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RESEARCH ARTICLE

ASSESSING THE PARADOX AND OPPORTUNITIES OF LOCAL CONTENT UNDER THE INTERNATIONAL TRADE AND INVESTMENT LEGAL FRAMEWORK: A LESSON FROM CAMEROON.

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Abstract

Appositely, Local Content Initiatives (LCIs) seek to promote the supply of domestically produced goods and services, and the employment of the local workforce. Besides, they apply require that a producer sources part of its inputs or labour force from the domestic economy and as well boost technology transfer or research and development in the country where the operations are taking place. Indeed, LCIs remain widely used and recent years have seen the proliferation of such instruments to support industrial objectives, as duly appreciated in the extractive sector. This is because LCIs are often perceived as paramount in achieving national development objectives by resource-rich countries. Yet, LCIs may contravene a number of trade and investment disciplines at the bilateral and multilateral levels, such as, the free trade agreements (FTAs), bilateral investment treaties (BITs) and the World Trade Organization (WTO) rules. In addition to the multilateral obligations, resource-rich countries also have contractual obligations with their extractive companies and/or have signed up to bilateral treaties, such as, investment agreements or free trade agreements – which generally are in favour of investors, have attempted to go beyond the scope of the WTO provisions; either by deepening the limitations or by adding new commitments that currently fall outside the scope of the WTO. Hence the question posed is - to what degree can these constrain the policy space of resource-rich countries using LCIs? In this regard, this paper argues that despite the limitations highlighted, within the multilateral trading system, guided by the WTO rules, developing countries in general and Cameroon in particular, still maintain a certain degree of policy space to pursue legitimate economic objectives, including industrial policies. More so, although the WTO provides clear rules on what types of LCIs are permitted or not, some fundamental policy instruments still remain widely available; in practice, this may have been eroded, especially with countries that have entered into more constraining bilateral agreements, through BITs and FTAs. From this, the paper assesses the paradox and opportunities of local content under the WTO framework, BITs, and FTAs with particular focus on Cameroon, where LCIs remain a key instrument of development despite its legal lapses and

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Introduction:-

Befittingly, local content initiatives (LCIs) are policy instruments put in place by national governments to ensure that a certain share of the factors of production required at each stage of the value chain are sourced from the domestic economy.¹ An increasing number of countries are introducing or reinforcing LCIs with a view to stimulate the use of local factors of production, create value in the domestic economy, and expand their industrial sectors. It is estimated that 90% of resource-rich countries apply one form of LCI or another.² Approaches to LCIs vary across countries. Approximately 50% impose quantitative regulations, while the other half take a softer approach, employing qualitative regulatory measures or incentives. These policies aim to give local stakeholders access to economic opportunities through employment, participation in supply chains, or the provision of related support services. In some cases, these policies may target a specific group, defined in spatial, industrial or social terms. In other cases, they may be intended to transform the local economy as a whole. In such cases, it is expected that new productive activities arising directly and indirectly from the LCIs imposed on business activities will make sustainable contributions to employment and income generation in the long run.³

Explicitly, LCIs are important development policies for countries in the global South but they are frequently told that they may not employ LCIs due to the constraints of trade and investment policy. A scan of the economic development trajectory of resource-rich countries suggests that many have not managed to derive sufficient economic and political benefits from their natural resources. In fact, numerous studies indicate that extractive resources can potentially become a 'curse', if not managed well, although evidence is non-conclusive regarding the correlation between resource endowments and economic outcomes. Conversely, it is worth noting that despite the strong position for LCIs, there are still some contrary views against the use of LCIs. One of the most frequently cited argument against the use of LCIs is their potential incompatibility with international trade measures applicable to members of the World Trade Organization (WTO). In this perspective, particular reference is made to the Agreement on Trade-Related Investment Measures (TRIMs), the General Agreement on Tariffs and Trade (GATT), and the Agreement on Subsidies and Countervailing Measures (SCM Agreement), all of which have endorsed the "national treatment" principle, which obliges member countries to treat one another as they would their own nationals; even though there are some limited exceptions for least developed and developing countries in the application of these WTO rules. With respect to SCM Agreement, for instance, Cimino et al point that domestic subsidies violate WTO rules only when they adversely affect the domestic commerce of another WTO member state.⁴ Nonetheless, it is observed that only few domestic subsidies meet this threshold, based in part, on the difficulty, for the complaining party to show evidence of "adverse effects" as well as on the fact that the definition of subsidy under the rules is narrow. This, therefore, leads some scholars to suggest that countries should instead of using traditional local content programs, could make use of subsidies to support their domestic firms "on a time-limited basis".⁵

In this regard, this paper aims to assess the real limits placed on less developed and developing countries by these commitments. It equally seeks to examine the paradox, compatibility, opportunities and challenges of LCIs with multilateral and bilateral trade and investment commitments, and the degree of policy space left for them in general, to conduct their legitimate economic objectives. Likewise, it also envisages the contour on how LCIs can be designed and implemented in resource-rich countries, with examples of measures taken by the resource-rich countries with particular focus on Cameroon. In sum, the paper is organised in three main sections: Section one examines the conceptual framework of LCIs. It provides the core characteristics LCIs, such as, employment and labour market development of local communities, value creation or addition in the domestic economy, development of stimulation of the domestic industries, and the promotion of innovation, technology, research and development. It equally introduces the notion of LCIs in international trade and investment policies. Section two assesses the legal

¹ Ramdoo, I. 2016. Local content policies in mineral-rich countries. An overview. ECDPM Discussion Paper No. 193, p. v.

² McKinsey Global Institute. 2013. *Reversing the Curse: Maximizing the Potential of Resource-Driven Economies*, December.

³ Ibid.

⁴ Cimino, C., Hufbauer, G. & Schott, J. 2014. "A Proposed Code to Discipline Local Content Requirements", Peterson Institute for International Economics Policy Brief No PB14-6, February, p. 3.

⁵ Ibid.

framework of LCIs under the international trade and investment rules. It considers the paradox and opportunities of the various forms of LCIs and commitments under international trade and investment; with particular reference to the various agreements under the WTO rulebook, the Bilateral Investment Treaties (BITs), and Free Trade Agreements (FTAs) that may have an impact on the design and implementation of LCIs, while equally assessing the degree of policy space open to developing country. Section three analyses the purview of local content commitments of Cameroon under the WTO rulebook, the BITs and FTAs. It also examines the safeguards against the nullification of the flexibilities of the WTO rules, especially in cases where countries have entered into more constraining bilateral agreements, through BITs and FTAs. Altogether, it critically considers the paradox and opportunities of LCIs in Cameroon, as appreciated on paper and in practice. The article then wraps up with a conclusion recommending the way forward of LCIs in general and for Cameroon in particular.

Conceptual Framework of Local Content Initiatives: -

Aptly, it is worth noting that the term local content is polysemy with no agreed definition. Nonetheless, it can be defined as set of policy measures, implemented at the state, sub-state or regional level requiring foreign or domestic investors to source a certain percentage of intermediate goods from local producers or manufacturers.⁶ In the same token, it has been defined in terms of the value contributed to the national economy through the purchase of national goods and services.⁷ In this regard, “local value-added” is the wealth local companies create in transforming materials and services purchased from other countries into revenue-generating output. This is calculated as the value of the firm’s output minus the value of all foreign purchased inputs (including raw materials, energy, contractor services and rents). In a similar manner, Esteves, Coyne and Moreno, stipulate that it includes various schemes ranging from delivery of raw materials on site, to the establishment of commercial relations with firms with permanent operational offices in a given area.⁸ In this perspective, they reiterate that local content policies in the context of the hydrocarbon sector are aimed at extending or expanding the benefits of the oil, gas and mining activities for the national economy;⁹ with the policies attempting to open access to economic opportunities through employment, participation in the supply chains or provision of other related support services.¹⁰

Conversely, Bacon, Tordo and Anouti, note that local content policies are not only related to the immediate increase in local services or products, but also to actions that will result in the improvements and long-term growth in other sectors related to the hydrocarbon industry.¹¹ Similarly, Perez asserts that the aim of local content policies is to make the participation of countries in globalized industries as broad as possible in terms of value added, which means that the incentives for local content may range from interest rate subsidies in favour of strategic sectors and projects, to contractual obligations in the public market. He thus notes that foreign companies must be seen as partners in the implementation of local content policies, because they are the starting point for generating economic and technological chains which open access to larger segments of the global production chains.¹² Indeed, experiences across resource-rich countries globally suggest that the countries have even embraced different routes at different moments of their development trajectories. These were defined by these countries’ internal systemic and political realities as well as exogenous contextual situations, such as the cyclical behaviour of commodity prices, demand and supply and technological changes. Amongst others, one of the prime policy instruments commonly aimed at stimulating resource-based economic transformation is local content. For instance, with regard to employment, local content policies seek to secure an immediate increase in the share of local employees. Equally, these policies can go as far as imposing a legal requirement onto extractive companies to actively recruit the local workforce in such a way as to create jobs or facilitate the transfer of valuable skills and knowledge from foreign labour to the local

⁶ Kuntze, J-C. and Moerenhout, T. 2013. Local content requirements and the renewable energy industry – a good match? ICTSD.

⁷ Warner, M. 2011. Local Content Solutions: Participation of Domestic Industry in Procurement for Oil, Gas and Mining Projects (Sheffield, England: Greenleaf Publishing).

⁸ Esteves, A., Coyne, B., Moreno, A. 2013. Iniciativa sobre contenido local: mejorar los beneficios subnacionales de los sectores petrolero, gasífero y minero. Nueva York: Revenue Watch Institute.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Bacon, R., Tordo, S. and Anout, Y. 2013. Defining Local Content. Local Content Policies in the Oil and Gas Sector. Washington, D.C.: World Bank.

¹² Pérez, A. 2012. Inversión extranjera sí, pero con contenido local: estrategias de desarrollo en Brasil (DT). Working document 7/2012. Madrid: Real Instituto Elcano, Cooperación Internacional y Desarrollo, Latin America.

workforce. In this regard, countries are more motivated to design and implement viable local content policies which have economic and socio-political considerations, even though the resulting balance is a delicate act.¹³

Correspondingly, on the economic front, local content is perceived as a 'low-hanging' fruit because it can potentially create jobs and stimulate local industrial development. It seeks to capitalise on the companies' necessity to source certain critical goods and services as well as on various types of jobs that are needed during the life cycle of the production activity, at different skills levels. Indeed, it is estimated that between 40 and 80 per cent of the revenue created in oil, gas and mining is spent on the procurement of goods and services.¹⁴ With the share spent in countries varying significantly, depending on the type of mineral at stake and on the capacity of the countries to supply the requisite goods and services to the extractive firms. Also, it is estimated that procurement spending significantly exceeds the contribution to government revenues, which only range between 3 – 20 per cent of GDP.¹⁵ For this reason, more than 90 per cent of resource-rich countries seek to use local content policies to get as much benefits possible from that potential.¹⁶ Moreover, it is worth noting that LCIs are ways of inciting the development of competencies, necessary to make the industry function. While sometimes the requisite talent or pool of expertise might not be immediately available due to skills mismatch or skills shortage, in other circumstances, extractive companies prefer to use expatriate labour. In this perspective, LCIs are meant to encourage workforce development and transfer of skills and knowledge, to gradually incite companies to use more local labour and less foreign workers, in particular strategic positions. Similarly, it is also noted that LCIs are way to create economic linkages and business opportunities for local entrepreneurs. Conversely, it is realised that specialised goods and services needed at various stages of the life cycle of the production activity may not be available. In this regard, the companies may purchase such goods and services from international providers. However, overtime, this might be a puzzle if the companies build well-established relationships with their regular international providers, thus making it difficult for small local firms to participate competitively in the value chain. In this situation, supportive policies are therefore deemed necessary to stimulate the efforts for local sourcing.

Similarly, with respect to socio-political interests, LCIs are increasingly consider as a vital tool to enhance sustainable development. In fact, in many resource-rich countries, societies are denouncing policy failures, and are increasingly holding the governments to account because the extractive sector has largely failed to deliver on inclusive and sustainable development objectives and welfare creation. In the same token, the Africa Progress Panel 2013, for instance, portrayed the wide disconnection between wealth and well-being, depicted by the mixed record between high growth rates in some resource-rich countries and poverty and low human development.¹⁷ Nevertheless, it is worth noting that the complex political economy surrounding the resource sector usually calls for governments to navigate among the various interests to secure deals that work for companies while maintaining social peace and maximising benefits at the national level. In this regard, it is envisaged that LCIs can provide useful tools to create the visible opportunities at the domestic level. Contrariwise, it is apparently noted that making better use of extractive resources is not a challenge unique to only resource-rich developing economies, but also resource-rich developed countries as well.¹⁸ Consequently, it is appropriate for policymakers of resource-rich countries to stimulate economic development through LCIs at the local level, by identifying key sectors with higher-than-average backward and forward links compared with other sectors in the local region. From this perspective, this section considers the following two principal issues: The core characteristics of LCIs and its contour under the international trade and investment rules.

The Core Characteristics of Local Content Initiatives: -

It should be recapped that LCIs are designed to realise the objectives and implement the priorities established by resource-rich countries with a view to reap maximum benefits from their resource endowments and also provide viable opportunities to their constituencies. These can only be achieved by embodying the following core elements of LCIs:

¹³ Wheeler. D. 1984. *Sources of stagnation in sub-Saharan Africa*. World Development, volume1, issue 1, January.

¹⁴ See McKinsey, n 2.

¹⁵ ICMM. *Enhancing Mining's Contribution to the Zambian Economy and Society. Mining Partnershipsfor Development Report*. April 2014.

¹⁶ See McKinsey, n 2.

¹⁷ Africa Progress Panel (APP). 'Equity in Extractives. Stewarding Africa' Natural Resources for All'. *Africa Progress Report 2016*. Geneva: 2013.

¹⁸ Ibid.

Firstly, the issue of employment and development of the labour market of the local communities is considered as a core and priority policy framework. Indeed, the creation of employment opportunities at the various levels of competencies and stages of operations, the training of staff and transfer of skills and know-how between the foreign and local labour are vital constituents of LCIs. In this regard, to ensure that the employment opportunities are actually created, most governments are using regulatory instruments to set minimum quantitative targets for the hiring of local labour and training of local staff. Equally, the governments are also requiring companies to provide a growing share of managerial positions for local personnel, in the form of a specific percentage of senior managerial positions to be earmarked for qualified nationals. Moreover, to build local capabilities, the companies might be required to invest a specific percentage of their turnover or recurrent spending for the training programmes of local staff.¹⁹

Secondly, the creation or addition of value in the domestic economy is an issue that is aimed in stimulating the development of the supply chains. In fact, governments usually design specific policy instruments regarding the local sourcing and increased participation of the local and locally-owned companies. Such policies usually take the form of a preference accorded to local suppliers during the bidding processes, a mandatory requirement to procure specific types or a given percentage of total spending on goods and services from domestic suppliers or an obligation to enter into partnerships with local entities to qualify as local suppliers. Thus, in order to avoid affecting the viability of the sector and hence endangering jobs and investments, local goods and services, however, need to be competitive, and of comparable quality and price to what can be sourced internationally.²⁰

Thirdly, the issue of stimulating the development of domestic industries is considered as one of the prime aims of LCIs, in supplying the production or extractive sector with goods and services. These can take several forms, namely preference given to companies that are registered or head-quartered domestically, irrespective of the 'nationality' of the investment or of the management; preference given to home-grown entrepreneurs, through indigenization policies, where certain types of activities are earmarked only for local firms that are owned and managed by people having the nationality of the country concerned, compulsory joint ventures between foreign investors and with domestic entities, and State equity participation to scale up the 'local' capital participation. In some cases, this policy can be used to give privileged access to historically disadvantaged population (South Africa) or first nations (Canada).²¹

Lastly, the issue of promotion of innovation, technology, research and development is regarded as a core policy focus that is more prominent in advanced economies or in countries where the extractive sector has reached an advanced level of maturity. Often, extractive companies may be required to attribute a share of their expenditure to finance R&D projects, innovation centres or incubators. In other cases, instead of putting monetary requirements on companies, governments provide financial incentives to their local firms to encourage them to develop cutting edge in technology and global strategies.²²

The Context of Local Content in International Trade and Investment Policies:-

In spite the distraction of international trade and investment policies, it has been expounded that the core purpose of LCIs, is to seek the promotion of the supply of domestically produced goods and services, and the employment of local workforce. Equally, in the extractive sector, the companies are required to conduct certain activities, such as technology transfer or research and development in the country where the extractive operations are taking place. Thus, despite the fact that these initiatives are essentially aimed at reducing the volume or value of imports or at restraining the employment of foreign labour.²³ It is realized that such measures can be critical in ensuring the

¹⁹ Ramdoo, I. 2015a. *Industrial Policies in a Changing World: What Prospects for Low-Income Countries?* The E15 Initiative, Geneva.

²⁰ Esteves A., Coyne, B. and Moreno, A. 2013. 'Local Content Initiatives: Enhancing the Subnational Benefits of the Oil, Gas and Mining Sectors'. *Briefing. Natural Resource Governance Institute*.

²¹ See Heum, n 22; Ovadia. 2016. *Is Natural Resource-Based Development Still Realistic for Africa?* E-international Relations. February, 10.

²² See McKinsey, n 2.

²³ For comprehensive overview of the LCP debate, see for example Ramdoo, I. 2016. *Local content policies in mineral-rich countries: An overview*. (Discussion Paper 193). Maastricht: ECDPM; Ramdoo, I. 2015a. *Industrial Policies in a Changing World: What Prospects for Low-Income Countries?* Think Piece. E15 Expert Group on

maximum benefits from the production activities accrue to the local economic actors. However, LCIs are widely used and these recent years have seen the proliferation of more instruments in support of industrial objectives, in particular in the extractive sector where the linkages with the broader economy remain weak and shallow.²⁴ This is because LCIs are often perceived as important to achieve national development objectives by resource-rich countries in particular. Altogether, there are several arguments in favour of LCIs which can help correct market failures,²⁵ arising “when there is a distortion that keeps the market from allocating resources efficiently and adjusting to a steady state”, with the result that “domestic industries cannot gain the necessary technology and capacity to compete on the open market without outside intervention and protection”.²⁶ Thus, by requiring companies to invest in the development of particular local skills, LCIs can help to correct this market failure because such requirements help to ensure that skills are available to meet the demands of the market.²⁷ Besides, there is an inherent good in a country developing its own technical skills to meet the demands of its industries. It also enhances entrepreneurship and can contribute to poverty reduction.²⁸ Similarly, LCIs can help domestic firms in developing countries integrate themselves into global economic networks.²⁹ In this regard, it has been argued that despite the challenges pose by international trade and investment policies, LCIs can contribute to the productivity and competitiveness of domestic firms through knowledge transfers that take place from foreign firms to domestic firms.³⁰ Moreover, other proponents observe that most advanced economies utilized industrial policies similar to LCIs to boost their domestic economy while in the early stages of their industrial development.³¹

Conversely, Rodrik argues that even though LCIs breach international trade and investment principles, they are an essential part of the “policy space” that less developed and developing countries ought to be allowed to pursue their economic development goals.³² This view is echoed by another commentator who notes that “fair trade” in the sense of a “level playing field” does not necessarily mean applying the same set of trade rules and conditions to every nation, but also means recognizing that some countries are so disadvantaged that they need “reasonable accommodation” under the international trade system.³³ An analogy to this is the adoption of differential income tax rates according to levels of individual income in most developed countries, which is not necessarily regarded as “unfair” because it is justified by the principle of “reasonable accommodation” for the poor rather than condemned as “unjustifiable discrimination” against the rich.³⁴ Fortunately for less developed and developing countries, it is realized that the international trade and investment rules, such as, the WTO rules which impede the application of LCIs are rarely enforced.³⁵ In the same token, it is noted that LCIs are said to be a poor instrument for addressing the inadequate contribution of the extractive sector to local economic development, for it creates distortions,

Reinvigorating Manufacturing: New Industrial Policy and the Trade System. Geneva; Ramdoo, I. 2015b. *Resource-based Industrialisation in Africa: Optimising Linkages and Value Chains in the Extractive Sector*. Discussion Paper No. 179. Maastricht: ECDPM; Tordo, S. et al. 2013. *Local Content Policies in the Oil and Gas Sector*. World Bank study; GIZ. 2016. *Space for Local Content Policies and Strategies. A Crucial Time to Revisit an Old Debate*. Report prepared by the Columbia Centre for Sustainable Investment.

²⁴ Morris, M., Kaplinski, R. & Kaplan, D. 2012. *One Thing Leads to Another. Promoting Industrialization by Making the Most of the Commodity Boom in Sub-Saharan Africa*. University of Cape Town.

²⁵ Tordo, S. et al. 2013. *Local Content Policies in the Oil and Gas Sector*, World Bank Study (Washington, DC: World Bank), pp. 24–25.

²⁶ DiCaprio, A. & Gallagher, K. 2006. “The WTO and the Shrinking of Development Space: How Big is the Bite”, 75, *The Journal of World Investment & Trade* 783.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Gereffi, G. 1995. “Global Production Systems and Third World Development” in Barbara Stallings (ed.), *Global Change, Regional Responses* (Cambridge: Cambridge University Press) at 142.

³⁰ Morrissey, O. 2012. “FDI in Sub-Saharan Africa: Few Linkages, Fewer Spillovers”, 24:1 *European Journal of Development Research* 26–31.

³¹ Whitfield et al, 2015. *The Politics of African Industrial Policy: A Comparative Perspective* (Cambridge: Cambridge University Press).

³² Dani Rodrik, 2007. *One Economics, Many Recipes: Globalization, Institutions and Economic Growth* (Princeton, NJ: Princeton University Press).

³³ Lee, Y. 2016. *Reclaiming Development in the World Trade System*, 2nd ed (forthcoming) (Cambridge: Cambridge University Press) at 462–463.

³⁴ Ibid., p. 463.

³⁵ See Cimino, Hufbauer & Schott (2014), n 4, p. 1.

inefficiency and corruption.³⁶ Equally, as one commentator also noted, however, these arguments are generalizations. Inefficiency, for instance, may be as a result of “technological strangeness” – that is, “the ability of the rest of the economy to develop service capacity through backward linkages and the speed at which such capacity can be created”.³⁷

Moreover, these problems can be dealt with through a well-designed local content framework that takes into account the socio-political and economic climate in which it is to be applied. Corruption, for instance, can be addressed through the integration of transparency measures into the policy and the avoidance of setting corruption-inducing unrealistic targets for companies. Other arguments abound. For instance, Nwaokoro believes that imposing quantitative conditions on companies regarding the hiring of locals when the existing local labour lacks the skills to carry out the desired task would not only discourage investment,³⁸ but also could put undue pressure on companies. Consequently, it is worth noting that the problem of unrealistic expectations can be addressed by a clear definition of what constitutes local content, and, even more importantly, by a country’s recognition and acknowledgment of its skills level and a compartmentalized and incremental approach to local content target setting, rather than stipulating stringent targets that are more likely to create corruption instead of helping to grow the economy.

Contrariwise, it has been portrayed that even though LCIs are sustainable, they can contravene a number of trade and investment disciplines at the bilateral and multilateral levels, notably in free trade agreements (FTAs), bilateral investment treaties (BITs) and the WTO rule book; with commitments notably prohibiting the use of quantitative restrictions and condition the use of other forms of performance requirements, which may be contingent on the use of domestic factors of production. However, it is worthy to note that the WTO rulebook provides significant degrees of ‘policy space’³⁹ for less developed and developing countries to conduct development policies and promote the use of local factors of production, while avoiding undue discriminatory practices, without contravening international trade and investment commitments. Consequently, on the one hand, it is realized that the challenge is not the space in itself, but rather the ability of these countries to use them, while on the other hand, the countries may be financially constrained and therefore not have the capacity to use them. In addition, besides the multilateral commitments, many countries have made the most constraining commitments at the bilateral level. In effect, it is worth noting that when entering in international investment agreements, either through BITs, or through investment chapters in FTAs, countries erode their policy space, by agreeing to prohibit most forms of LCIs. Likewise, the essence of BITs is to ensure level playing fields for foreign investment on the domestic market, with the aim to constrain the use of discriminatory instruments, such as those that favour local industries and factor of production.⁴⁰ Nevertheless, it should be noted that FTAs tend to be more flexible than BITs, even though the policy space is generally limited in time, with some derogations allowed on a temporary basis only.

Legal Framework of Local Content Underinternational Trade and Investment Rules: -

As highlighted earlier, it can be reiterated that LCIs are widely used across the world, in the developed and developing countries alike. Nevertheless, it is realized that despite their popularity and wide application, it has been observed that some local content measures are incompatible with the various international trade and investment commitments of countries. From this perspective, this section examines the paradox and nexus between local content and the trade and investment rules in general, with special focus on the WTO rulebook, the BITs and FTAs.

A Synopsis of Local Content Under the ‘WTO’ Rulebook: -

³⁶ Lec, S. 2011. “The Petroleum Sector Value Chain” in Silvana Tordo, Brandon S Tracy & Noora Arfa (eds.), “National Oil Companies and Value Chain”, World Bank Working Paper No 218, 2011, p. 9, available at: <http://siteresources.worldbank.org/INTOGMC/Resources/9780821388310.pdf>.

³⁷ Ibid., pp. 9–10

³⁸ Nwaokoro, E. 2011. “Signed, Sealed but Will it Deliver? Nigeria’s Local Content Bill and Cross-Sectoral Growth”, 4:1 Journal of World Energy Law and Business 56.

³⁹ The term ‘policy space’ in its current meaning appeared in 2002 in UNCTAD documents and acquired its first official status in the São Paulo Consensus of 2004. It is generally understood to be ‘the scope for domestic policies, especially in the areas of trade, investment and industrial development’ which might be ‘framed by international disciplines, commitments and global market considerations’.

⁴⁰ See Ramdoo, I. (2016). n 23.

First and foremost, it is worth noting that the GATT which preceded the advent of the WTO, has many rounds of negotiations that significantly constrained the use of a number of trade policy instruments⁴¹, frequently used in the past to foster industrial development.⁴² However, some of these measures such as quantitative restrictions (like quotas) or performance requirements are now completely proscribed. Similarly, it is realized that the scope of other measures has been heavily constrained. For instance, the WTO member states are requested to “bind⁴³” their tariff schedules and subsequently, to gradually reduce their rates. Besides, the conditions under which WTO members can raise their bound tariffs levels to protect their domestic products have been disciplined. Generally, it is worth noting that the various WTO agreements, notably the GATT, the Agreement on Trade-Related Investment Measures (TRIMs), the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the General Agreement on Trade in Services (GATS) - all contain rules that condition the design and application of LCIs. However, it is observed that in spite of this, the WTO agreements still provide a certain degree of flexibility to developing countries, enabling them to have more policy space to adopt certain policy measures, if these are needed to help them address their development concerns as will be critically illuminated and analyzed in the course of this section.

LCIs Under the General Agreement on Tariffs and Trade (GATT): -

Firstly, it should be noted that the ‘national treatment’ provision is a core principle that disciplines LCIs under the 1994 GATT, as specified in Article III. It sets out the legal basis regarding the treatment accorded to local goods providers compared to foreign producers. In particular, Article III:4 of GATT outlines the criteria that define the contours of the compatibility of LCIs with the principles of national treatment. Thus, for these to be so, the following three criteria must be met: (1) whether the imported products are accorded ‘less favourable treatment’ compared to local suppliers. This simply implies that a country is not allowed to discriminate between a foreign and a local supplier. In this regard, it is noted that all those measures that seek to reserve certain markets or require certain products to be procured only from domestic suppliers may fall in this category; (2) whether the imported goods and domestic products are considered as ‘like products’. Indeed, for this condition to apply, it is appropriate to determine the level of ‘likeness’ of the domestic products to the foreign products. However, it is realized that this is not obvious, despite clarifications brought by Panel reports⁴⁴ under the WTO Dispute Settlement Body, and the fact that ‘likeness’ can only be determined on a case- by-case basis⁴⁵; and (3) whether the measures are ‘inscribed’ in laws, regulations and requirements. This means that only measures that are clearly defined in legal instruments can be potentially disciplined. Consequently, it is noted that owing to the lack of clarity on the interpretation of the criteria regarding ‘likeness’, to some extent, thus, given considerable discretionary powers and hence, flexibilities, to countries to design certain measures in a way that would be difficult to discipline under GATT III:4.

In addition, Article III:5 of GATT states that internal quantitative regulations pertaining to the “*mixture, processing or use of products in specified amounts or proportions which requires, directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources*”. From this, it is realized that the Article bans the use of internal regulations regarding a specific

⁴¹ In 1982, under the pressure of foreign investors, the US government included the performance requirement issue on the GATT’s ministerial meeting agenda. Eventually, the outcomes indicated that some trade-related investment measures had been prohibited. See Ado. R. 2013. Local Content Policy and the WTO Rules of Trade-Related Investment Measures (TRIMs): The Pros and Cons. *International Journal of Business and Management Studies*. ISSN: 2158-1479;2(1): 137 – 146.

⁴² Chang, H-J. 2004. Regulation of Foreign Investment in Historical Perspective. *European Journal of Development Research* 16 (3): 687–715.

⁴³ While there is no specific threshold for countries to bind its tariffs, countries are however restricted to increase their tariffs within their bound rates. In other words, if countries want to raise their tariffs above the bound rates, this has to be negotiated against compensation to third parties who might be affected by such increases.

⁴⁴ For example, in the case Japan – Custom Duties, Taxes and Labelling Practices on Imported Wines and Alcoholic Beverages 1987, the panel offered up four criteria to assess the likeness of a products: (i) physical characteristics: the greater the physical identity of two products the more likely it is that they are interchangeable; (ii) functional likeness (end-uses): the extent to which two products do in fact perform the same function; (iii) tariff applications; and (iv) consumer tastes and habits (minor differences in taste and habits would not be enough to prevent a finding of likeness). Other relevant elements include substitutability: the extent to which consumers perceive two products as functionally equivalent, measured by the consumer’s willingness to substitute one for the other.

⁴⁵ See Working Party Report on Border Tax Adjustments (Border Tax), GATT B.I.S.D. II/18S/97 at para 18 (1947).

percentage of a product of domestic origin that must be used in the production of another product (e.g. that a specific proportion of domestically mined iron ore and coal is to be used in the fabrication of steel)⁴⁶. Equally, the compulsory reporting mechanisms, where companies are mandated to report on an annual basis on targets met for local procurement, pending penalties may be inconsistent with Article III:5 of GATT. In effect, in a 1994 dispute on “United States - Measures Affecting the Importation, Internal Sale and Use of Tobacco”⁴⁷, the panel concluded that the requirement for certification was an internal quantitative regulation relating to the use of tobacco in specified amounts or proportions which required, directly or indirectly, that a minimum specified proportion of tobacco be supplied from domestic sources, was inconsistent with the provisions of Article III:5⁴⁸. Conversely, it is realized that Article III:8 of GATT, excludes government procurement from the application of the provision of national treatment, which apparently falls under the purview of a plurilateral agreement, such as the Government Procurement Agreement, signed in 1996, applying only to its contracting parties.

Secondly, it is worth noting that the ‘*general elimination of quantitative restrictions*’ is provided in Article XI.1 of GATT. It prohibits the use of all forms of quantitative restrictions on imports and exports, including through quotas and licences or any other measures.⁴⁹ With an interpretative note⁵⁰ including restrictions made through state trading operations. Indeed, while the Article is clear about certain types of quantitative restrictions, such as quotas, bans or licences, a Panel Report of 1988 on “*Japan - Trade in Semi-conductors*” interpreted the scope of this article. The report commented that ‘*unlike other provisions of GATT, Article XI.1 did not refer to laws or regulations but more broadly to measures*’, which in their application, can have equivalent effects to mandatory requirements. The Report referred specifically to administrative structures that can be set up by governments to administer and monitor product specific costs, export prices and sales of products. With countries like China, Indonesia or Japan having such mechanisms in place. Therefore, it is realized that the interpretation of Article XI.1 limits the application of administrative mechanisms, through the restriction of the exportation or sale for export of products, irrespective of the legal status of the measure. Equally, the ‘*Non-automatic licencing systems*’ also fall within the scope of Article XI of GATT 1994. Therefore, from this, the various panel decisions have concluded that discretionary or non-automatic licensing requirements constitute restrictions prohibited by Article XI.1, as they are considered to have equivalent effects to quantitative restrictions. For instance, in several cases⁵¹ involving so-called ‘SLQ’ regimes⁵², where imports or exports licenses or permits were granted upon request, although no quotas were set for specific products, the Dispute Settlement Panel Reports noted ‘*that the SLQ regime was an import licensing procedure which would amount to a quantitative restriction unless it provided for the automatic issuance of licences*’. These interpretations confirm that discretionary or non-automatic licensing systems by their very nature operate as limitations on imports or exports, and thus are not permitted.⁵³

⁴⁶ See https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art3_e.pdf.

⁴⁷ In the 1994 panel report on “United States - Measures Affecting the Importation, Internal Sale and Use of Tobacco”, the panel examined a claim that the US Domestic Marketing Assessment (“DMA”) was inconsistent with Article III:5. The DMA legislation required each “domestic manufacturer of cigarettes”, as defined in the legislation, to certify to the Secretary of the U.S. Department of Agriculture (“USDA”) for each calendar year, the percentage of domestically produced tobacco used by such manufacturer to produce cigarettes during the year. A domestic manufacturer that failed to make such a certification or to use at least 75% domestic tobacco was subject to penalties in the form of a non-refundable marketing assessment (i.e. the DMA) and was required to purchase additional quantities of domestic burley and flue-cured tobacco.

⁴⁸ See https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art3_e.pdf

⁴⁹ See Paragraph 1 of Article XI reads as follows: No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licences or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

⁵⁰ Interpretative Notes from Annex I: Ad Articles XI, XII, XIII, XIV and XVIII: ‘Throughout Articles XI, XII, XIII, XIV and XVIII, the terms “import restrictions” or “export restrictions” include restrictions made effective through state -trading operations’. See https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art11_e.pdf.

⁵¹ See GATT Panel Report on EEC — Import Restrictions; Panel Report on EEC — Minimum Import Prices; Panel Report on Japan — Trade in Semiconductors

⁵² SLQ Regime refers to ‘*Régime sans limite de quantité*’ (*Regime without quantitative limit*).

⁵³ See Ramdoo, I. (2016). n 23., p. 17.

In addition to Article XI of GATT, the Agreement on Import Licensing Procedures further regulates administrative procedures pertaining to imports. In particular, the Agreement seeks to ensure that (non-automatic) import licensing procedures ‘are not utilized in a manner contrary to the principles and obligations of the GATT and are *‘implemented in a transparent and predictable manner’*. However, it is realized that the agreement does not apply to licensing rules per se (it applies only to procedures, with rules being covered under Article XI). Indeed, it is interesting to note that there is no equivalent Agreement to regulate procedures for export licensing (although rules are regulated under Article XI of the GATT), thus, implying that countries may have more flexibility to administer licences to control exports of their domestic products. Equally, it is realized that in cases where *‘restrictions on ports of entry’* may lead to increases in costs for importers or exporters and that the measure has a limiting effect on imports or exports, the measure will constitute a restriction on trade within the meaning of Article XI:1 of GATT and therefore is prohibited. Similarly, *‘enforcement measures’*, such as pecuniary penalties for non-compliance with quantitative restrictions may violate Article XI.1 of GATT. This is particularly relevant when fines are prohibitive; as was confirmed by a 2007 Panel decision in *Brazil – Retreaded Tyres*⁵⁴, where it was stated that *‘fines imposing limiting conditions in relation to the imports acts as a restriction on imports, within the meaning of Article XI.1’*. In the same token, the *‘combination of practices’* to regulate export of minerals has been examined and found inconsistent with Article XI.1 of GATT 1994. For instance, the Panel in China — Raw Materials found that China in imposing export quotas on bauxite, coke, fluorspar, silicon carbide and zinc and that for each of these minerals, stated that *“the series of measures operating in concert has resulted in the imposition of a restriction or prohibition on their exportation that are inconsistent with China’s obligations under Article XI:1”*.⁵⁵

Thirdly, it should be noted that *‘State Trading Enterprises (STEs)’*⁵⁶ are allowed but their activities⁵⁷ are disciplined under Article XVII of GATT. Conversely, it must be observed that the mere fact that imports or exports are conducted through STEs does not mean that in themselves they constitute a restriction. In this regard, the STEs need to operate in accordance with the principles of non-discrimination. In addition, their purchases and sales must be conducted in accordance with commercial considerations, including price, quality, availability, marketability, transportation and other conditions of purchase or sale, and shall afford the enterprises of the other contracting parties adequate opportunity to compete for participation in such purchases or sales.⁵⁸ Altogether, it is noted that many resource-rich countries have national bodies that are engaged in international commercial trading, including state owned companies⁵⁹ that have commercial operations. In this regard, it is appreciated that the provisions of

⁵⁴ The Panel analysed the fines as follows (See WTO Report WT/DS332/R):

“What is important in considering whether a measure falls within the types of measures covered by Article XI:1 is the nature of the measure. In the present case, we note that the fines as a whole, including that on marketing, have the effect of penalizing the act of “importing” retreaded tyres by subjecting retreaded tyres already imported and existing in the Brazilian internal market to the prohibitively expensive rate of fines. To that extent, we consider that the fact that the fines are not administered at the border does not alter their nature as a restriction on importation within the meaning of Article XI:1. In addition, the level of the fines — R\$400 per unit, which significantly exceeds the average prices of domestically produced retreaded tyres for passenger cars (R\$100–280) — is significant enough to have a restrictive effect on importation”

⁵⁵ See Panel Report, China — Raw Materials, para. 7.224.

⁵⁶ There is a lack of clarity on the definition of what a state trading enterprise is, or what state trading is. Through the GATT history, many attempts were made at such a definition, but all of them failed. This is therefore a major shortcoming in the efforts to enforce the transparency obligation under Article XVII. Article XVII nonetheless makes a distinction between various types of enterprises: a “State enterprise” or “any enterprise” that has been granted “formally or in effect, exclusive or special privileges” (paragraph 1(a)) including “Marketing Boards” (interpretative note to paragraph 1); “any enterprise” under the jurisdiction of a contracting party (paragraph 1(c)); and an “import monopoly” (paragraph 4(b)). See https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art17_e.pdf.

⁵⁷ The Working Party on STEs developed an illustrative list showing the kinds of relationships between governments and STEs, and the kinds of activities engaged in by STEs, which may be relevant for the purposes of Article XVII. Types of STEs include statutory marketing boards, export marketing boards, regulatory marketing boards, fiscal monopolies, canalising agencies, foreign trade enterprises, or boards or corporations resulting from nationalised industries. See G/STR/4.

⁵⁸ See Ramdoo, I. (2016). n 23., pp. 17-18.

⁵⁹ A state-owned enterprise (SOE) is a legal entity that is created by the government, in order to partake in commercial activities on the government's behalf. These can include production and commercialisation/trading activities. STEs are therefore a subset of SOEs, which can have broader mandates.

Article XVII of GATT may apply to the STEs if their operations and transactions influence the direction or volume of imports and exports of commodities.

LCIs Under the Trade-related Investment Measures (TRIMs): -

The Agreement is essentially focused on regulating investment measures affecting LCIs, which are believed to have a trade-distorting effect, because they are meant to favour the use of domestic products over imported products, and therefore affect trade.⁶⁰ In this regard, it is interesting to note that the term 'investment measures' is not limited to measures taken in regard to foreign investment only⁶¹, which are essentially regulated through GATS. Thus, the Agreement can have serious implications for industrial policies that are designed to support the development of domestic industries, or to limit the effects of foreign competition to foster local industrial capabilities and encourage linkages and value addition.⁶² Contrariwise, the TRIMs Agreement does not create any new rules or disciplines, but rather refer to existing provisions under the GATT, in particular to Article III and Article XI. In sum, governments are required to provide no '*less favourable treatment*' to investors (national treatment requirement) and must not impose quantitative restrictions or performance requirements on investments. Altogether, the scope of the TRIMs Agreement covers: (1) *local content requirements* as it bans in particular policies that require companies to use or purchase domestic products in order to avoid a penalty or to benefit from an incentive; (2) *trade balancing measures*, that is, policies that impose restrictions on or limit the import of inputs in accordance with its level of exports; (3) *foreign exchange balancing requirements*, that is, when policies require that the value of imports should be tied to the value of exports so that there is a net foreign exchange earnings.⁶³

In effect, it is important to note that the TRIMs Agreement covers goods only. Services are covered by GATS and export subsidies are covered by the Agreement on Subsidies and Countervailing Measures. Similarly, export performance and technology transfer requirements are not included in the TRIMs Agreement. Altogether, it is realized that even though the government of Cameroon has not notified the WTO of any measures that are inconsistent with its TRIMs commitments, the application of the TRIMs Agreement to LCIs provided in the 'illustrative list'⁶⁴, details potential measures that are inconsistent with the Agreement. In fact, this consistency being assessed on the two considerations that: (i) the investment measures must be trade-related, and (ii) must fall within the scope of the illustrative list, i.e. they must be: mandatory and enforceable under domestic law, although the panel decisions later confirmed that a simple advantage conditional on the use of domestic goods is considered to be a violation of Article 2 of the TRIMs Agreement, even if the local content requirement is not binding as such, form of performance requirements (mandatory local procurement of parts and components), and compliance is necessary to obtain an advantage. More specifically, other measures relating to exports, such as export incentives and export performance requirements, are however not covered by the TRIMs Agreement. Apparently, it is noted that despite the inconsistency discussed above, developing country can still take advantage of the provisions of Article 4 of the TRIMs Agreement⁶⁵, which permits the retention of TRIMs to the extent that the measures are consistent with the specific derogations permitted under Article XVIII of GATT 1994, by virtue of their economic development needs and subject to notification to the General Council, to introduce LCIs.

LCIs Under the Agreement on Subsidies and Countervailing Measures: -

The two principal forms that subsidies can be used to provide support to the development of industries are: the direct financial support to industries and the indirect support through favourable fiscal policies, duty exemptions or access to inputs at reduced rates.⁶⁶ Conversely, it is noted that the Agreement on Subsidies and Countervailing

⁶⁰ Interpretation given in the panel decision Indonesia – Autos.

⁶¹ This was clarified in the panel decision Indonesia – Autos.

⁶² See Ramdoo, I. (2016). n 23., pp. 18.

⁶³ Ibid.

⁶⁴ See Annex - Illustrative List, World Trade Organization (1995). "Marrakesh Agreement Establishing the World Trade Organization. Annex 1A: Multilateral Agreements on Trade in Goods - Agreement on Trade-Related Investment Measures", The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts (Geneva: World Trade Organization), pp. 163-167.

⁶⁵ See Article 4 of TRIMs allows developing countries to derogate temporarily from TRIMs obligations, as provided for by Article XVIII of GATT 1994 and related to WTO provisions of safeguard measures for balance of payments difficulties.

⁶⁶ Singh, H. and Jose, R. 2016. Industrial Policy and the WTO Rules-Based System. Overview Paper. E15

Measures (SCM Agreement)⁶⁷ prohibits the use of subsidies in two principal cases: (i) When countries take measures to support local content in the form of *export subsidies*, within the meaning of Article 3.1(a) of the Agreement.⁶⁸ An exception is made for developing countries (such as Cameroon) with a GNP per capita of less than US\$1,000, as listed under Annex VII⁶⁹ of the Agreement; (ii) When subsidies are granted to investors or industries contingent on the use of domestic products (*local content subsidies*), within the meaning of Article 3.1(b) of the Agreement⁷⁰. Accordingly, SCM Agreement is relevant only if subsidies have been ‘specifically’ provided to a company or industry or group of industries. Thus, it is realized that where subsidies are widely available within an economy (as a horizontal measure), they are not covered by the Agreement. In this regard, three types of “specificity” within the meaning of SCM Agreement are: (i) *Enterprise-specific subsidies*, where the governments provide subsidies only to a particular company or group of companies; (ii) *Industry-specific subsidies*, where the governments provide subsidies to a particular industrial sector or to a few sectors only; and (iii) *Regional specific subsidies*, where the governments provide subsidies to producers in specified parts of its territory. Similarly, it is realized that other forms of subsidies, such as production subsidies, are permitted, although they may be *actionable*, in the event that they cause *adverse effects*⁷¹ to the interests of other WTO members.

LCIs Under the General Agreement on Trade in Services (GATS): -

Explicitly, the LCIs having impacts on foreign investment and employment of local and foreign staff are regulated by the General Agreement on Trade in Services (GATS). The Agreement has distinguished the following four modes of supplying services: (i) *Cross-border trade*, understood to cover services flows from the territory of one member into the territory of another member (essentially through electronic means); (ii) *Consumption abroad*, where the consumer moves into another member's territory to obtain a service (the classic case is tourism); (iii) *Commercial presence*, where a service supplier establishes a territorial presence, including through ownership or lease of premises, in another territory to provide a service; and (iv) *Presence of natural persons*⁷², where foreign persons enter the territory of another country to supply a service. In this regard, it is noted that while the GATS recognises the right of WTO members to regulate the supply of services in pursuit of their own policy objectives, it nevertheless provides the framework to do so in a ‘*reasonable, objective and impartial manner*’. Therefore, it is observed that each mode of supply is guided by provisions regarding market access and national treatment in specifically designated sectors.⁷³ Conversely, unlike the GATT where all the provisions apply directly and automatically to all WTO members, the GATS have a two-track approach: (1) *general obligations*, which include

Expert Group on Reinvigorating Manufacturing: New Industrial Policy and the Trade System. Geneva

⁶⁷ The WTO Agreement on Subsidies and Countervailing Measures provides a definition of "subsidy" that has been accepted by all WTO members. Article 1 of the Agreement states that a "subsidy" exists when there is a "financial contribution" by a government or public body that confers a "benefit". A "financial contribution" arises where: (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees); (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); (iii) a government provides goods or services other than general infrastructure, or purchases goods; or (iv) a government entrusts or directs a private body to carry out one or more of the above functions. A "benefit" is conferred when the "financial contribution" is provided to the recipient on terms that are more favourable than those that the recipient could have obtained from the market.

⁶⁸ Article 3.1(a) of SCM Agreement prohibits the use of (subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.

⁶⁹ See Annex VII countries are Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

⁷⁰ See Article 3.1(b) of the SCM Agreement in particular prohibits the use of “subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods”.

⁷¹ There are three types of adverse effects: (i) there is injury to a domestic industry caused by subsidised imports in the territory of the complaining Member, this is the only basis for countervailing action; (ii) there is serious prejudice arising as a result of adverse effects (e.g., export displacement) in the market of the subsidising member or in a third country market; (iii) there is nullification or impairment of benefits accruing under the GATT 1994. Nullification or impairment arises most typically where the improved market access presumed to flow from a bound tariff reduction is undercut by subsidisation (see https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)

⁷² The Annex on Movement of Natural Persons specifies, however, that members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

⁷³ See the services sectoral classification list MTN.GNS/W/120

most-favoured nation (MFN) treatment, transparency, exceptions for regional integration, have a universal coverage; and (2) *obligations concerning market access and national treatment*, contained in individual countries' schedules of commitments. However, the scope of those commitments varies significantly across countries.

Altogether, the provisions under the GATS that are relevant to LCIs, are contained in market access and national treatment clauses. In particular, Article XVI, which relates to market access, requires countries that have scheduled commitments, not to maintain or adopt, unless expressly specified therein: limitations on the *number of service suppliers* whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; limitations on the *total value of service transactions* or assets in the form of numerical quotas or the requirement of an economic needs test; limitations on the *total number of service operations* or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test⁷⁴; limitations on the *total number of natural persons* that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test; measures which restrict or require specific *types of legal entity* or joint venture through which a service supplier may supply a service; and limitations on the *participation of foreign capital* in terms of maximum percentage limit on foreign share-holding or the total value of individual or aggregate foreign investment. Therefore, as with GATT, countries that have scheduled commitments in services related to the extractive sector (i.e. their commitments apply to mining as well as petroleum activities), unless they have expressly stated exceptions, are restricted in their ability to use LCIs to: (i) *protect domestic suppliers* with Article XVI.2(a)–(c) regulating any forms of measures (quantitative and qualitative) that countries can impose on foreign operations, service suppliers and transactions; (ii) *limit employment* of expatriates in lieu of local workforce with Article VI.2(d) restricting the ability to impose LCIs to secure employment of local workforce. This is relevant for specific job categories, obligations to use local workforce by sub-contractors and those indirectly involved in supplying services to the mineral sector; and (iii) *impose ownership requirements* with Article XVI. 2(e–f) restricting LCIs in the form of joint ventures, equity participation, maximum foreign ownership and obligation of state participation.

Moreover, Article VIII of GATS allows monopolies and exclusive service suppliers, to the extent that there is no discrimination made to foreign suppliers in the supply of the service in the domestic market (i.e. that the monopoly does not act in a manner that is inconsistent with Article II of GATS relating to MFN). For example, Original Equipment Manufacturers (OEMs), which are generally given exclusive access to capital equipment, in particular because they offer guarantees on spare parts and other after sales-services, may fall under this category if market access is restricted. However, national treatment provisions are contained in Article XVII of the GATS, which require that WTO members should not impose discriminatory measures that would benefit domestic services or service suppliers over foreign suppliers. The key requirement is not to modify, in law or in fact, *the conditions of competition* in favour of the domestic service industry. Thus, like with market access, the extension of national treatment in any particular sector can be made subject to conditions and qualifications, which must be inscribed in the schedule of commitments. Indeed, it is noted that while the GATS cover the essence of elements that may impact of the flow of trade in services, its *scope* is however limited, compared to the GATT. For instance, it is observed that not all services-related negotiations could be concluded within the time frame of the Uruguay Round.⁷⁵ These include, in particular, rules and disciplines for domestic regulation (Article VI), emergency safeguards (Article X), government procurement (Article XIII), and subsidies (Article XV). Apparently, it is noted that since negotiations have not been concluded on these issues, they fall outside the scope of the Agreement.

Furthermore, it is observed that while all countries are required to have a schedule of specific commitments, which identifies the services for which the latter guarantee market access and national treatment and any limitations that may be attached; in reality developing countries have made very shallow commitments, leaving them with a lot of policy space to regulate their services, according to their national policy objectives. More importantly, it is noted that GATS's core obligations adopts a "*positive list*" approach to market access and national treatment. This, thus, implies that market access and national treatment commitments under the GATS *only apply if and to the extent that the WTO Member has expressly "scheduled" the relevant services sector in its Schedule of Commitments*. As a result, countries retain significant margins of manoeuvre to design and implement local content policies in

⁷⁴ This does not cover measures of a member which limit inputs for the supply of services.

⁷⁵ Therefore, the GATS set out a work programme which is normally referred to as the "built-in" agenda.

service sectors that are not specifically identified in their schedules.⁷⁶ However, it is also noted that the GATS Schedule of Commitments adopts a ‘negative list approach’, that is, a specific commitment in a given sector or sub-sector applies to the whole of that sector, that is, all services included in that sector or sub-sector are covered by the commitment. In this perspective, it is worth observing that if a country wants to restrict market access with respect to certain services falling within the scope of a sector or sub-sector, it needs to set out the restrictions or limitations on access in its schedule.

LCIs Under the Plurilateral Agreement on Government Procurement: -

As highlighted above, it is worth noting that the multilateral disciplines provided under the GATT and the GATS do not regulate government procurement. However, to respond to political pressures to address discriminatory treatment in favour of local suppliers for government transacted businesses, particularly regarding the tendering procedures for contracts above a certain financial threshold⁷⁷, some WTO members usually agreed to negotiate a plurilateral agreement on Government Procurement (GPA), whose scope is limited only to its signatories. Although the WTO’s GPA is the main instrument regulating government procurement in the international economy, it has been considered by many to be of questionable efficacy for several reasons. On the one hand, it binds only a subset of the WTO’s member governments, while on the other hand, it is a plurilateral treaty. Moreover, WTO members choose whether or not to sign the GPA and simply being a member of the WTO does not necessitate agreeing to the GPA. In fact, it is realized that GPA entered into force in 1996 and its schedules were revised in 2012.⁷⁸ The Agreement is applicable only to the 19 parties⁷⁹ comprising 47 WTO members⁸⁰ that have acceded to it, although all WTO members are eligible to join.⁸¹ Thus, it is worth noting that non-discrimination between local and foreign suppliers is the cornerstone of GPA. The use of offsets is explicitly excluded from GPA but it is observed that developing countries can benefit from certain flexibilities if they join the GPA. However, it is noted that despite the flexibilities granted to developing countries, no African country is a signatory of the GPA except for Cameroon even though not a signatory to the WTO Agreement on Government Procurement, it is an observer to the WTO Committee on Government Procurement.⁸²

An Overview of Local Content Under Bilateral Obligations: -

Explicitly, in addition to the multilateral obligations, resource-rich countries equally have contractual obligations with their extractive companies and/or have signed up to bilateral treaties, such as investment agreements or free-trade agreements. Those agreements, generally in favour of investors, have attempted to go beyond the scope of the provisions of the WTO, either by deepening the limitations or by adding new commitments that currently

⁷⁶ GIZ, 2016. Space for Local Content Policies and Strategies. A Crucial Time to Revisit an Old Debate. Report prepared by the Columbia Centre for Sustainable Investment.

⁷⁷ While the GATT and TRIMs are based on a positive list approach (i.e. countries agree to liberalise only those sectors that are put forward in their respective list of commitments, the GPA is based on a negative list approach, which means that rules apply to all sectors except those that the countries chose not to include in the Agreement, as reflected in their respective schedules of commitments).

⁷⁸ The coverage Schedule of the Revised GPA can be found on:

http://www.wto.org/english/tratop_e/gproc_e/gp_app_agree_e.htm#revisedGPA

⁷⁹ The EU and its 27 countries are considered as one party, but as 28 members.

⁸⁰ These are Armenia, Canada EU, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxemburg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom, Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia, Bulgaria and Romania, Croatia, Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Moldova, Montenegro, Aruba (Netherlands on behalf of), New Zealand, Norway, Singapore, Switzerland, Chinese Taipei, Ukraine, US.

⁸¹ At present, ten WTO members are in the process of acceding. These are China, New Zealand, Montenegro, Albania, Georgia, Jordan, Kyrgyz Republic, Moldova, Oman and Ukraine. Five other WTO members have undertaken commitments, in their WTO accession protocols, to initiate accession to the GPA. They are the former Yugoslav Republic of Macedonia, Mongolia, the Russian Federation, Saudi Arabia and Tajikistan. An additional 17 countries are observers. These are Argentina, Bahrain, Cameroun, Chile, Colombia, Costa Rica, India, Indonesia, Kazakhstan, Malaysia, Panama, Pakistan, Seychelles, Sri Lanka, Thailand, Turkey, Vietnam.

⁸² See Ramdoo, I. (2016). n 23., pp. 22-23.

fall outside the scope of the WTO.⁸³ These have, however, significantly constrained the policy space of resource-rich countries to use LCIs. Therefore, even though the WTO provides a number of rules regarding LCIs, these are nevertheless seen as not sufficient by investors. In this regard, four main reasons are advanced to justify the need for more and stricter rules: (i) There has not been a single dispute case at the WTO pertaining to LCIs in the extractive sector until now, this might be because 90% of mineral-rich countries have some form of local content policies.⁸⁴ Thus, despite the fact that many measures can potentially be disputed, the countries are not willing to bring a dispute against another WTO member, for fear of retaliation. In the same token, investors see the WTO State-to-State dispute mechanism as a weakness; (ii) The scope of the TRIMs Agreement is seen as limited, in particular regarding investment rules⁸⁵. Similarly, for the GATS coverage, in particular, many countries have not scheduled specific commitments regarding mineral-related services; (iii) The WTO is perceived to be too flexible, and the interpretation of rules is not always straightforward. This is because panel decisions can be upheld or reversed in case of appeal, creating uncertainty over the rulings; and (iv) WTO does not provide financial compensation to investors in case a country is found in breach of the rules while investors might have incurred business losses and paid financial penalties for non-compliance to domestic rules and LCIs. Consequently, it is worth noting that for these reasons, there has been a proliferation of Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs) in response to the willingness to secure higher levels of protection, and the design of stricter rules to ensure a more predictable business environment and safety net to stakeholders.

Impact of Bilateral Investment Treaties on Local Content Initiatives:-

Unequivocally, BITs are international agreements between two or more countries that lay down the terms and conditions of foreign private investment between parties to the Agreement. Thus, in this contemporary era, there are about 3,000 BITs in force globally⁸⁶, all of which have been designed to create and secure a favourable investment environment and set out disciplines and rules regarding the treatment of foreign investments. Explicitly, the United Nations Conference on Trade and Development (UNCTAD) stated that as of the end of 2013, 793 BITs had been concluded by African countries, representing 27% of the total number of BITs worldwide⁸⁷ - with more agreements currently under negotiation. Equally, as earlier mentioned, there is no known dispute settlement case relative to LCIs in the extractive sector brought for dispute settlement at the WTO. Besides, in the case of BITs, with over 600 known cases, 25% of them are in the mining, oil and gas sector⁸⁸, although not all of them relate to local content policies. With sub-Saharan African (SSA) countries increasingly subject to investors-state disputes, regarding mineral resources. For instance, out of all known cases registered under the International Centre for Settlement of Investment Disputes (ICSID), 16% were from SSA.⁸⁹ Moreover, in 2014, 20% of the overall new cases under the ICSID were from SSA.⁹⁰ Thus, this apparently reveals the power of BITs as instruments to curb government's ability to use LCIs to stimulate the development of the local supply chains, downstream industries and employment creation and the resulting challenges to conduct legitimate industrial policies for structural transformation away from commodity dependency.

⁸³ See Ramdoo, I. (2016). n 23., p. 25.

⁸⁴ McKinsey Global Institute. 2013. *Reversing the Curse: Maximizing the Potential of Resource-Driven Economies*. December.

⁸⁵ TRIMs do not bring any new rules on investment, it only clarifies measures under Article III and IX.

⁸⁶ International Institute for Sustainable Development (IISD). 2014. *Bilateral Investment Treaties, Mining and National Champions: Making it Work*. Background paper for the Ad Hoc Expert Group Meeting: Bilateral Investment Treaties and National Champions. 18th Meeting of the Inter-Governmental Committee of Experts "National Champions, Foreign Direct Investment and Structural Transformation in Eastern Africa. Kinshasa, February 17-20, 2014.

⁸⁷ Mohamadieh, K. and Uribe, D. 2016. *The Rise of Investor-State Dispute Settlement in the Extractive Sectors*. Research Papers 65, South Centre, Geneva, February.

⁸⁸ International Institute for Sustainable Development (IISD). 2014. *Bilateral Investment Treaties, Mining and National Champions: Making it Work*. Background paper for the Ad Hoc Expert Group Meeting: Bilateral Investment Treaties and National Champions. 18th Meeting of the Inter-Governmental Committee of Experts "National Champions, Foreign Direct Investment and Structural Transformation in Eastern Africa. Kinshasa, February 17-20, 2014.

⁸⁹ Mohamadieh, K. and Uribe, D. 2016. *The Rise of Investor-State Dispute Settlement in the Extractive Sectors*. Research Papers 65, South Centre, Geneva, February.

⁹⁰ Ibid.

Conversely, there have been growing criticisms against BITs of having an ‘in-built dissuasive mechanism’, in that arbitral awards to compensate investors’ losses against government practices, including regarding the implementation of local content policies, can be very costly. For instance, in 2010, Ecuador lost two cases against Chevron, costing the country the equivalent of 3.3% of its GDP and in 2014, three arbitral awards for a total amount of US\$50 billion were decided against Russia in the cases brought by Yukos oil company.⁹¹ Similarly, in response to the surge of disputes and the consequent financial costs to governments, a number of developing countries are seeking to review their approaches to investment protection treaties. Some have set a moratorium on new agreements pending a review while others like South Africa, Indonesia, Ecuador and Bolivia have chosen to withdraw from all or some treaties. With South Africa aiming to replace BITs with a domestic legislation on investment entitled “Promotion and Protection of Investment Bill”. Equally, Indonesia and India are designing a model BIT, while Ecuador is defining its relations with investors on a case-by-case basis as enshrined in the investment contracts.⁹² However, one of the challenges with these current reviews is that some protections provided for in BITs may continue to exist even beyond the legal life of the agreements, as most BITs have ‘survival clauses’ that can apply for up to 15 years after termination of the agreement. The US BIT Model for instance, provides that for ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments. This implies that, in case investors feel that the new legal arrangements are less favourable than the BITs, they can still invoke BITs to bring countries to arbitration, even after the Agreement has been terminated.⁹³

Effect of Free Trade Agreements on Local Content: -

Generally, investment chapters contained in Free Trade Agreements (FTAs) contain legal obligations that may affect the use of local content policies. Their scope and coverage vary significantly. Thus, it is observed that by including investment chapters in their FTAs, parties seek to go beyond the GATS provisions. Like with BITs, it is realized that new generation FTAs have more stringent disciplines that curtail the use of LCIs. However, it is noted that few FTAs signed by developing countries include ‘WTO plus’ disciplines on LCIs. In this regard, it is worth noting that one notable exception is the introduction of explicit disciplines on export taxes, generally allowed under the WTO. Explicitly, the European Union (EU) is currently negotiating Economic Partnership Agreements (EPAs) with 76 of its former colonies in Africa, the Caribbean and the Pacific (ACP).⁹⁴ The EPAs are essentially FTAs that envisage the creation of a free trade area between the EU and ACP countries, in which there are no duties on goods imported and exported between these countries. Similarly, it is worth noting that FTAs, such as EPAs, are based on the principle of reciprocity – that is, when one party to the agreement makes a concession by lowering its tariffs on goods, the other parties reciprocate by lowering their tariffs too.⁹⁵

Purview of Local Content Commitments of Cameroon: -

Explicitly, it is pertinent to highlight that Cameroon as a founding member of the WTO, acceded it in 1995.⁹⁶ It has also signed multiple bilateral and multilateral trade and investment agreements. Indeed, it provides at least most-favoured-nation (MFN) treatment to all its trading partners, while equally enjoying numerous facilities provided by the WTO and its partners, which have enabled it to participate effectively in the multilateral trading system (MTS), to benefit from its rules, and to promote the development of its trade.⁹⁷ Consequently, the WTO Agreements are an integral part of Cameroon's internal law and can be invoked directly in its courts. This is by virtue of the provisions of its Constitution.⁹⁸ In fact, Article 45 of the Constitution states that “international treaties and agreements that have been duly approved or ratified, take precedence over domestic laws once they have been published, provided that they are implemented by the other party”.⁹⁹ Besides, it should be accentuated that this has been corroborated by the

⁹¹ Ibid.

⁹² Ibid.

⁹³ From 2012, the US BIT Model is accessible online: <http://www.state.gov/documents/organization/188371.pdf>.

⁹⁴ See https://www.southcentre.int/wp-content/uploads/2015/05/AN_EPA33_Ratification-of-the-EPA-The-case-of-Cameroon_EN.pdf. p. 4.

⁹⁵ Ibid.

⁹⁶ The Marrakesh Agreement Establishing the WTO was ratified by Decree No. 5/194 of 26 September 1995.

⁹⁷ Cameroon-WT/TPR/S/187, https://www.wto.org/english/tratop_e/tptr_e/s187-02_e.doc.

⁹⁸ See Articles 43, 44 and 45 of Law No. 2008/1 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 amending the Constitution of 2 June 1972.

⁹⁹ Ibid.

provisions of its Investment Charter¹⁰⁰, which has provided the necessary measures for the implementation of international trade and investment agreements in Cameroon.

Coupled with these, the WTO and other major donors have also set up various technical committees for consultation and follow-up, of the economic programmes with the government of Cameroon. These have as objectives to ensure that the development strategies are truly operational, to speed up the reform of government finance, and to expand and reinforce the external control powers. In the same token, it is worth noting that the National Technical Committee for the Follow-up of the Marrakesh Agreements in Cameroon, was reorganized and renamed in 2006, as the National Technical Committee on Follow-up of the WTO Agreements.¹⁰¹ It has responsibility to examine and evaluate the impact of the agreements on the economy of Cameroon; to identify the implementation problems, propose appropriate solutions to the government with a view to define a national position, and to monitor the implementation of these proposals in the context of trade negotiations.¹⁰² In sum, as reiterated earlier, this section will assess the paradox, that is, nexus, compatibility and challenges of LCIs under the WTO rules (GATT, TRIMs, GATS, SCM Agreement and Plurilateral Agreement on Government Procurement), the BITs and FTAs, and the degree of policy space left for Cameroon in general, to conduct their legitimate economic objectives. Likewise, it examines the commitment and contour on how LCIs can be designed and implemented in Cameroon.

Commitments Under the WTO Rulebook on Local Content: -

Firstly, with respect to GATT, it should be noted that although Cameroon does not have rules of origin for non-preferential purposes, nonetheless as a member of the CEMAC Customs Union (community), it does have the community's rules of origin for preferential purposes. In fact, it is worth accentuating that these rules can, in principle, also be applied for non-preferential purposes. However, it is realized it has not yet notified the WTO of any rules of origin, whether preferential or non-preferential.¹⁰³ Appositely, the community's origin status is given to: products that are entirely obtained in the CEMAC member countries¹⁰⁴, local raw materials, and products made in the CEMAC territory.¹⁰⁵ Likewise, to be considered as such, manufactured products must be made from raw materials of community origin whose value is at least 50 per cent of the total of all raw materials used¹⁰⁶, or must contain domestic added value that is at least 40 per cent of the ex-factory price.¹⁰⁷ More so, it is worth highlighting that once the Generalized Preferential Tariff (GPT) of the Economic Community of Central African States (ECCAS) is operational, other rules of origin will enter into force, at the CEMAC level, to reduce the incorporation threshold for raw materials of community origin to 35 per cent.¹⁰⁸ Besides, in Cameroon, the Chamber of Commerce, Industry, Mines and Handicrafts (CCIMA), has responsibility to issue certificates of origin of goods for export (with the exception of specific provisions resulting from international obligations). Consequently, for the purposes of applying the CEMAC GPT, community origin is thus attested by the CEMAC Movement Certificate.¹⁰⁹

In the same token, it is worth noting that discretionary or non-automatic licensing requirements constitute restrictions prohibited by Article XI.1 of GATT 1994; as they are considered to have equivalent effects to quantitative restrictions. For instance, in several cases¹¹⁰ involving so-called 'SLQ' regimes¹¹¹, where imports or

¹⁰⁰ The investment code applicable to investment activities in Cameroon before now was instituted by ordinance No. 90/007 of 09 November 1990 as amended by Law No. 2002-004 of 19 April 2002 (the Investment Charter), today it is replaced by Law No. 2013/004 of 18 April 2013 to lay down Private Investment Incentives in Cameroon.

¹⁰¹ WTO Document G/RO/63 of 3 November 2006.

¹⁰² See Decree No. 2006/0069/PM of 12 January 2006.

¹⁰³ WTO Document G/RO/63 of 3 November 2006.

¹⁰⁴ For example, minerals mined from the land or seabed; products of agriculture, fishing or hunting; and products made in a company managed or run by one or several citizens of one or several member States by exclusively using the products of hunting or fishing.

¹⁰⁵ CEMAC Customs Code and Decision No. 7/93-UDEAC-556-CD-SE1, modified by Decision No. 1/98-UDEAC-1505-CD-61.

¹⁰⁶ Up to 1 January 2003, the percentage was 40 per cent, and will be raised to 60 per cent on 1 January 2008.

¹⁰⁷ Up to 1 January 2003, the percentage was 30 per cent, and will be raised to 50 per cent on 1 January 2008.

¹⁰⁸ Decision No. 03/CEEAC/CCEG/XI/04.

¹⁰⁹ Chapter III of Decision No. 7/93-UDEAC-556-SE1.

¹¹⁰ See GATT Panel Report on EEC — Import Restrictions; Panel Report on EEC — Minimum Import Prices; Panel Report on Japan — Trade in Semiconductors

¹¹¹ SLQ Regime refers to 'Regime sans limite de quantité'.

exports licenses or permits were granted upon request, although no quotas were set for specific products, the Dispute Settlement Panel Reports noted *'that the SLQ regime was an import licensing procedure which would amount to a quantitative restriction unless it provided for the automatic issuance of licences'*. These interpretations confirm that discretionary or non-automatic licensing systems by their very nature operate as limitations on imports or exports, and thus are not permitted.¹¹² In this regard, Cameroon has notified its replies to the questionnaire on import licensing procedures to the WTO in 2004, stating that it does not have import licensing regimes.¹¹³

Secondly, with regard to TRIMs Agreement, it should be highlighted that Cameroon acceded to it in 1995. Explicitly, the Agreement is essentially focused on regulating investment measures affecting LCIs, since they are believed to have a trade-distorting effect, and are meant to favour the use of domestic products over imported products, and therefore affect trade. Apparently, it is worth noting that despite the inconsistency of the agreement as discussed above, Cameroon as a developing country can take advantage of the provisions of Article 4 of the TRIMs Agreement¹¹⁴; which permits the retention of TRIMs to the extent that the measures are consistent with the specific derogations permitted under Article XVIII of GATT 1994, by virtue of their economic development needs and subject to notification to the General Council. In this regard, it is realized that the application of LCIs under the TRIMs Agreement is very flexible to an extent.

Thirdly, it is noted that SCM Agreement prohibits the use of subsidies in two principal cases. On the one hand, it prohibits when countries take measures to support local content in the form of export subsidies, within the meaning of Article 3.1(a) of the Agreement. With exceptions provided to developing countries (such as Cameroon) with a GNP per capita of less than US\$1,000, as listed under Annex VII of the Agreement; and on the other hand, when subsidies are granted to investors or industries contingent on the use of domestic products (local content subsidies), within the meaning of Article 3.1(b) of the Agreement. Accordingly, SCM Agreement is relevant only if subsidies have been 'specifically' provided to a company or industry or group of industries. Similarly, other forms of subsidies, such as production subsidies, are permitted, although they may be actionable, in the event that they cause adverse effects to the interests of other WTO members. In this perspective, Cameroon has not yet notified any contingency trade measures to the WTO. Conversely, the application of anti-dumping duties, countervailing duties and safeguard measures in Cameroon is governed by the 1998 Law, its 2005 text of application, and regional regulations. Therefore, in case of any inconsistency between the 1998 Law and the Articles of GATT 1994, SCM Agreement and other WTO Agreements on Safeguards, all of which have been duly ratified by Cameroon as a single undertaking, the international trade and investment agreements shall prevail.¹¹⁵ Coupled with this, Article 1 of the 1998 Law states that *"This law regulates dumping and establishes rules for the marketing of subsidized imported products, increased quantities of which are likely to cause serious injury to the domestic industry that produces like or directly competitive products"*. From this, it is realized that Articles III.5 and III.7 of GATT 1994, Article 5 of SCM Agreement, as well as Article 1 and other Articles¹¹⁶ of the 1998 Law clarify and provide further details on the

¹¹² See Ramdoo, I. (2016). n 23., p. 17.

¹¹³ WTO Document G/LIC/N/3/CMR/1 of 17 December 2004.

¹¹⁴ See Article 4 of TRIMs allows developing countries to derogate temporarily from TRIMs obligations, as provided for by Article XVIII of GATT 1994 and related to WTO provisions of safeguard measures for balance of payments difficulties.

¹¹⁵ See Article 45 of Law No. 2008/1 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 amending the Constitution of 2 June 1972.

¹¹⁶ With Article 22 of the 1998 Law, establishing the Anti-Dumping and Subsidies Committee, specifying that the Committee is an advisory body responsible for issuing an opinion on dumping practices and on the files, it receives relating to subsidies or imports that cause, or threaten to cause, serious injury to a domestic industry. The 1998 Law already has implementing regulations as contained in the 2005 Decree establishing the composition of the Anti-Dumping and Subsidies Committee and its operating and referral procedures. Thus, Articles 19, 20, 21, 22, 23, 25 and 26 of Decree No. 2005/1362/PM of 6 May 2005 provide further information regarding consultation procedures for interested parties and the publication of such notices, which may only contain non-confidential information. The Ministry of Trade decides whether or not to apply contingency measures, and the Ministry responsible for Finance decides on the nature of the actual measures. Therefore, according to the provisions of 1998 Law, dumping occurs when the sale price of the imported good is lower than that "normally" charged by the supplier of the product or a like product in the exporting country or a third country. Once injury to domestic production has been established by the Anti-dumping and Subsidies Committee, an anti-dumping duty, whose rate must not exceed the margin of

issue of anti-dumping and subsidies. In the same token, the provisions of the WTO Agreement on Anti-Dumping and Countervailing Duties have been incorporated into the CEMAC Customs Code. The procedures for implementation and the rates of countervailing or anti-dumping duties are established by decisions of the UEAC Council of Ministers. According to the authorities, no countervailing or anti-dumping duty has been applied by CEMAC during the period under consideration.

Similarly, in Cameroon, standardization is regulated by Law No. 96-117 of 5 August 1996, establishing the National System of Standardization and the National Quality Mark. Thus, in 2005, Cameroon notified the WTO of the replacement of the Committee for Standardization and Quality with the Division of Standardization and Quality (DNQ)¹¹⁷, under the Ministry of Industry, Mines and Technological Development (MINIMIDT). Indeed, DNQ is a national enquiry point for all questions concerning technical barriers to trade and sanitary and phytosanitary measures, and as the body dealing with notification procedures. It is responsible for standardization in Cameroon (including drawing up regulations in collaboration with the relevant departments, quality control and the accreditation of offices responsible for standardization and bodies responsible for certification). It includes the Committee on Standards and Certification (CNC), the Committee for Promotion and Assistance, and the Centre for Analyses and Tests. Equally, the Ministry of Trade (MINCOM) also has a standardization committee - Committee for Standardization and Consumer Protection (CNPC), which is responsible for metrology, and the dissemination of standards on products put on the consumer market, particularly labelling, quantity and quality. However, Cameroon has not yet made any notifications to the WTO regarding standards and technical requirements, or sanitary and phytosanitary measures.

Fourthly, the LCIs having impacts on foreign investment and employment of local and foreign staff are regulated by GATS. As discussed in section two above, it is observed that while all countries are required to have a schedule of specific commitments, which identifies the services for which the latter guarantee market access and national treatment and any limitations that may be attached; in reality developing countries have made very shallow commitments, leaving them with a lot of policy space to regulate their services, according to their national policy objectives. More importantly, it is noted that GATS's core obligations adopts a "positive list" approach to market access and national treatment. This, thus, implies that market access and national treatment commitments under the GATS only apply if and to the extent that the WTO Member has expressly "scheduled" the relevant services sector in its Schedule of Commitments. As a result, countries retain significant margins of manoeuvre to design and implement local content policies in service sectors that are not specifically identified in their schedules. However, it is also noted that the GATS Schedule of Commitments adopts a 'negative list approach', that is, a specific commitment in a given sector or sub-sector applies to the whole of that sector, i.e. all services included in that sector or sub-sector are covered by the commitment. If a country wants to restrict market access with respect to certain services falling within the scope of a sector or sub-sector, it should set out the restrictions or limitations on access in its schedule. In this regard, although Cameroon has made specific commitments under the GATS only with respect to tourism and travel-related services, its commitments are limited and do not reflect the effective opening up of its tourism market. They mainly concern commercial presence, restricted by specific criteria in the approval agreement, for instance, the use of inputs produced in Cameroon for at least 25% of the total value and a minimum of 35% of the registered capital of the company concerned must be held by Cameroonians or a legal person under Cameroonian law. The commitments also include requirements to create jobs for Cameroonians. As regards market access, the measures concerning the presence of natural persons have not been bound, with the exception of those concerning the entry and temporary residence of certain categories of employee identified in the horizontal commitments.

Altogether, it is worth noting that the concessions made by Cameroon during the Uruguay Round are contained in Schedule CIII in the case of tariff bindings (Chapter III(2)(iii)(c)) and document GATS/SC/15 for specific commitments under GATS (Chapter IV(5)). It did not take part in the WTO negotiations on basic telecommunications or those on financial services. Indeed, as a developing country, Cameroon benefited from the transitional period to implement a number of the provisions in various WTO Agreements, such as the Customs

dumping and which may be in place only for the time necessary to offset the dumping, may be imposed. Equally, countervailing duties may be imposed on subsidized imported products whose distribution threatens or causes adverse effects to the domestic industry because of the price difference between the imports and the domestic products, the aim being to remove the adverse effects.

¹¹⁷ The DNQ is also the national contact for the International Standardization Organization (ISO).

Valuation Agreement and the Agreement on Import Licensing Procedures. Equally, it is observed that after Cameroon availed itself of the five-year delay period granted to developing countries to implement the WTO Customs Valuation Agreement, in January 2001, the authorities requested anew delay period on the basis of Paragraph 1 of Annex III of the Agreement, until 1 July 2001. Moreover, it should be noted that the CEMAC Customs Code has been revised by inserting the decisions and regulations incorporating therein the WTO Customs Valuation Agreement, which are implemented in Cameroon by virtue of Law No. 2001/008 of 30 June 2001 on customs valuation. Consequently, since July 2001, Cameroon has applied the WTO Customs Valuation Agreement, with exceptions. Conversely, the provisions of the Agreement are not applicable to goods subject to reference prices or minimum values, and used goods. Equally, in 2001, Cameroon notified the WTO that it would apply minimum values (*'valeurs mercuriales'*) for a transition period of three years. However, up to May 2007, the minimum values still apply to goods such as second-hand tyres, second-hand clothing, second-hand goods, fabrics, and all imports from Asia. Apparently, the minimum values are also established for products such as textiles, meat and offal, biscuits, salt, imported sugar, alcoholic beverages and cigarettes. In the same token, reference values for frozen fish were eliminated in September 2006. Therefore, a list of products and services whose prices and tariffs are subject to the prior approval procedure has been established.

Commitments Under the Plurilateral Agreement on Government Procurement: -

As reiterated above, the WTO's GPA is the main instrument regulating government procurement in the international economy, even though it binds only a subset of the WTO's member governments. The principle of non-discrimination between local and foreign suppliers is thus regarded as the keystone of GPA. Although it is observed that developing countries (like Cameroon) can benefit from certain flexibilities if they join the GPA. However, despite the flexibilities granted to developing countries, it is observed that no African country is a signatory of the GPA with the exception of Cameroon, even though not a signatory to the WTO's GPA, is an observer to the WTO Committee on Government Procurement.¹¹⁸ Thus, to ameliorate the situation and ensure transparency and accountability, the government of Cameroon has continuously reformed its procurement policy in line with international standard by establishing a Government Procurement Regulatory Agency (ARMP) in 2001¹¹⁹, and introducing new regulatory frameworks¹²⁰. These reforms have led to the putting in place of a Procurement Code¹²¹, which established rules for signing, executing and monitoring of government procurement contracts for work, supplies, general services, and intellectual services. The Code applies to all state orders worth CFAF 5 million or more. In principle¹²² government procurement contracts are signed inclusive of all taxes.¹²³ The splitting of a contract is considered to be a violation of the regulations.¹²⁴ Even though ARMP, which is under the supervision of the Presidency of the Republic, is responsible for regulating and monitoring the government procurement system. It equally functions in preparing model documents and procedure handbooks, publication of the Government Procurement Journal (*Journal des marches publics*), monitoring the application of regulations, and collecting

¹¹⁸ See Ramdoo, I. (2016). n 23., pp. 22-23.

¹¹⁹ See Decree No. 2001/048 of 23 February 2001, on the setting up, organization and functioning of the Government Procurement Regulatory Agency (ARMP).

¹²⁰ These include: Order No. 032/CAB/PM of 28 February 2003, establishing the application of procedures for requests for price quotation; Order No. 070/CF/A/MINFI/B of 20 June 2003 on the delegation of the ARMP Director General's powers as commissioner; Decree No. 2003/651 of 16 April 2003, establishing the modalities for the application of the Government Procurement Tax and Customs Regime, and Order No. 004/CAB/PM of 7 January 2005, setting up the commission empowered to sign government procurement contracts with certain ministerial departments.

¹²¹ See Decree No. 2018/366 of 20 June 2018 amending the provisions of Decree No. 2004/275 of 24 September 2004, on the Government Procurement Code; and Circular No. 004/CAB/PM of 30 December 2005, on the Government Procurement contract signing procedure.

¹²² African Development Bank Programme contracts are before tax (VAT and special tax on the sale of petroleum products (TSPP)), according to Note No. 057/CF/MINEFI/DI/ of 20 July 1999. A similar situation exists for all other contracts signed in the same conditions with the State (Ministry of the Economy and Finance, Directorate-General of Taxes, "Présentation de la Direction générale des impôts". Consulted at: http://www.impots.gov.cm/cadre_organisation.htm).

¹²³ See Decree No. 2003/651/PM of 16 April 2003, on the modalities for the application of the tax and customs regulation of government procurement.

¹²⁴ See Order No. 004/CAB/PM of 30 December 2005, on the application of the Government Procurement Code.

statistics. Additionally, it can take preventive and remedial steps to improve the performance of its functions.¹²⁵ However, it is observed that the main problem with the code lies at level of its implementation, for instance, it is realized that sanctions for infringement of the regulations are not readily operational.¹²⁶

Commitments Under the Bilateral Investment Treaties (BITs):-

Explicitly, like most developing countries, it should be noted that Cameroon in particular has been active in entering into BITs. Consequently, it is worth highlighting that the impact of BITs on LCIs has been considered as having a detrimental effect in limiting the scope of the Cameroon's commitment in designing and implementing appropriate local content.¹²⁷ In this regard, the followings are some limiting factor of LCIs contained in BITs.

Firstly, it is observed that '*BITs contain non-discrimination provisions*' that prohibit discrimination against other foreign investors, thus, ensuring national treatment with local investors. This, therefore, ensures that investors of the country with which the BIT is signed get no less favourable treatment than any other investors. In this regard, countries cannot provide any types of incentives/subsidies or impose any given preferences that would apply only to local investors; such as, the BIT between US and Cameroon¹²⁸ signed in 1986 but entered into force in 1989, which called for parties to "endeavour to avoid imposing' local content or export requirements. Similarly, it is noted that state-owned enterprises are also covered by these provisions and other new generations of BITs covering pre-establishment rights, hence limiting the capacity of countries to develop indigenisation policies. In this regard, although they limit the space of countries to impose ownership requirements to foreign investors. There might be some exceptions as appreciated with respect to Article II, paragraph 3(a)(b) of the BIT between the US and Cameroon providing that each party reserves the right to maintain limited exceptions in the sectors as indicated in the Annex¹²⁹, while equally emphasizing that the rights to engage in mining on the public domain shall dependent on reciprocity.

Secondly, it is realized that '*BITs contain fair and equitable treatment provisions (FET)*'¹³⁰ that protect investors against serious instances of arbitrary, discriminatory or abusive conduct by host states. It is an 'absolute standard of protection'¹³¹ and applies to investments in a given situation without reference to how other investments or entities

¹²⁵ See Decree No. 2001/048 of 23 February 2001.

¹²⁶ WTO Trade Policy Review for Cameroon, WT/TPR/S/187/Rev.1, p. 62. On ARMP (2006).

¹²⁷ GIZ. 2016. *Space for Local Content Policies and Strategies. A Crucial Time to Revisit an Old Debate*. Report prepared by the Columbia Centre for Sustainable Investment.

¹²⁸ The BIT between the United States and Cameroon (1986) provides in Article II (1) that: "Each Party shall endeavor to maintain a favorable environment for existing or new investments in its territory by nationals and companies of the other Party and shall permit such investments be acquired and established on terms and conditions that accord treatment no less favorable than the treatment it accords in like situations to investment of its own nationals or companies or to nationals and companies of any third country, whichever is most favorable." The BIT is available online: <https://www.state.gov/e/eb/ifd/43244.htm>.

¹²⁹ See Annex of the 1986 BIT between the US and Cameroon, for which the US indicated exceptions for air transportation; ocean and coastal shipping; banking; insurance; government procurement, government insurance and loan programs; energy and power production; custom house brokers; ownership of real estate; ownership and operation of broadcast or common carrier radio and television stations; ownership of shares in the Communications Satellite Corporation; the provision of common carrier telephone and telegraph services; the provision of submarine cable services; use of land and natural resources. While Cameroon indicated exceptions for air transportation, ocean shipping, public markets, radio and television, ownership of shares in INTEL CAM, provision of common carrier telephone and telegraph service, provision of submarine cable services, consultants on taxation matters.

¹³⁰ Many tribunals have interpreted them broadly to include a variety of specific requirements including a state's obligation to act consistently, transparently, reasonably, without ambiguity, arbitrariness or discrimination, in an even - handed manner, to ensure due process in decision-making and respect investors' legitimate expectations. See UNCTAD. 2012. *Fair and Equitable Treatment*. UNCTAD Series on Issues in International Investment Agreements II. A sequel. New York.

¹³¹ An "absolute standard of treatment" is a standard that states the treatment to be accorded in terms, whose exact meaning has to be determined, by reference to specific circumstances of application, as opposed to the "relative standards" embodied in "national treatment" and "most-favoured nation" principles which define the required treatment by reference to the treatment accorded to other investment (OECD: 2004).

are treated by the host state.¹³² Apparently, the FET standard has in fact emerged as a potent tool¹³³ used by investors to challenge a range of state conduct that has been adverse to their investment.¹³⁴ This has been incorporated in the BITs for which Cameroon is a party as seen in the case of the BIT between the US and Cameroon¹³⁵.

Thirdly, it should be noted that '*BITs contain more straightforward restrictions measures and prohibitions*' pertaining to LCIs. In this regard, the key provisions that prohibit, condition or discourage the use of local content policies include: (1) *Pre-establishment rights*: Indeed, while the WTO does not contain any provisions regarding pre-establishment rights, BITs have sought to ensure a level-playing field for the conditions of establishment, which has particular relevance for the extractive sector (where in most cases, sub-surface assets are the property of the state, which regulates access to permits and licences); (2) *Establishment of joint ventures and minimum level of domestic participation*: In recently negotiated BITs, host countries have agreed not to have any forms of compulsory requirements regarding domestic participation. However, it is observed that this may limit learning and transfer of know-how and technology from foreign firms, especially in the extractive sector which might limit local development; (3) *Employment conditions*, in particular regarding key foreign professional or technical personnel, including restrictions associated with visa requirements, and obligations to hire specific categories of domestic workforce. It is observed that this type of discipline prevents countries from taking measures to enhance the participation of local workforce in the extractive sector; (4) *Location of headquarters in a specific region*: This is a paramount condition for governments to have an oversight on companies' financial reporting, in particular to monitor tax matters, and possible incidence of illicit financial flows, trade mis-invoicing and transfer-pricing. In fact, it is a key factor in triggering disputes, and companies incorporated locally may be considered as local companies and therefore may not be able to use the dispute instruments of BITs in case of challenge; (5) *Export conditions and other restrictions on sales of goods or services in the territory where they are produced or provided*: Generally, investors are particularly wary of restrictions on sales from the proceeds of investments, and have attempted to prohibit those under BITs (although they are not allowed under the WTO); (6) *Supply of goods produced or services from a specific region or territory*: Some BITs prohibit the use of measures that encourage local supply chain development, in particular from mining areas, which is a major constraint for industrial development and upstream linkages; and (7) *Transfer of technology, production processes or other proprietary knowledge and R&D requirements*: In this regard, it is realized that some BITs even proscribe any form of LCI that may entail companies to share technology or to invest in research and development.

Fourthly, '*BITs contain measures relating to the nationality of board members and senior management*'. In addition to the general restrictions regarding conditions of employment, BITs seek to ensure that investments do not face restrictions on foreign labour for senior management and board members. Indeed, it is realized that the scope of application of BITs to LCIs varies significantly across agreements. In this regard, the stance on LCIs in BITs can be classified in three main categories, essentially determined by the levels of development of parties to the agreements and the level of interests at stake. Therefore, it is worth noting that large source countries of FDI for instance, would tend to secure more benefits for their investors, while large recipient countries would tend to negotiate more flexible agreements. Thus, the three categories are: (1) BITs containing implicit

¹³² UNCTAD. 2012. *Fair and Equitable Treatment*. UNCTAD Series on Issues in International Investment Agreements II. A sequel. New York.

¹³³ In a study considering 19 awards against host states, the host state was sanctioned for unfair or inequitable treatment or for a failure to provide full protection and security in 13 cases; for a failure to provide compensation for expropriation or other deprivation of property in 7 cases; for discriminatory treatment in 5 cases; and for failure to observe contractual or other obligations in 2 cases. (in Van Harten, G. 2006. A return to the Gay Nineties? The Political Economy of Investment Arbitration, Law Department, LSE, April). See Malik, M. 2009. Fair and Equitable Treatment. The International Institute for Sustainable Development. Bulletin #3. September. www.iisd.org

¹³⁴ See Malik, M. (2009). n 133.

¹³⁵ See Article III (4) of the BIT between the US and Cameroon (1986) which provides that the investment of nationals and companies of either Party shall at all times be accorded fair and equitable treatment and shall enjoy full protection and security in the territory of the other Party. The treatment, protection and security of investment shall be in accordance with applicable national laws and international law. Neither Party shall in any way impair by arbitrary and discriminatory measures the management, operation, maintenance, use, enjoyment, acquisition, expansion, or disposal of investment made by nationals or companies of the other Party. Each Party shall observe any obligation it may have entered into with regard to investment of nationals or companies of the other Party. Available online: <https://www.state.gov/e/eb/ifa/43244.htm>.

prohibition on LCIs. These are contained in general standards regarding treatment of investors, covered under FET provisions, national treatment and MFN principles. Generally, these are found in regional investment arrangements. For instance, the Treaty Establishing the European Community, whereby the internal market calls for free movement of persons, services, capital and freedom of establishment of businesses.¹³⁶ (2) BITs discouraging LCIs and containing permissive provisions. This is often the case in BITs between developing countries and in 'old generation' BITs, such as the BIT between US and Cameroon signed in 1986 but entered into force in 1989, which called for parties to "endeavour to avoid imposing" local content or export requirements, or where parties "shall seek to avoid performance requirements".¹³⁷ It should be noted that these BITs are still in force today. (3) BITs conditioning and prohibiting certain mandatory and voluntary LCIs. In this light, the BIT between the US and Cameroon, refers to employment conditions¹³⁸, including the recruitment of foreign workforce, but does not prohibit the host country to regulate their use. LCIs on local purchasing, export requirements are prohibited.¹³⁹ These prohibitions are applicable both to goods and services, going beyond the provisions of the TRIMs. In fact, to ensure consistency in its international investment policies, the US Agreements are based on 'model BITs', which provide the following six key benefits to its investors: MFN and national treatment; expropriation and compensation; transfers; performance requirements; dispute settlement; and senior management and board of directors.¹⁴⁰

Altogether, it is worthy to note that the US BIT Model is applicable to Cameroon as per the provisions of Article VIII of the 1986 BIT between the United States and Cameroon.¹⁴¹ This provides that for ten years from the date of termination, all other Articles shall continue to apply to covered investments established or acquired prior to the date of termination, except insofar as those Articles extend to the establishment or acquisition of covered investments. In this perspective, it is realized that this implies that where the investors feel that the new legal arrangements are less favorable than the BITs, they have the option to still invoke the BITs to bring countries to arbitration, even after the Agreement has been terminated.

Commitments Under the Free Trade Agreements (FTAs): -

Generally, in Africa, although the inclusion of export taxes was a contentious issue in the context of the EPAs negotiations with the European Union (EU), nonetheless, Cameroon is the only country in Central Africa that has so far ratified the EPAs which entered into force on the 16 August 2016. In fact, Article 15 of the EPAs prohibits the introduction of new exports taxes or increase in existing ones, with exceptions existing only in the event of a serious public finance problem or the need for greater environmental protection, for a limited number of additional goods. Similarly, Article 22 of the EPAs prohibits export restrictions, with no reference made to exceptions as contained in

¹³⁶ World Trade Organization (WTO). 2001. *Trade-Related Investment Measures and other Performance Requirements*. Joint Study by the WTO and UNCTAD Secretariats. Committee on Trade-Related Investment Measures. G/C/W/307

¹³⁷ The BIT between the United States and Cameroon (1986) provides in Article II (6) that: "Neither Party shall impose performance requirements as a condition of establishment, expansion or maintenance of investments owned by nationals or companies of the other Party, which require or enforce commitments to export goods produced locally, or which specify that goods or services must be purchased locally, or which impose any other similar requirements". The BIT is available online: <https://www.state.gov/e/eb/ifa/43244.htm>.

¹³⁸ See Article II.5(a)(b) of the US-Cameroon BIT states that "(a) Subject to the laws relating to the entry and sojourn of aliens, nationals of either Party shall be permitted to enter and to remain in the territory of the other Party for the purpose of establishing, developing, directing, administering or advising on the operation of an investment to which they, or a company of the first Party that employs them, have committed or are in the process of committing a substantial amount of capital or other resources. (b) Nationals and companies of either Party shall be permitted to engage, within the territory of the other Party, professional, technical and managerial personnel of their choice, for the particular purpose of rendering professional, technical and managerial assistance necessary for the planning and operation of investments. Companies which are incorporated, constituted, or otherwise organized under the applicable laws or regulations of one Party, and which are owned or controlled by nationals or companies of the other Party, shall be permitted to engage, within the territory of the first Party, top managerial personnel of their choice, regardless of nationality, subject to the provisions of paragraph 5(a) above.

¹³⁹ See Article II.6. of the 1986 BIT between the United States and Cameroon.

Available online: <https://www.state.gov/e/eb/ifa/43244.htm>.

¹⁴⁰ From 2012, the US BIT Model is accessible online: <http://www.state.gov/documents/organization/188371.pdf>

¹⁴¹ The BIT is available online: <https://www.state.gov/e/eb/ifa/43244.htm>.

Article XI of GATT. Therefore, besides the export taxes, EPAs contain no other disciplines on LCIs, in part because none of the EPAs concluded with Africa to date, contain full-fledged investment or services chapters. Conversely, one impediment to the EPAs for Cameroon is contained in Article 4 of the CEMAC treaty establishing a common external tariff (CET) applicable to all third country imports and the gradual removal of tariffs on intra-regional trade, with efforts to harmonize the common external tariffs between CEMAC and the Economic Community of Central African States (ECCAS) and introduce the free circulation of goods. In this regard, it is worth noting that Cameroon is the only CEMAC country that has ratified and implemented the EPAs. Thus, in pursuant to Article 21 of the EPA, new tariffs cannot be introduced by both parties, with Cameroon to lower its applied tariffs from the rates specified in the CEMAC CET. So, as Cameroon has ratified the EPA and implements its liberalization commitments, it will be unable to impose higher tariffs on goods from the EU market again, even if the (re)negotiations for the Common External Tariff among CEMAC and/or ECCAS Member States result in tariffs that are higher than the EPA tariffs. This also limits the policy space currently available for Central African States to negotiate the Common External Tariff.

Similarly, with respect to the MFN clause, it is noted that since the CEMAC states have not been at ease with the existing of the clause in the EPA because of the inflexibility of the EU. This means that if Cameroon negotiates a free trade agreement with a major economy in the future (e.g. with United States, China, India, Brazil, South Africa etc) and there are clauses or parts of the agreement where Cameroon provides more concessions than in the EPA, this more favourable treatment will have to be extended to the EU in the EPA. Consequently, it is envisaged that if care is not taken, these EPAs which are intended to promote regional integration and development, might end up with a totally different outcome, to the detriment of all Central African Member States. However, despite the impediments, it is envisioned that there are some viable benefits for the other CEMAC member states to follow the footsteps of Cameroon, by ratifying the EPAs which have less impact on LCIs. Apparently, it is worth noting that since the FTAs are flexible with respect to LCIs, therefore, unless countries have very tight BITs with European countries, their EPAs do not further constrain their policy space, beyond their multilateral commitments. In this regard, it is observed that BITs are the actual virtual fora for which the policy space for LCIs can be constrained. Consequently, for countries like Cameroon aiming to incorporate LCIs into its legal framework, it is suggested that it must be prepared to strike a balance during the negotiation phase of the BITs between the necessity of LCIs development and the preponderance of its commitments with respect to international trade and investment policies.

Conclusions: -

Explicitly, this paper has brought to light the wide-ranging paradox and opportunities of LCIs. It is realized that while the approaches of designing LCIs vary across countries, they remain the cornerstone of industrial policy in resource-rich countries. Indeed, in practice, it is observed that they depend on a host of conditions, which are country and context specific, thus, resting on the ability of governments to provide the necessary environment for local businesses to thrive, productively and competitively. In this regard, the paper assessed the challenges and nexus between LCIs and international trade and investment agreements, with particular focus on Cameroon. It thus addressed the question - to what degree can these constrain the policy space of resource-rich countries using LCIs? Although there are evident issues of incompatibility with many measures, in particular when LCIs take the form of quantitative restrictions or performance requirement for investors, countries nevertheless continue to design and enforce those measures, despite the risk of being taken to dispute by other states at the WTO, or by investors under BITs. In the same token, the paper has also perused the relevant trade and investment commitments that impact on LCIs contained in the WTO rulebooks or in BITs. With regard to the WTO rules, the paper has vividly analyzed the restrictions on policy space for LCIs as contained in the TRIMs, SCM Agreement and GATS. These restrictions are focused to a great extent on preventing measures that discriminate against goods providers located in other WTO member states in favour of goods providers established within the domestic jurisdiction. Similarly, it is realized that GATS equally places certain limits on measures affecting foreign investors, including measures favoring local service suppliers over foreign service suppliers, and measures requiring foreign firms to enter into joint ventures with domestic entities as a condition of market access. Conversely, it is worth noting that those GATS provisions are only applicable to sectors, if and to the extent that the WTO member states have expressly agreed the provisions.

Consequently, notwithstanding the limits, it is appreciable that the WTO agreements have left states with some degree of flexibility to adopt local content measures, including those: providing SCM Agreement subsidies or other supports to domestic firms; requiring or incentivizing use of domestic service suppliers and domestic labour; requiring joint ventures or a certain share of domestic equity; requiring or incentivizing transfers of technology; restricting exports through measure other than quantitative restrictions in order to encourage development of

downstream segments of the value chain; requiring or incentivizing research and development or other expenditures to be made in the host state; and requiring or incentivizing firms to locate their headquarters or particular activities in the host state, or to locate their investment in a particular area in the host state. In the same token, it is worth noting that while the WTO is a hallmark for disciplines regarding the treatment of domestic and foreign trade, including producers and suppliers, it nevertheless provides ample flexibilities to developing countries, such as Cameroon.

Conversely, it is explicitly observed that the most constraining obligations to LCTs are found in BITs and FTAs - where countries have voluntarily agreed to erode their capacity to regulate, generally under pressure from investors who do not feel that multilateral frameworks are sufficient to preserve their interests or to compensate them financially in case of conflicts. To that effect, it is observed that as countries enter into bilateral deals (as seen in the case of the BIT between the US and Cameroon, and the EPAs between the EU and Cameroon), the multilateral framework becomes irrelevant vis-à-vis the bilateral partner. However, despite these constraints, LCIs still consider as a key instrument of linkages development. Correspondingly, it is worth noting that they are other strategies that can deliver equivalent effects, for instance: Linking LCIs to horizontal or non-specific incentives, can entice companies to deploy efforts to source locally or to employ the local workforce; setting up LCIs institutional frameworks in partnership with the private sector, aiming at accompanying local suppliers in meeting the requirements of the company, accessing procurement, and sustaining supply on a long-term basis; and integrating LCIs into the national development plans or industrial policies of the countries.

Last but not least, it is envisaged that a regional approach to LCIs is essential to the success of the policies. This is because most national LCIs (as seen in the case of Cameroon) contradict the objectives of regional integration, since they are designed with a clear focus on their various national interests; which can potentially jeopardise the regional integration efforts. In this regard, it is suggested that a coherent and coordinated effort is needed, not only to preserve the regional integration agenda but also to tap market opportunities from neighbouring countries and make use of their comparative advantage to complement the national efforts. Similarly, it is realized that developing countries, such as Cameroon, have very small markets with insufficient critical mass to attract investments in suppliers' activities. However, it is suggested that this can be partly addressed by designing regional policies specifically aimed at procuring, in particular, the extractive industries operating in the region to have added value to their minerals proceeds.

Finally, it is worth noting that in Cameroon and many developing countries, the efforts to leverage greater development from trade investments have in recent years, focused on strengthening backward linkages from the industries and, in particular, on raising local content initiatives. In this regard, it is realized that the industries are usually prepared to participate in such efforts, provided that their impact on costs is limited. On the one hand, it is observed that in the short term, however, the scope for increasing local content in developing countries may be constrained by the low capacity of potential suppliers, low skill endowments and a number of other factors constituting the general business environment. For instance, a number of extractive industry companies have introduced supplier development programmes that attempt to reduce these constraints and skill gaps. Such measures have had their successes. On the other hand, it is realized that in the long term, they are mainly effective in underlining the need to manage expectations and for local communities to be engaged in the process in order to avoid disappointments. In spite of this, it is noted that the international regulatory landscape is gradually evolving in a direction that is not favorable to quantitative local content targeting. However, it is realized that while Cameroon as a developing country is benefitting from the exemptions from the WTO disciplines accorded to less developed and developing countries, it is worth noting that these exemptions are at the verge of expiring. Similarly, it is observed that the provisions of BITs are also prohibiting or limiting local content measures in Cameroon, as appreciated in the case of the BIT between the United States and Cameroon. In this regard, it is suggested that the government of Cameroon should always take great precautions in the negotiation process of BITs, in order to protect its LCIs. Moreover, although not discussed in this paper, it should be noted that the Trade-in-Services Agreement among 23 economies, which is reported to be using a negative list approach for the national treatment obligation, can further erode Cameroon's flexibilities to use LCIs.

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