this localisation provision was extended to all countries with which the US has a FTA – again in violation of TRIMS.

CBAM/impact on African Countries



- While the EU followed the US in implementing some of the restrictions on Chinese digital tech products and companies, the EU has not emerged as a key player in the digital space. Rather it has sought to position itself as a major driver of the transition to a low carbon economy. One of its major initiatives was the climate justified Carbon Border Adjustment Mechanism (CBAM) - also not in conformity with the spirit, at least, of WTO rules.
- Ostensibly a measure to prevent “carbon leakage” through trade, CBAM will from October 2026 levies impose levies on top of duties on imports in a defined list with a carbon content higher than that set for domestic producers through the European Trading System (ETS). This will apply initially to aluminium, cement, electricity, fertilizers, iron and steel – a list, which is potentially expandable and ultimately intended to apply to all imports.
- A study commissioned by the African Climate Foundation developed different scenarios for the impact of the EU’s CBAM on African Countries based on possible ranges for carbon price set in European Trading System and product coverage. The ACF study found that:
 - even “lightest” scenario (lowest price and least coverage) “Africa’s economy will be negatively affected...with exports declining by 4%” and that the continent will be worse affected than any other region;
 - with higher price and wider coverage, African exports could decrease by 5,75% and GDP by 1,12%;
 - All of this while having a negligible effect on reducing global carbon emissions.
- The impact will be unevenly spread across different countries – e.g. Mozambique (an LDC) that exports smelted aluminium could suffer a 1,5% decline in GDP.
- The UK later introduced its own CBAM, while Canada has signaled its intention to do so as well.



The Second Trump Administration: Upending the entire MTS ?

- The Second Trump Administration which took office in January 2025, has significantly accelerated the pace of departure from established trade rules.
- One of the many executive orders signed on inauguration day (January 20) was an “America First Trade Policy”. This, among other things, instructed government officials to “investigate the causes of our country’s large persistent annual trade deficits in goods, as well as the economic and national security implications and risks resulting from such deficits, and recommend appropriate measures, such as a global supplemental tariff or other policies to remedy such deficits”.
- This was followed by the levying of several country and product specific tariffs, including a 10% additional tariff on all imports from China and Section 232 (national security justified) tariffs of 25% on all steel and aluminium imports, plus a similar 25% duty on automotive imports (vehicles and most components). The rate for steel and aluminium was later increased to 50%.
- On April 2 (which Trump dubbed “liberation day”), the promised “global supplemental tariff” was unveiled. This was to take the form of country specific “reciprocal tariffs” levied on imports of goods from virtually all countries of the world. The “reciprocal tariff” rates were to range from a minimum rate of 10% to a maximum of 50% (on Lesotho) with certain exemptions for raw materials needed by US industries.
- The basis of the calculation of these “reciprocal tariffs” was a novel methodology unprecedented in calculating tariffs to this point. The point of departure was an estimate of the trade deficit against the US modified by some assessment of the impact of various non-trade regulations. This was used to establish a percentage of the total bilateral trade with each country, which was then halved to determine the actual “reciprocal tariff” applied to each individual country.



Impact weighted against poor countries

- Trump's "reciprocal tariffs" were based on a "one size fits all" formula that took no account of specific circumstances.
- Many of those most affected were Least Developed Countries. As indicated earlier, one of these, Lesotho, was subject to the highest "reciprocal tariff" – 50%.
- Lesotho was a casualty of the "one size fits all" formula that ignored specific circumstances. With encouragement from successive US administrations, it developed a small export-orientated apparel industry employing around 40.000 people, taking advantage of the duty free access (and third country fabric provisions) provided for African LDCs under the African Growth and Opportunity Act (AGOA). Its exports to the US in 2024 totalled around \$ 240 mn (mainly apparel but also diamonds). However, because of its geographic location and membership of the Southern African Customs Union, it imported little from the US totalling less than \$ 3 million. The relatively large deficit for the US as a percent of total trade is what led Lesotho to receive the highest "reciprocal duty", which threatens to devastate a major industry and source of employment in a country whose total exports to the US amount to only 0,007% of total US imports.



Potential Landing Ground

- Faced with major crashes in global share prices, on April 8 Trump suspended the application of “reciprocal tariffs” for 90 days for all affected countries except China. He also indicated that 75 countries had approached the US seeking some negotiation. At the end of May the issue migrated to the US courts, with a Federal trade court ruling that the International Emergency Economic Powers Act under which the reciprocal tariffs had been imposed required congressional authorisation. An Appeal Court later suspended that judgement pending further deliberations throwing the future of these measures in doubt.
- While the future of the reciprocal tariffs is thus uncertain, the UK-US “Economic Prosperity Deal” whose “general terms” were published on May 8 may provide an indication the potential landing ground envisaged by the Trump administration. While short on details, the two parties appear to have agreed on a limited tariff quota “deal”. The UK will still be subject to a reciprocal tariff of 10% and the 25% for auto and 50% on steel and aluminium products, but receive a quota of 100.000 vehicles which will pay 10% as well as receive a quota on steel and aluminium products (still to be negotiated). In return the UK will provide a tariff quota for US beef imports which currently pay a duty of 20% - including by diverting some existing quotas with other countries to the US. In addition, it is reported that in a “side deal” the UK has agreed to facilitate the purchase by British airlines of Boeing aircraft.
- This arrangement falls well outside WTO norms and rules: the reciprocal and S 232 tariffs both effectively nullify the US’s WTO binding commitments and a limited exchange of concessions between two developed countries that falls far short of covering the “substantially all” trade required by Article 24 is clearly a violation of the MFN principle.



Cease Fire Deal with China

- While 75 countries reportedly sought to negotiate “deals” in the immediate aftermath of the announcement of the “reciprocal tariffs”, China did not.
- Instead, the US and China engaged in tit for tat tariff increases which took US tariffs on Chinese imports to a high of 145% and Chinese tariffs on US imports to 120%. In addition, each side imposed restrictions on exports of strategic products – the US on digital products and China on rare earth minerals. By May 2025, it was reported that Chinese imports into the US had fallen by 34,5%.
- Both eventually agreed to a “truce”. The “deal” giving effect to this, which is still not complete and short on details, includes some rolling back of the extreme tariffs – Trump was reported by Reuters saying that the US would charge China 55% and China charge the US 10% (but this needs to be verified). In addition, each side would relax export restrictions – China its restrictions on rare earth exports, the US on some micro-chips, but according to Trump not “very, very high end Nvidia chips”.



Upending Global trade Rules plus austerity and Global Power contestation

- The transactional deals sought in exchange for some relaxation of “reciprocal”²³² tariffs also have little or no reference to established trade architecture e.g. they appear not to be seeking FTAs (and have violated those already in existence). Instead they are looking to sector and sometimes product or firm specific ad hoc deals –some additional market access, some critical mineral supply deals and even, reportedly, facilitating the entry of Elon Musk’s Starlink.
- While Trump’s “America First Trade policy” on top of already existing unilateral actions have thrown the multilateral trade rules system and trade liberalisation agenda into a state of disarray, reports of the death of neo-liberalism are greatly exaggerated. Argentine President Javier Milei’s chainsaw attacks on government programmes are now widely celebrated in both Washington and Davos, while DOGE has elements of austerity masquerading as efficiency along with stronger role for AI. The promotion of austerity and “Wall Street consensus” derisking as a pathway to profit seeking fund managers investing in cash strapped network industries thus seem likely to proceed.
- At a broader strategic level, the Trump administration does appear to acknowledge the reality of a transition to greater multi-polarity, but it tends to confine this to one dimension – acknowledgement of the existence of three global powers (US, China, Russia). What it seeks is to become the dominant force within the three. To this end it seems to want to exit “never ending wars” in peripheral areas that it sees as a distraction from pivoting to the East. It has also signalled willingness to negotiate a nuclear arms reduction deal and maybe acknowledge spheres of influence. Its own being a reinvigorated “Monroe doctrine”.
- Largely neglected is the other dimension of the transition to multipolarity – the rise of regional powers and greater assertiveness of the Global South.



Will this arrest US decline ?

- Whether any of this will work in achieving the stated aim of arresting US relative and absolute decline is doubtful.
- The agenda of imposing tariffs without Industrial Policy (levied in a broad brush manner that takes little account of the dependence of US companies on GVCs) looks set to raise costs both to businesses and consumers in the US more than it propels reindustrialisation – at least on a scale that ensures US dominance over China in critical digital and low carbon industries. Boeing's potential move of some of its production out of the US (citing uncertainty as to effect of tariffs on components among other things) is a sign of this.
- Nor does this agenda address financialisation which is in fact a major impediment to industrial development in the US (exemplified by the experience of Boeing which prioritised financial engineering over aircraft engineering).
- Beyond this is role of the US \$ as a global reserve currency, which the entire US establishment seems to agree it must hang on to. This is at the heart of the wealth and power of US finance capital (Wall Street) but the inflows of foreign capital it promotes is also a major factor underpinning US trade deficits and an overvaluation of the US \$ that tends to make US manufactures uncompetitive.
- While "economic warfare" rather than "never ending wars" in peripheral areas seems to be a preferred modus operandi, achieving such a reset is proving more difficult than imagined in the face of powerful domestic lobbies and ingrained dynamics of conflicts e.g. exiting the war in Ukraine is proving more difficult than imagined and it seems possible that the Trump Administration will get even more enmired in the Israeli ethnic cleansing of Palestine and related regional conflicts than its predecessor.



Deepening Crisis in the ISDS

- Compounding all of the above, is growing discontent with Investor-State Dispute System (ISDS).
- Such discontent has long been apparent in the Global South, where a few countries exited BIPAs with ISDS provisions.
- It has now spread to parts of the Global North – the EU in particular, which was earlier a fervent advocate and promoter of the system.
- The proximate reason for this is a number of successful challenges mounted by fossil fuel companies against climate policies in several EU countries.
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Cases by Fossil Fuel Companies

- According to an investigation by The Guardian, cases initiated by fossil fuel companies against countries across the world have led to awards totalling \$ 84 billion with an average amount awarded per case won of \$ 600 million.
- Germany, Romania, Spain, France, the Netherlands, Luxembourg and Slovenia have all been indicted in such cases, most of which were initiated under the ISDS provisions of the Energy Charter Treaty.
- This led in 2024 to the European Parliament voting for the EU exit the ECT although this does not bind individual EU countries who are members of the ECT.
- MEPs who drove this move are aware that there are more than 1.000 other agreements with ISDS provisions (mainly BIPAs) that the EU and its member states are party to.
- All of this while further undermining the legitimacy of the ISDS has not totally upended a system that still has capacity to challenge public policy positions among countries still exposed to it.



Widening of Development Policy Space depends on willingness actively to seize opportunities

- While WTO rules and the ISDS system are now widely acknowledged as having restricted policy space for development, more recent actions of countries and blocs in the Global North pursuing their own interests have somewhat weakened both their enforceability and legitimacy.
- This, however, has not, and will not, automatically and inevitably translate into an expansion of policy space for development.
- As indicated earlier this depends on the political will and willingness to act by developing countries themselves.
- The most relevant “green industrialisation” case is that of Indonesia. According to Krisna Gupta writing in East Asia Forum (7/12/2023) regulations restricting exports of unprocessed nickel led to investments of US \$ 14 bn in nickel smelting, to double digit growth in nickel processing provinces and to a 30 fold increase in earnings from exports of nickel value chain products. The longer term aim of the policy is to position Indonesia as a manufacturer of EV batteries.
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Whither Multilateralism

- As previously indicated the Trump administration is both bent on disregarding the existing “rules based” global order and appears to have no real interest in or vision for a future multilateral global order.
- Instead it is focussed on unilateral action to re-assert its power and dominance.
- While it is conceivable that there may be some change in rhetoric and stance on some issues under a different administration, the structural reality of contestation over the shape of a future more multipolar global order is likely to shape the conduct of the erstwhile uncontested global hegemon for some time to come suggesting the likelihood of some form of continued unilateral departure from the trade rules established during the era of hyperglobalisation and neoliberalism.
- Other more ardent proponents of multilateralism are meanwhile divided into those seeking to maintain the status quo, those discredited by a manifestly partisan approach to “reform” while the Global South remains yet to assert itself in this space. The UK’s acceptance of a “deal” that manifestly violates WTO norms and even rules suggests that short term direct economic interests will override longer term strategic considerations by many of those that proclaimed their commitment to a “rules based” international order.
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African Underdevelopment and the lower carbon transition

- African underdevelopment is widely recognised as being rooted in the continent's continued dependence on production and export of primary products –a role assigned to it under colonialism and reproduced after formal political independence by a variety of skewed investment, trade and technology, and financial arrangements
- An understanding of this reality needs to underpin Africa's strategies in the accelerating transition to a lower carbon economy now well underway.
- Africa is endowed with many of the minerals required to produce lower carbon products and technologies.
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Africa's endowments of critical minerals (percentage of world's known reserves)

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- Platinum Group Metals (PGMs): 92% (90% in South Africa and 2% in Zimbabwe).
- Cobalt: 53% (51% in DR Congo followed by Madagascar, Morocco and South Africa).
- Manganese: 45% (40% in South Africa, followed by Gabon and Ghana).
- Chromite: 35%
- Bauxite: 25%
- Graphite: 21% (Madagascar 8.1%, Mozambique 7,8% and Tanzania 5,3%).
- Vanadium: 16% (South Africa).
- Copper: 6% (Zambia and DR Congo).
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Industrial Policy for Green Industrialisation

- There is indeed what some have called a “second scramble for Africa” with industrialised countries rushing to sign contracts to access “critical minerals.
- But the continent cannot afford to merely be relegated to the role of producer and exporter of raw materials used in value added processes elsewhere. If it is, taking account of the costs of adaptation (currently not attracting much external finance) and the loss of jobs and income from fossil fuel activities, the transition to a low carbon economy will likely be highly unjust for Africa.
- A strategic choice to promote industrial development as the transition to a lower carbon economy unfolds is thus imperative and the lesson of the economic history of all earlier industrialisers suggests that this will require identifying and implementing a range of appropriate ITT policies.
- These will need to embrace the deployment of a range of policy tools including investment promotion, appropriate infrastructure provision, mobilisation of incentives, establishment of Special Economic Zones Research and Development, development finance and a trade policy that seeks to nurture and protect against import competition prioritised nascent industries while seeking export opportunities for value added products.
- The design and application of such policies will inevitably need to be tailored to sector specificities and also to strategies to build particular regional value chains within the African Continental Free Trade Area (AfCFTA).



- While all of the above will depend on deep technical and sectoral analysis to inform and guide actual policy development and implementation, several areas where a demonstrated strong political will and decisive messaging could potentially enlarge developmental policy space to the benefit of green industrialisation.
- Three areas where precedents have already been set for a widening of policy space deserve particular attention: export taxes or regulations to promote beneficiation of critical minerals; extending localisation measures ultimately to the whole of AfCFTA; and imposing climate justified levies and prescribed investment requirements.



1 - Critical Minerals Beneficiation

- Africa's endowment of critical minerals and the new "Scramble for Africa" were referred to earlier.
- Major companies from the Global North, China and Japan among others are actively identifying opportunities to access critical minerals including seeking long term supply contracts. In some cases this has led to investments in mining and promises to do the same in infrastructure.
- At the same time the continent's ambition to leverage its resource endowment to move higher up the value chain is widely proclaimed resulting in some initiatives to move in this direction.
- The DRC and Zambia supported by AfriXembank have launched a joint initiative to establish a Transboundary Battery and Electric Vehicle Special Economic Zone. Prefeasibility work has been completed, which has established that the two countries have 70% of the minerals necessary to sustain the project. This project is intended to begin by producing precursor products that foreign battery manufacturers will use as components.
- South Africa's Mineral Research organisation, Mintek, recently announced that it had completed a study that had identified South Africa's capacity to establish a lithium-ion manufacturing facility with a production capacity of 5.000 MW. The study established that South Africa has most of the mineral resources to support a project that could generate an additional ZAR 16 billion in the electrical machinery sector.
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- South Africa is also seeking to expand production of Hydrogen fuel cell vehicles and small scale power stations using as a catalyst Platinum, which the country is the largest producer of.
- Realising these ambitions will depend on mobilising significant investment. While there are signs of some possible investment interest in the DRC Zambia project, this is dwarfed by the US's investment interest in upgrading the Lobito corridor – clearly intended as a conduit for the export of largely unprocessed critical minerals to be transformed into value added products abroad.
- What is certain is that unless the continent advances as a battery(or at least battery component) manufacturer its motor industry will regress in the transition to NEVs.



Battery manufacturing critical to avoid regression in respect of local content of vehicles

- NEVs inherently require less components than internal combustion vehicles and without value addition in the battery local content will fall to levels lower than now.
- Motor industry players have indicated that without a policy intervention it is unlikely that OEMs will of their own volition begin battery manufacturing on the continent.
- All of this suggests that efforts to promote battery and NEV manufacture on the continent would greatly benefit from a bold clear policy message that Africa will be requiring specified levels of processing and value addition of critical minerals before they are exported.



The need for an urgent bold new initiative

- The Indonesian case points to the fact that policy space can both be claimed and defended.
- All of this suggests the urgent need for Africa to map out a strategy significantly to raise the levels of beneficiation before export of critical minerals.
- Driving up the scale of investment will require some combination of Indonesian style export taxes and minimum value-added/beneficiation regulations together with ambitious prescribed investments in beneficiation projects as part of the terms of supply agreements.
- While to some extent the horse may have bolted in the flurry of contracts probably already signed, there is still value – indeed an imperative – to move decisively in this direction.
- While final regulations may at this stage of regional integration still need to be enacted and implemented at national level, there would be great benefit if groups of countries with similar mineral endowments harmonised their approach and if there was an overall framework of high level messaging from the highest levels in the AU.

2. Extending Localisation requirements to support Regional Value Chain development within the AfCFTA



- Localisation (implementing or enforcing decisions to buy from local producers) has been a critical driver of industrialisation particularly, but not only, in its initial stages everywhere and at all times.
- Under current WTO rules enforced localisation requirements (as distinct from general campaigns to “Buy Local”) are limited to government procurement by countries that have not signed the Optional Protocol on Transparency in Government Procurement. Those that have signed have to open their procurement regimes to all other signatories.
- In addition this policy tool (with all its limitations) is available only to individual countries meaning that local content designations are restricted to products produced in the country applying them.
- Yet building of Regional Value Chains using the larger AfCFTA market has been identified as a key potential driver of deeper and more inclusive industrial development.
- In such a context being able to extend local content requirements across the whole or part of the AfCFTA (at least by giving a second preference to inputs or products from other AfCFTA partners) could be a useful tool to promote value chain integration and development. Being able to impose such requirements on private sector procurement would also greatly amplify the scope of this tool.
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- Unilateral measures introduced by the Global North have broken through both of those constraints potentially setting important precedents.
- The Climate sections of the US Inflation Reduction Act have both applied localisation incentives to private sector transactions (a \$ 15 000 tax credit to private consumers buying from private auto manufacturers) and extended it to all countries with which the US has a Free Trade Agreement. The application of localisation incentives to private transactions is in violation of the WTO's Trade Related Investment Measures (TRIMs) and the extension to FTA partners undermines the "most favoured nation principle".
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Building on this precedent

- The precedent created could potentially be built on to support the development of industries in a range of potential Regional Value Chains within the AfCFTA. These could include, but not be limited to, Renewable Energy generating components, uniforms and workwear, pharmaceutical products and even foodstuffs.
- By extending the scope of any localisation regulation or incentive to other AfCFTA partners (at least as a second choice after national producers) real multiplication of the value of such measures could be enhanced, while supporting sourcing of components from multiple countries.
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3. Imposing Levies and Prescribed Investments

- Finance is a critical question in promoting green or any indeed any other kind of industrialisation. This section will not address the totality of this issue, nor does it intend to suggest that any of these proposals are a “magic bullet” to solve the finance challenge.
- Nevertheless, CBAM has created an important precedent. It has in effect opened space to impose “climate justified” levies on trade transactions. This is very much against the norm established by the WTO, where all levies and charges were “tariffised” before being subject to bindings established in various rounds of negotiations (only the Uruguay being completed). The CBAM will in effect operate as a levy on top of tariffs and regardless of the EU’s WTO bindings or tariff concessions made under any of the EU’s bilateral arrangements – EPAs, EBAs etc.
- One immediate possibility would be to impose a “climate justified” levy on CBAM implementing countries to raise revenue for urgent but grossly under-funded climate change adaptation projects on the continent.



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- Consideration may also usefully be given to other “climate justified” levies to support green industrialisation on the continent.
- Prescribed investment requirements in higher value-added projects within the value stream also deserve active consideration.

The ISDS in Crisis still remains probably the main threat to widening policy space for green industrialisation

- While serious discontent has created a crisis of legitimacy for the ISDS system, it still remains the most likely channel to challenge ITT policies in the Global South.
- It is also important to critically analyse any alternatives proposed to solve the specific problems of Global North – like a climate waiver – as these would leave much of a highly problematic system in place.
- Part of the answer lies in developing alternatives crafting and promoting their own alternatives. While there are several of these, one which deserves scrutiny is the Investment Protocol of the AfCFTA.
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AfCFTA Investment Protocol: Objectives and Provisions

- Declared objectives, include establishing a “balanced, predictable and transparent continental and legal framework for investment” that “takes account of” [balances rights of investors with] interests of states and communities.
- State parties are required, “subject to their respective laws and regulations, [to] facilitate investments that contribute to sustainable development”.
- National treatment is accorded to eligible investors “in like circumstances to its own investors” and this is spelt out with various criteria. Exceptions to allow preferential treatment for developmental purposes or meet needs of “designated disadvantaged people” are provided for.



Provisions

- Physical protection is to be “no less favourable” than provided to nationals “in like circumstances”.
- Exceptions are provided to the prohibition on expropriation, including allowing this for a public purpose, in accordance with due process, and against “fair and adequate” compensation. “Indirect expropriation” has to be established on a basis that is more than the effect of a measure had an adverse effect on the economic value of an investment. Legitimate regulation in the public interest are specifically excluded from definition as “indirect expropriation”.
- Article 26 deals with Investment and Climate Change



Article 26

- The article obliges State Parties in accordance with their own climate policies and principles of “common but differentiated responsibilities” to promote investments that “support actions to mitigate greenhouse gas emissions and measures to adapt to the negative impacts of climate change”. It also requires them to “promote and facilitate investment for a fair and just transition in sectors such as renewable energy, low carbon technologies...”
- Similar principles are applied in Article 27 “Investment, Public Health and Pandemics, and “Article 28 “Pursuit of Developmental Goals”



Investor Obligations and Dispute Settlement

- The Protocol identifies a number of Investor Obligations to act according to laws and refrain from corrupt practices as well as maintain high standards of business ethics, comply with ILO conventions and tax obligations, observe human rights as well as act to “protect the environment”.
- On dispute settlement, the Protocol obliges State parties to facilitate the prevention of disputes through various actions to receive complaints and introduce follow up actions to de-escalate disagreements.
- Where this fails, Heads of States of two parties will seek to resolve matter amicably through consultation, negotiation, conciliation, mediation etc. Failing this, Ministers agreed that an annexe still being finalised will provide a framework for investors to seek recourse in domestic courts and allow only State to State (not investor-state) arbitration. There is, however, push back from some countries wanting ISDS.