

**Belize's Industrial Policies in the Context of Its World Trade Organization  
(WTO) Agreement on Subsidies and Countervailing Measures (ASCM)  
Commitments : A Legal Analysis**

By

**OGUNJOBI, Olabanji Samuel**

**THESIS**

Submitted to

KDI School of Public Policy and Management

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Professor Shadikhodjaev, Sherzod, Supervisor



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## ABSTRACT

### **BELIZE'S INDUSTRIAL POLICIES IN THE CONTEXT OF ITS WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (ASCM) COMMITMENTS: A LEGAL ANALYSIS**

By

Olabanji Samuel Ogunjobi

With the slowing economic growth after the 2008 global recession, countries are struggling to energize their respective economies to boost growth and create more employment opportunities for their Citizens. As such, countries are taking a second look at various industrial policies to help restructure their respective economies. Belize, a small developing country in Central America with economic and political ties to the Caribbean, must expand its supply capacity to sustain its economy. Achieving this requires a robust institutional response through an industrial strategy aimed at strengthening the competitiveness of Belize's economy. In this paper, we examine Belize's existing industrial policies by conducting a legal analysis of its three investment incentive programs in relation to its WTO commitment. We identified the inconsistency in the three programmes with the World Trade Organization's Agreement on Subsidies and Countervailing Measures (ASCM), and observed the corrective measure undertaken by the government. Further, we identified possible flexibilities that Belize could take advantage of, while also suggesting a long-term industrial strategy that ensures an economy-wide competitiveness.

**Keywords:** Industrial policy, subsidies, export contingency, international trade commitment, regionalism

## **Belize 의 세계무역기구(WTO)의 보조금 및 상계대책(ASCM) 약정에 따른 산업정책 : 법적 분석**

올라반지 사무엘 오군조비

2008년 글로벌 경기침체 이후 경제성장이 둔화되면서 각국은 자국 경제에 활력을 불어넣어 성장을 촉진하고 시민들에게 더 많은 고용기회를 창출하기 위해 고군분투하고 있다. 이와 같이 각국은 자국 경제의 구조조정을 돕기 위해 다양한 산업정책을 재점검하고 있다. 카리브해와 경제적, 정치적 유대를 맺고 있는 중앙아메리카의 작은 개발도상국 벨리즈는 경제를 유지하기 위해 공급 능력을 확대해야 한다. 이를 달성하려면 벨리즈 경제의 경쟁력 강화를 목표로 한 산업 전략을 통한 강력한 제도적 대응이 필요하다. 본 논문에서는 벨리즈의 기존 산업정책을 검토하고, WTO의 약속을 받아 수출처리구역 프로그램에 대한 법률 분석을 실시했다. 세계무역기구의 보조금 및 상계조치에 관한 협정(ASCM)과 프로그램의 불일치를 확인하고, 정부가 취한 시정조치를 관찰했다. 또한, 우리는 벨리즈의 국제 무역 공약에 대한 접근법을 조사했고, 벨리즈의 접근법은 지역주의에 달려 있다는 것을 발견했다. 심지어 양국의 무역 참여도 지역주의 철학에서 비롯되었다.

**키워드:** 산업정책, 보조금, 수출대비, 국제무역공약, 지역주의

*In loving memory of my dad, the one who never doubted my capacity*

**Bamidele Oladapo Ogunjobi**

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## LIST OF ABBREVIATION

AB	Appellate Body
AEO	Approved Enterprise Order
ASCM	Agreement on Subsidies and Countervailing Measures
BELTRAIDE	Belize Trade and Investment Development Service
BTB	Belize Tourism Board
CARIBCAN	Caribbean-Canada Trade Agreement
CARICOM	Caribbean Community
CFZ	Commercial Free Zones
CSME	CARICOM Single Market and Economy
DPA	Designated Processing Area
DPAC	Designated Processing Area Committee
ECLAC	Economic Commission for Latin America and the Caribbean
EU	European Union
EPZ	Export Processing Zone
FI	Fiscal Incentive
FZ	Free Zones
FDI	Foreign Direct Investment
GATT	General Agreement on Tariffs and Trade (GATT)
GC	General Council
GSP	Generalized System of Preferences
IPCU	Investment Policy and Compliance Unit
IS	Import Substitution
LDCs	Least Developed Countries
MSME	Micro Small and Medium Enterprises
MTS	Multilateral Trading System
OECD	Organization of Economic Cooperation and Development
RTC	Revised Treaty of Chaguaramas
SEZ	Special Economic Zones
SITP	Scheme for Integrated Textile Park
WTO	World Trade Organization

## **Section 1: Introduction**

With the slowing economic growth after the global economic crisis in 2008, countries are struggling to energize their respective economies to boost growth and create more opportunities for their citizens. Latin America and the Caribbean, in particular, have experienced an overall contraction in its economy; growth declined from 5.84% post-recession in 2019, to 0.499% in 2018 (World Bank, 2018). Thus, some developing countries, including countries in Latin America and the Caribbean, are experimenting with old industrial strategies or policies to breathe life into the economy (Moreno, 2015). This new look at industrial policies has since generated a growing number of research interests among academics as they look to see what countries who have grown on the back of some form of industrial policies have done (Development Centre, 2012).

It is important to note that previous industrial strategies and policies used by countries existed out of the framework ushered in by the Uruguay round that led to the establishment of the World Trade Organisation (WTO); post-1995, all trade-distorting industrial policies are subject to the principles of non-discrimination of the WTO thus, making their use more challenging and generally less effective (Ornelas & Puccio, 2019). Since these policies are now subject to the WTO rules, it has become imperative to examine them within the context with which they currently exist, especially for countries seeking to use those policies to fulfil their various industrial development objectives (Shadikhodjaev, 2018).

Belize recently brought one of its three incentives regime in-line with its WTO rules on subsidies (Belize Trade and Industrial Development Service (BELTRAIDE), n.d.). Belize's economy is highly volatile and is susceptible to numerous external shocks, especially from its largest trading partners, the United States (US), and the European Union (EU) (World Trade Organization, 2017). It thus needs to diversify its export baskets and markets to enhance the

resilience of the economy. Belize can achieve this through a robust institutional response to expand its productive capacity and strengthen the competitiveness of its private sector. A comprehensive industrial policy is essential to achieve such an objective. Given Belize's uncoordinated approach to industrial strategy and its international commitments, mainly at the WTO, understanding its current approach in the context of its WTO commitments on subsidies is essential should it want to reorient its industrial strategy for optimum economic growth. Consequently, this research will examine Belize's industrial policies in the said context, exploring the flexibilities and the lack thereof.

The following questions will guide this research endeavor:

- What are Belize's Industrial Policies?
- What are Belize's Commitments to the WTO vis-à-vis its current industrial strategies?
- What are the flexibilities inherent in those commitments?

Section 2 of this paper will review the existing literature. Section 3 will examine the history of industrial development in the Caribbean and Belize. Section 4 details the existing industrial policies in Belize. Section 5 examines section 4 in the context of WTO commitments on subsidies and identifies flexibilities. Finally, in section 6, we conclude and provide recommendations.

## **Section 2: Literature Review**

Industrial policy is arguably one of the most contentious topics in economic development. The disagreement is primarily because some countries have experienced tremendous economic growth because of industrial policies. In contrast, others such as Nigeria, Ghana, Kenya, Argentina, etc. have seen their economies take a turn for the worse as a result of the same policies. The cause of such disparity in the effect of industrial policies varies, depending on what side of the divide the policies are examined. Before we proceed, it is essential to define industrial policy; I should note that there is no consensus on the definition of industrial policy. However, succinctly, I define industrial policy as any intervention by a state to enhance the productivity of its economy or a particular economic sector. Other researchers are more specific in their definition, According to Park and Saggi (2006), and the World Bank (1993), industrial policy is any form of state intervention aimed at changing the production structure of a sector to enhance economic growth that would otherwise not occur without such intervention. The Organization of Economic Cooperation and Development (OECD) (as cited in Shadikhodjaev (2018)) define industrial policy as a government measure that enhances industrial growth and efficiency.

Notwithstanding the broad definitions of industrial policy, industrial policies are generally divided into two broad areas: Horizontal industrial policies and vertical industrial policies. Horizontal industrial policies are primarily aimed at improving the general workings of the market, while vertical industrial policies are usually targeting select industries (United Nations Conference on Trade and Development (UNCTAD), 2016). Vertical policies historically have been the more contentious one, because they tend to choose winners, which leads to an overall inefficiency in the chosen sector – the very failure the policy sought to address in the first place (Dadush, 2016). Industrial Policies are also examined from two prisms, that of the protection of domestic industry and the promotion of domestic industry; both perspectives utilise various policy instruments to

achieve the objectives of the implementing governments. When it comes to the protection of industries, there are border measures such as tariffs, quotas, and trade remedy measures; while behind the border measures include, taxes, product standards, protection of service industries (Shadikhodjaev, 2018). Concerning the promotion of domestic industry, subsidies, price regimes, export restrictions, local content requirements, special economic zones, and development of industrial parks are among the instruments that governments use in their effort to boost local industry productivity (Shadikhodjaev, 2018).

With the negative effect of the 2008 global economic crisis still present, countries are seeking new ways to boost the productivity of their economies; some developing countries and increasingly developed countries are dusting off old industrial strategies to help boost growth. In doing that, it is essential to avoid the mistakes of the past when it comes to industrial policies, especially vertical policies. Developing countries tend to be notoriously obsessed with boosting their manufacturing base using Import Substituting (IS) policy instruments. In contrast, developed countries tend to have a penchant for protecting dying industries such as agriculture through subsidies (Moreno 2015). According to Dadush (2016), a 21st Century industrial policy should focus less on manufacturing as it is increasingly prone to automation, which will negatively affect the anticipated job gains in the sector. Instead, industrial policies should focus on the services sector, where the potential for job retention is higher and has the opportunity to enhance the income of the population faster.

While many factors affect the success of industrial policy or strategy, a close collaboration with the private sector is much touted as one of the keys to an effective implementation. In this globalised era, industrial policy is not only to correct market failure but to encourage innovation and boost productivity in the long run. Doing this requires a robust private sector engagement by

the government, however, not merely by dialoguing with the private sector, but infusing competition for government support to encourage innovation. According to Weiss (2013), there should be substantive support to enhance the learning network of the private sector through trade fairs, trade missions, the facilitation of capital and technology importation. A group of researchers agree with Weiss that stakeholder consensus is crucial for maximum impact of industrial strategies (Ansu, Booth, Kelsall, & Williem te Velde, 2016); however, they go further in their criteria for a robust impact. They rightly emphasise that the identification or the establishment of an autonomous parastatal to coordinate a state's industrial development approach is essential. While cautioning of the risks in a weak governance environment – the fact that such powers vested in one organisation raises old issues such as corruption, nepotism, and inadequate oversight synonymous with weak governance – especially in Africa.

Even though Belize is physically in Central America, it is part of the Caribbean Community's (CARICOM) Single Market and Economy (CSME); thus, this paper will examine Belize's economy from the Caribbean perspective. A study by the United Nations' Economic Commission for Latin America and the Caribbean (ECLAC) on the efficacy of Caribbean industrial policy details how between the 70s and the 80s, Caribbean countries with varying intensities implemented IS policies primarily based on the writings of Sir Arthur Lewis, a foremost Caribbean thought leader in industrial development. However, Caribbean countries focused more on the import replacement of domestically consumed products and ignored the export promotion pillar of industrial development championed by Lewis. Interestingly, the path threaded by the region has proven to be wrong, especially since the region's population is rather small; thus one wonders how the region's economy can thrive on domestic consumption as opposed to exports, and minimal integration into the global value chain (Economic Commission for Latin America and

the Caribbean, 2001). The same report mentions that the export contingent mix of policies available to countries in the past is now largely prohibited by the subsidy rules of the World Trade Organization (WTO) (ECLAC, 2001). In other words, drawing from the South Korean industrialisation experience; where at the heart of Korea's rapid economic development were numerous government efforts that supported industrial development backed by aggressive export promotion efforts that saw a productive partnership between the fledgeling private sector and the government. Even though the incentives were reward-based, albeit contingent on exports – measures which will be inconsistent with the WTO's agreement on subsidy and countervailing measures (Lim, 2014).

In recent times, countries, including Belize, are experimenting with new approaches to industrial strategy. Special Economic Zones (SEZs) in particular, has been frequently touted as the future of industrial policy. SEZs have been credited for Chinese economic growth. According to Zeng (2015), SEZs success in China has been primarily due to long term government commitment, technological upgrade, skills training, and linkages to the local economy, and of course, an efficient institutional framework that ensures adequate implementation. In Rwanda, SEZs are geared towards attracting foreign investment, especially in sectors that are mostly export-oriented. Notably, the manufacturing industry. More so, SEZs are favoured by the Rwandese government because it allows for the agglomeration of infrastructure that enhances the competitiveness of the manufacturing sector (Calabrese, Papadavid & Tyson, 2017). According to Saleman & Jordan (2014), Much reverberation has been experienced regarding the success or the lack thereof of industrial parks, especially in countries with heavy use of industrial policies for economic development purposes. Often, the gains from the parks or zones have disappointed the promoters of such parks with only blight spots of successes. India's Scheme for Integrated Textile Park (SITP)



unique implementation approach sets it apart. At the heart of the implementation is an enhanced private sector approach, where the leading ministry of government only provides oversight, even the development grants administration is largely outsourced to a competent project management consultant.

In all, the effective industrial policy requires support and some level of coordination from the government. Gebreeyesus & Lizuka (2009) stressed the importance of the role of government support to emergent industries, case in point, salmon farming in Chile and floriculture in Ethiopia. The authors demonstrated that government must see itself more as facilitators to new industries with export potentials than as regulators. They argue that often, certain capacities such as cost-sharing for capital intensive industries and coordination support, especially concerning the importance of knowledge is essential to the eventual success of new industries. Ultimately infant industries need financial space to experiment, which might be costly to the market; and as have been observed in the case of Chile and Ethiopia, that early support from the state go a long way in picking winners. In the Caribbean, the creative industry is one of the emergent sectors that is attracting government attention. Given that the creative industry presents new opportunities for economic growth in the region, Caribbean leaders have encouragingly started articulating options of developing the sector by way of financing incentives to de-risk financing for the sector. However, little progress has been made thus far (Hendrickson, Lugay, Caldentey, Mulder, & Alvarez, 2012).

In section 3, we will examine the history of industrial development in the Caribbean and Belize.

### **Section 3: History of industrial development in the Caribbean and Belize**

The Caribbean has historically been agrarian; indeed, that was the primary purpose of their establishment by colonialists. As such, it is no surprise the foundation of the economy of the region was based on agricultural exports. Tourism, the current mainstay of the region's economy is reasonably recent. Cash crops such as sugar, coffee, banana, citrus have always dominated the commercial agricultural industry of the region. The renowned Caribbean economist, Arthur Lewis advocated for industrialisation – a move away from the traditional agricultural sector which he contended was not as productive as the potential gains from manufacturing.

Rhiney (2016), mentioned that opposing scholars would later arise in the 70s to argue that such intense focus on exports was weakening the competitiveness of the Caribbean, especially its agricultural sector. As such, protectionist measures were implemented albeit at a very high cost that pushed countries in the region to undergo the Bretton Wood institutions structural adjustment programs in the 80s. The intervention saw the liberalisation of the Caribbean economies that included the reduction of the state support to local farmers and the rise in food imports initially to meet the growing demand from the increasingly expanding tourism industry.

Due to colonial ties to European powers, the sugar-producing Caribbean countries have long enjoyed preferential market access to the European market through its then sugar quota by way of the Lome Convention (Mitchell, 2005). This system invariably meant that European consumers had to pay more for sugar due to the quota-program – in the face of more efficient imports from low-cost sugar-producing countries. The WTO trade rules which eliminated the banana and sugar preferences of Caribbean countries have seen the sugar industry, in particular, become uncompetitive in the face of other, perhaps more efficient producers in Latin America. Invariably the reduced earnings from agriculture made it necessary for the governments of the region to seek to diversify into services. The trajectory of the industry in the region did follow the

basic economic development pattern from agrarian to a service dominated economy even though the middle stage of light manufacturing seemed to have been skipped by the region.

Belize

Smith (2013), in his book “a history of enterprise in Belize”, details the development of various industry in Belize:

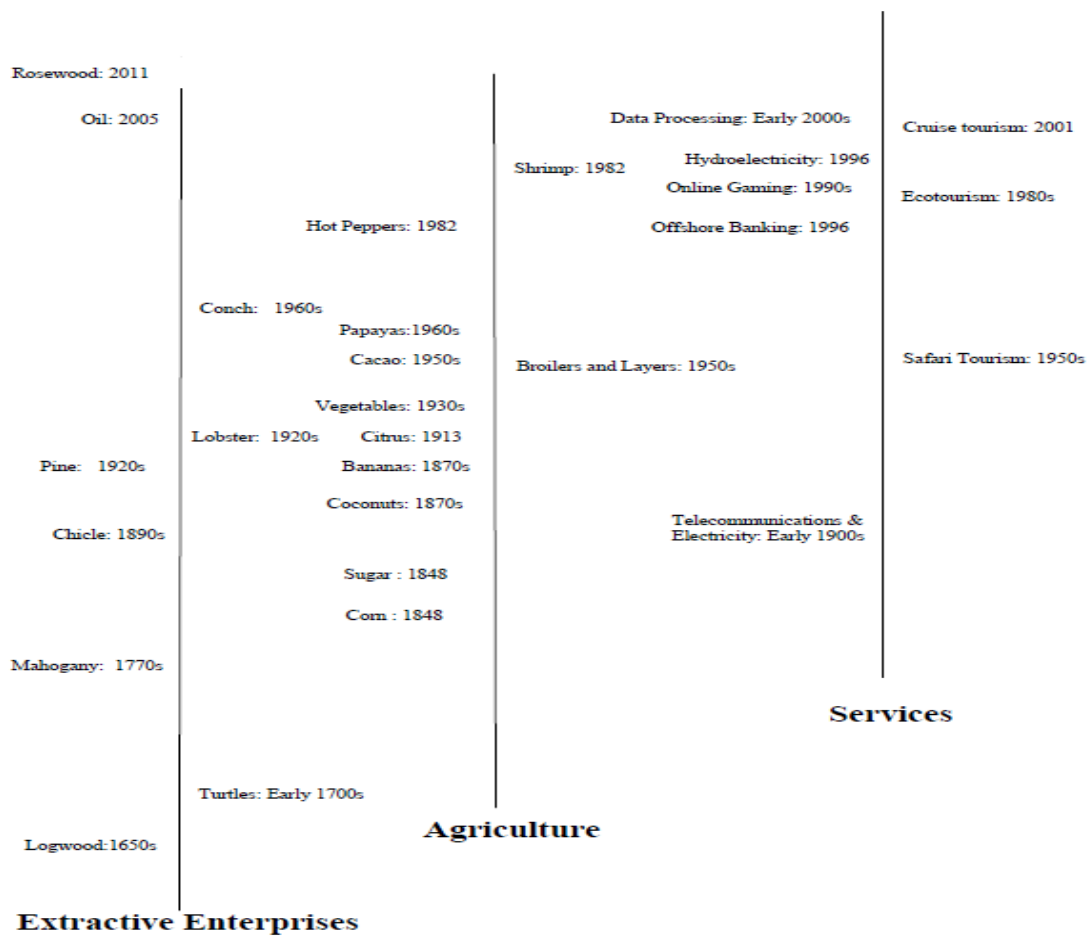


Figure 1: Belize's industrial evolution

The first real enterprise in the then British-Honduras (now Belize) was the extraction of logwood in the 1600s. Initially being stolen from the Spaniards by the English Buccaneers, and subsequently extracted by the English through the increased use of African labour. Over time, the buccaneers became settlers and shifted into the extraction of mahogany – this new venture required

more sophistication than what was needed for logwood. Till date, Belize continues to extract mahogany and other kinds of luxury trees such as rosewood, even though stymied due to environmental concerns (Llewellyn, 2012).

While it appears from figure 1 that agriculture had also always been part of the economic make-up of Belize, it was until after the second world war that the country's economy began shifting focus to agriculture as a result of investment by locals and Americans. It is noteworthy that the Mayan natives of Belize had been an agrarian society and planted corn, avocados, tomatoes etc. to sustain their society long before the arrival of the Spaniards or the English settlers. As such, capital and land were the contribution of the settlers to the expansion of the agricultural sector of Belize pre-independence.

Industrial policies to sustain the sector did not truly emerge until after independence in the early 80s. Government participation in the industry had been limited not by way of policy, but of capacity to the approval of seeds that ensures better yields (Smith 2013).

As was the economic development experience of other Caribbean nations, it appears as well, that Belize skipped the light manufacturing to the manufacturing stage of economic development into services while trying to ensure that its agricultural sector remained vibrant. Even as the service industry's significance became pronounced over time, sugar, banana, and citrus saw improved competitiveness and sustained Belize's exports to date. The banana industry was also affected by the WTO judgement against the European Union's preferential banana regime (World Trade Organization , 2012).

As with the rest of the Caribbean, the 80s saw the true genesis of the development of the tourism industry – the bulwark of Belize's services industry. Up till the 80s, the agro-industry had been the leading foreign exchange earner for the country. The tourism sector did not grow quickly

but gradually until the early 90s, where the government began the process of organising players in the industry. The Belize Tourism Board (BTB) was thus constituted in 1996. Majority of visitors came from the United States and Canada – it was more accessible given the proximity of Belize to North America despite colonial ties to the United Kingdom. Also, there was a concerted government effort to promote Belize as a prime tourism destination on major television outlets in the United States in the late 80s (Smith, 2013, p. 135).

## **Section 4: Industrial Policies in Belize**

With 20 countries receiving 70% of the global Foreign Direct Investment (FDI) inflows in 2016 (Obiols, 2018), it automatically means the remaining 175 countries must compete for 30% of what is left; setting up an aggressive battle of wits and creativity to get the most attention, and ultimately, the most investment. Clearly, the investors are the bride, while the countries are the suitors. With more suitors than the bride, their primary objectives become, initially, to attract the most positive attention that will ultimately lead to being chosen. With each country blessed with a varying degree of natural assets, including human capital, sometimes, similar, countries use investment incentives to enhance the value of their offerings.

Belize, being the smallest economy in Central America with a GDP of USD 1.8 billion (Central Bank of Belize, 2020), must compete with the rest of the world for investments to grow its economy. To do that, given its small size, the government must be creative in marketing itself to investors while not engaged in a race to the regulatory bottom to the detriment of the long-term economic interest of the country. Indeed, Belize has investment incentives aimed at showcasing its strength to investors. The investment incentives of Belize are the framework of its industrial policy, and it is illustrative of the government's economic aspirations through select priority sectors.

### ***4.1 Regional***

Basically, the industrial policy of Belize flows from the Community Industrial Policy, which flows from the Revised Treaty of Chaguaramas (RTC) (2001); that understanding is key in the description of the industrial policy landscape of Belize. The integration movement in the Caribbean started in the late 50s, from the short-lived West Indies federation, to the Free Trade association, and finally the original treaty of Chaguaramas in 1973 by Jamaican, Barbados, Trinidad and Tobago, and Guyana. The original treaty became the basis of CARICOM. As the

English-speaking Caribbean gained independence, they joined the community, culminating into the revision of the treaty in 2001 to establish the single market and economy. CARICOM's integration is hinged on economic integration, foreign policy coordination, human and social development, and security (CARICOM Secretariat , 2020).

Chapter 4, Part one of the RTC, explains the objective and the implementation of the community industrial policy for the region. Article 51 notes the goal of the policy to be market-oriented, and the competitive production of goods and services to support the region's economic growth. Paragraph 2 of Article 51 states the following objectives for Member States in implementing the policy:

- a. sustainable use of natural and human resources across the region to expand productive capacity
- b. intentional development of linkages between the economic sectors of the CSME Member states
- c. promotion of regional champions that can help the region achieve scales of production to enhance the competitiveness of regional industries
- d. development of a vibrant Micro Small and Medium Enterprises (MSME)
- e. embedded diversification approach to the production of goods and services for both the internal market and exports
- f. efficient partnership between the private sector and the public sector for efficient production of goods and services
- g. development of green industries
- h. strike continuous balance between economic needs and social needs while recognizing the special needs of disadvantaged countries

- i. stable labour relations across economic sectors (CARICOM Secretariat, 2001)

Without industrial development, there would be nothing to trade. As such, industrial development and trade development go together. However, in Belize, the coordination has been lacking, as such, harmonizing the industrial strategy is essential. Outside of Article 51 of the RTC, Article 164 of the RTC about the promotion of industrial development is another legal impetus for industrial policy in the region, which applies to Belize. Article 164 supports CARICOM Least Developed Countries (LDCs) in order to promote their respective manufacturing sectors with tariff waivers and technical assistance from the more developed Member States (Government of Belize, 2019; US Department of State, 2019).

The Article 164 makes particular provisions for the suspension of community origin rules for the importation of inputs aimed at the promotion of identified industries with extensive linkages to the rest of the economy. In Belize, agro-processing economic activities such as, the processing of meat, pepper, and its sauces, cheese, milk, ice cream, animal feed etc. form part of the Government of Belize's effort to diversify its export basket to reduce the susceptibility of the economy to external shock synonymous to mono-product economies. Even though, the government is increasingly paying attention to export diversification, the need for a unified industrial policy to guide industrial policy for Belize cannot be overemphasized. (Government of Belize, 2019).

#### ***4.2 National***

As noted previously, the Government of Belize is cognizant of the importance of export diversification due to shocks the economy has experienced when demand reduces from its primary export markets. Thus, ensuring the ease of business environment is key to facilitating increased investment, diversification of exports. Consequently, the government of Belize, apparently, is focused on policies that will increase employment, increase foreign exchange earnings, and



enhance technology transfer. To ensure all these activities aimed at attracting investments, there are three investment incentives programs Belize has put in place to boost its industrial aspirations. Those programs form the basis of Belize's industrial policy thrust, and thus suffices for the purpose of this research endeavor.

They are the Export Processing Zone (EPZ), Free Zones (FZs), and Fiscal Incentive programmes. The common benefit of these programs are duty and tax concessions. These programmes have been instrumental thus far in the diversification of Belize's exports and services sector.

Belize Government is working on harmonizing these investment programs to make them consistent with its international obligations.

#### ***4.3 The fiscal incentive programme***

This programme is governed by the fiscal incentive act of 1990, and it is one of many schemes the government of Belize implemented to attract investments to the country. The acts feature the fiscal incentives and the regulations and rules governing the investment. It defines fiscal incentives as tax holidays and duty exemptions granted to qualified businesses. For tax holidays, the fiscal incentive act details the benefits and conditions of the tax holiday period. The tax holidays period shall be for 5 years. In addition, there is an exception that for businesses in agriculture, agro-industrial products etc., with a labour-intensive operation and export oriented, should enjoy the benefits for the program for a minimum of 25 years. The incentive under the clause also allows for exemptions from income tax obligations.

Companies who have been granted an Approved Enterprise Order (AEO) under the regulations are exempted from duty payments on imports to duties on the following items:

- a. Building materials, plants, machinery, equipment including specialized tools, utility, and transport vehicles, fixtures and fittings, office equipment and appliances

- b. Spare parts for the plant and plant-related machinery and agricultural machinery;  
and
- c. Any raw materials or other items for the sole of use of approved enterprise.

The Fiscal Incentives Program is managed by the Belize Trade and Investment Development Service (BELTRAIDE), a statutory body under the Ministry with responsibility for Investment, Trade, and Commerce.

#### ***4.4 Commercial Free Zone Programme***

The Commercial Free Zone programme's is governed by the commercial free zone (FZ) act of 1994. The zone offers facilities for various manufacturing, processing, packaging, warehousing, and distribution of goods and services. Supplies warehoused in the FZ may be wholesaled and sold to diplomats who by the virtue of international law are not required to pay duty for foreign imports. Transactions with ships that dock at Belizean ports even though destined for other ports, and the sale of direct exports by any of Belize's borders are exempted from duties, as long as those goods are sold in bulk; however, these goods, should they enter into national customs territory must pay the necessary customs duty (ambergriscaye.com, n.d.).

Duty free goods can only be delivered at the point of departure. Inside the FZ, businesses located within can trade with one another so long as there is appropriate record of such transaction. Equally, in the FZ, there is no restriction on foreign exchange transactions, and businesses operating in the zone are able to open foreign current account with any bank, duly registered, located within the zone.

The Rent Restriction Act shall also not apply to real estate transactions in the zone. As with the fiscal incentives programme, there are also exemptions and tax holidays for businesses operating in the zone which are:

- a. Imports entering the zone are exempted from custom duties and other charges
- b. Fuels, building materials, furniture and sundry are exempt from import duties and other charges
- c. There is no quota restriction of any goods imported into the zone by a FZ business
- d. The ingress and egress of the goods that enter the zone do not require import or export license
- e. Goods from the zone that is destined for entrance into the national customs territory are subject to the import duty and other charges payment (ambergriscaye.com, n.d.)

#### ***4.5 Export Processing Zone Programme***

The Export Processing Zone (EPZs) program was designed with the objective to facilitate foreign investors to boost the exports of new industries. The programme was also expected to facilitate technology transfer that will ultimately spill-over into the national customs territory; this would encourage high quality production of goods, enhanced technical managerial skills in addition to creating needed employment for the youths of the country (Belize Investment Guide, 2020). Belize's EPZ program is particularly attractive to investors given its preferential market access to major export markets; the entire community market of CARICOM, the European Union (EU) through the Lome Convention (European Union, 2020), Canada under the Caribbean-Canada Trade Agreement (CARIBCAN), the United States (US) through the Caribbean Basin Initiative and its Generalized System of Preferences (GSP).

The following are some of the benefits EPZ business operators benefit from:

- a. Import and export duty exemptions with extensions to capital and intermediate goods to be used by EPZ business
- b. EPZ businesses are exempted from capital gains, land and property tax. They are also exempted from sales and consumption tax etc.
- c. The duration of the benefits is 20 years with possibility for extension
- d. EPZ businesses are equally exempt from dividend taxes in perpetuity
- e. EPZ businesses are able to open foreign currency bank accounts unlike business domiciled within the national customs territory
- f. Imports by EPZ business require no import license, equally these businesses do not require trade licenses to operate within the zone
- g. In the zone, the Supplies Control Act alongside its regulations does not apply (ambergriscaye.com, n.d.).

Unlike the fiscal incentives programme, the EPZ is administered by the Investment Policy and Compliance Unit (IPCU) of the Ministry with responsibility for Investment, Trade and Commerce.

#### ***4.6 The Designated Processing Area Programme***

The EPZ from its name is sure to raise the dust of opposition from WTO members given the overt export contingency of the program. As such, the Government of Belize was obliged to reform the programme. It did so through the repeal of the EPZ act and replaced it with the Designated Processing Area (DPA) Act of 2018. The DPA act among other changes, removed the export contingency contained in the EPZ act. The DPA programme's primary objectives are to facilitate and enable new investments in value-adding enterprises in Belize's national economic priority sectors, while of course, generating employment and maintaining the environmental sanctity of the country.

A company operating within a DPA must fulfil obligation stipulated in the act. Such company is required to bear the cost of administration of the DPA; the company must also meet the sanitary and phytosanitary requirements of Belize as stipulated in the Belize Agricultural Health Authority Act. Part of the DPA act also requires companies operating within the area to maintain an efficient, be it physical or electronic, records of inventory, production of sale of goods and services for inspection by the authorities when needed.

In the DPA, companies must ensure that 85 per cent of employed persons within the organization are Belizeans or CARICOM citizens. Nationals of countries other than Belize and CARICOM can only be employed in senior management or technical positions. Should an approved DPA company desire to change the nature of approved activities, it must seek permission from the DPA Committee (DPAC) according to the DPA act. Equally under this DPA regime, companies operating within the region must keep records of inventory and financials for inspection from time to time by the authorities.

As with the EPZ programme, the DPA programme is also administered by the IPCU of the Ministry with responsibility for Investment, Trade and Commerce.

## **Section 5: Existing industrial policies in the context of Belize's WTO ASCM commitments**

This section will examine the previous section within the context of the WTO's Agreement on Subsidies and Countervailing Measures (ASCM). We will examine the inconsistencies of the three incentive programmes of Belize, including particular examination of the difference between the repealed EPZ act and the new DPA act.

As explained in the section 2 of this paper, governments, both of developing and developed countries are continuously seeking ways to boost economic growth. In developing countries, much of that effort is geared towards the development of new industries. Subsidies are known to be one of the ways to help governments meet their various industrial development objectives. Evidently, the capacity of each government to provide subsidy to its industries according to their respective national priority varies by the fiscal strength to do so. The amount of subsidy that an OECD country can muscle to protect or promote an industry would not be same as the amount a developing country, say from the Caribbean can do. As such, the effect of the subsidy on the global market also varies. Where a subsidy by a country distorts competition in an industry, competing supplying countries, indeed, the countries which are unable able to match the amount of subsidy being provided by the economically well-off country, will complain about the lack of fairness that the Multilateral trading system promises.

Consequently, the three primary incentive programmes Belize operates are a form of subsidy; because they seek to develop industry through various benefits that would otherwise not be available to firms in the country. Investment incentive programs such as those described are subject to Belize's international trade obligations, especially its commitment to the WTO. It is therefore prudent to examine the conformity of the programs with the WTO ASCM.

The ASCM is the agreement that governs the acceptable use of subsidy by members of the WTO. It forms part of the Annex 1A of the WTO agreement thus indicating that all members of the WTO are subject to its provisions. The agreement also, provides guidelines in respect to the acceptable approach when counteracting the effect of said subsidy in a Member State's market.

In defining subsidy, the ASCM, succinctly, subscribes the definition of subsidy to be any financial contribution by a government or its agent, where such contribution confers benefit to the receiving firm, or industry. The financial contribution by government can take various forms such as actual direct transfer of funds, forgone government revenue, provision of goods and services that would otherwise not have been provided, or the contribution to mechanism by a government, and any form of income or price support as defined in Article XVI of the General Agreement on Tariffs and Trade (GATT).

Also, in really understanding the nitty-gritty of the definition of subsidy, we are prudent to understand that not all financial contribution by a government or its agents confers benefit to its recipient. It is the combination of the financial contribution and benefit that constitutes a subsidy within the meaning of Article 1.1(a) and (b) of the ASCM. The distinction between what a financial contribution and benefit was further emphasized in *Brazil – Aircraft*<sup>1</sup>, where the Appellate Body (AB) stressed their difference and noted that, it is the combination of it that constitutes a subsidy according to Article 1.1 of the ASCM. The same sentiment was echoed in *US – Softwood Lumber IV*<sup>2</sup>, where the AB notes that Article 1 of the ASCM pictured a situation in which an economic advantage is experienced by firm or industry consequent upon a financial contribution by a government or its agents is deemed a subsidy.

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<sup>1</sup> Appellate Body Report, *Brazil – Export Financing for Aircraft*, WT/DS46/AB/R, adopted 20 August 1999, para. 157

<sup>2</sup> Appellate Body Report, *United States – Final Countervailing Duty Determination with respect to certain Softwood Lumber from Canada*, WT/DS257/AB/R, adopted 17 February 2004, para. 51

For our purpose in this paper, we note that Belize's three investment incentives program are all administered by a Ministry or an agency of government as stipulated in the respective enabling legislations, as such the transfer of economic value under Belize's subsidies regime is consistent with Article 1.1(a)(1). As mentioned earlier, Article 1, paragraph 1(a) is not enough to assume a subsidy exists. The tax holiday, and duty exemption helps businesses save cost and reinvest in much needed areas of growth, it also enhances the competitiveness of such businesses. Surely, these assistances are bound to benefit the recipient company thus completing our definition of what can and cannot be considered a subsidy. Since the benefit obtained through Belize's investment incentive programmes by authorized companies are in form tax holidays and duty exemptions, it follows that those programmes legally fit the purpose of our inquiry.

Article 1.2 of the ASCM notes that subsidy as defined in Article 1.1 must be subject to the provision of Part II, or Part III or Part V of the ASCM only if the subsidy meets the specificity test laid out in Article 2 of the ASCM. A subsidy shall be deemed to be specific if access to it is limited to an enterprise or a group of enterprises, or even location as per Article 2.1 of the ASCM. The limitation must be as a result of the legislation of the programme. Specificity is deemed to be absent if the granting authority utilizes an objective criterion in determining access to said subsidy. For Belize, its three investment subsidy regimes contain exports contingencies, which are prohibited subsidies as per Part II of the ASCM, and would automatically be deemed to be specific in accordance with Article 1.2 of the ASCM. Belize's CFZ could be deemed to be specific under Article 2.2 of the ASCM as its benefits are limited to geographical location. The AB in *US – Washing Machines*<sup>3</sup> establishes that Article 2.2 concerns the particular locations of the enterprises

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<sup>3</sup>Appellate Body Report, *United States – Anti-Dumping and Countervailing Measures on large Residential Washers from Korea*, WT/DS464/AB/R, adopted 26 September 2016, para. 5.213



benefiting from said subsidy. Further, in *US – Countervailing Measure (21.5 – China)*<sup>4</sup>, the Panel agreed with the US Department of Commerce’s regional specificity determination requirement that the subsidy could only be obtained in an economic zone – the procedure differs outside of the zone. The subsidy in this case was the conditionalities attached to land provision in an economic zone in China. As is with Belize, a CFZ is a designated area, according to Section 6 of the Free Zones Act, within Belize to fulfil the objective of the programme.

The above definition as per Article 1.1 of the ASCM must be understood alongside Article 2, which speaks to the specificity of the subsidy. In that, for a financial contribution to be considered a subsidy within the meaning of the definition article, such benefit must be specific to a firm or a group of firms. Geographical specification also falls within the scope of subsidy specificity as stated in the second paragraph of article 2 of the ASCM.

Section 9 of the EPZ act speaks to the process of import and export into the EPZ. Subsection 2 of section 9 states that all imports of an approved EPZ business are exempt from all customs duties, tariffs, taxes etc. The importation of fuel for the purpose of energy generation is exempted from taxes. Section 6 of the Fiscal Incentive (FI) Act, alongside section 7 of the same act details the tax holiday, duty exemption the government, under the programme, extends to approved companies. Equally, the Commercial Free Zones (CFZ) Act’s section 19, and 27 speaks to the duty exemptions available to CFZ companies, alongside the tax regime that is operational in the zone respectively. The scope of the described benefit in the three subsidies programme of Belize fit into the definition of subsidy as contained in the ASCM.

Evidently, the three investment incentive programmes of Belize, indeed, meets the definition of subsidy as per Article 1 of the ASCM. The CFZ programme, of the three programmes,

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<sup>4</sup> Panel Report, *United States – Countervailing Duty Measures on certain products from China*, WT/DS437/RW, adopted 21 March 2018, para 7.303

appear to be the least contentious vis-à-vis Belize's obligations under the ASCM, even though one section in the act is also inconsistent with the ASCM due to some element of export performance conditionalities. Sections of the FI programme entails some export performance conditions, which puts it at crossroads with the ASCM as well. The nomenclature of the EPZ says all an observer needs to assume about its provisions being riddled with export performance conditions. The FI and especially the EPZ from its name, connotes a contingency that falls under the purview of Part II, Article 3 of the ASCM, which speaks to *prohibited subsidies*. The article reads that subsidies within the meaning of Article 1 of the ASCM, contingent *de facto* or *de jure*, on the performance of exports solely or alongside other conditions, including conditions contained in the Annex I, which contains the list of illustrative export subsidies, of the ASCM are not to be used by WTO Members.

In *Canada – Aircraft Credits and Guarantees*<sup>5</sup>, proving export conditionality according to Article 3.1(a) requires that said subsidy to have been established within Article 1 of the ASCM as we have earlier done in this section. In other words, export contingency cannot be proved without the actual existence of subsidy. The prohibition of export subsidies was further confirmed by the AB in *US – FSC (Article 21.5 – EC)*<sup>6</sup>. Export subsidies according to Article 3.1(a) of the ASCM should either *de jure* or *de facto* be dependent on export performance. *De jure* in the sense that the wording of the legislation that give effect to the subsidy should include such conditionality; this interpretation was confirmed in *Canada – Autos*<sup>7</sup> AB report. We would see in our analysis of Belize's FI act and EPZ act the explicit export performance requirement.

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<sup>5</sup>Panel Report, *Canada – Export Credits and Loan Guarantees for Regional Aircraft*, WT/DS222/R, adopted 19 February 2002, para. 7.16

<sup>6</sup> Appellate Body Report, *United States – Tax Treatment for “Foreign Sales Corporation” Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW, adopted 29 January 2002, para. 111

<sup>7</sup> Appellate Body Report, *Canada – Certain Measures affecting the Automotive Industry*, WT/DS139/AB/R WT/DS142/AB/R, adopted 19 June 2000, para. 100

When it comes to *de facto* export contingency, we mean that though not explicit in wording in a legislation, regulation or policy, in practice, there is a conditionality that requires beneficiary of a subsidy to be engaged in some form of export-related activities. As noted in footnote 4 of the ASCM, the simple fact that an exporting firm benefits from a subsidy should not be construed to confirm the existence of an export subsidy according to Article 3. However, if such subsidy is even remotely tied to expected export earnings of the receiving firm, we can infer that, in fact, the granting of said subsidy has been made conditional to export. This analysis was equally buttressed by the AB in *Canada – Aircraft*, and also in *EC and certain member States – Large Civil Aircraft*<sup>8</sup>; where export conditionality could be inferred from the full body of facts meeting some requirements. We find the third factor, which speaks to the essential factual circumstances pertaining to the granting of said subsidy to be more relevant to our analysis of the CFZ act, where the export contingency in the act is not stated but inferred. A section of the FI act, as we will see below equally contains a provision that is *de facto* an export contingency.

Even though the second paragraph of Article 3 of the ASCM makes no distinction between developed and developing countries when it comes to being able to grant nor maintain prohibited subsidies, article 27 of the ASCM makes provision for special and differential treatment for developing countries. In particular, paragraph 1(a) of article 3, shall not apply to specific Member States listed in Annex VII of the ASCM. Other developing country Members are mandated to phase out measures within the definition of Article 3 of the ASCM within eight (8) years of entry into force of the Agreement; with annual extension subject to the consultation with the committee with responsibility for the ASCM at the WTO. Since Belize is not listed in Annex VII, but nonetheless a developing country, it is paragraph 2(b) of article 27 of the ASCM that applies to it.

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<sup>8</sup> Appellate Body Report, *European Communities and Certain Member States – Measures affecting trade in Large Civil Aircraft*, WT/DS316/AB/R, adopted 1 June 2011, para. 1046

Consequently, the export contingencies identified in the three incentive programmes should have had to have been eliminated by 2003 per the stipulated 8 years.

Belize, as is required by article 27, paragraph 4 of the ASCM, continues to request the continuation of the extension for exemption on prohibited subsidies, with the last record of such request in 2018<sup>9</sup>. A General Council (GC) decision<sup>10</sup> on Article 27, paragraph 4 of the ASCM on the 27 July 2007 put a deadline to the extension of the exemption for prohibited subsidies for non-Annex VII countries. All subsidies within the definition of Article 3 of the ASCM were to be phased-out by affected countries by 31 December 2015, upon the implementation of action plans by Member states developed by members to give effect to the GC decision.

Even though the authorities in Belize, in its 2017 secretariat's report on its third Trade Policy Review (World Trade Organization , 2017), note that most beneficiaries of the FI programme are not exporters; sections of the FI act contain provisions that is tantamount to export contingency thereby making it inconsistent with the ASCM. Section 3 of the FI act speaks to the requirement for the application of order from the Minister to benefit from the FI. Subsection 1, paragraph (d) of the FI act requires that the applying company provides to the Minister through the Chairman of BELTRAIDE, information that will facilitate the determination of the levels of export, foreign exchange earnings or savings the company expects to generate. While the simple fact of an exporting subsidy obtaining subsidy is not in itself considered an export subsidy, the conditioning of obtaining such subsidy on export would meet the export contingency test of article 3 of ASCM. What makes this particular section problematic is that the requested information reveals the export abilities of a company – one is left to wonder what happens if the applying

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<sup>9</sup> New and Full Notification pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, Belize, G/SCM/N/299/BLZ/Rev.1 G/SCM/N.315/BLZ, circulated 26 February 2018

<sup>10</sup> (WTO General Council , 2007)

company has no export potential. Such ambiguity gives too much discretion that could be used to as an export contingent.

Section 6 of the FI act states that the tax holiday an approved company could be entitled to should, under normal circumstance not be beyond five (5) years from the date of production with a possibility of a further ten (10) extension according to subsection 1. Paragraph (b) of the said subsection allows for a tax holiday for a maximum of twenty-five (25) years provided the company is engaged in select sectors, whose production is solely for exports. Therein lies the export contingency of Section 6 of the FI act

Section 7 of the FI act also contains an explicit export contingency that makes it inconsistent with the ASCM as per its article 3. Section 7 of the FI act speaks to duty exemption due to an approved company. Its subsection 1, paragraph (a) allows approved company to have duty exemption of not more than fifteen (15) years; paragraph (b) on the other hand, allows for a maximum of 25 years duty exemption for companies whose production is solely for exports. Again, here, there exist a *de facto* violation of the ASCM under its article 3. Evidently, the FI act as is, requires an amendment by parliament to make it consistent with Belize's obligation under the ASCM.

The Free Zones Act 2005 governs the CFZ programme of Belize. Section 19, subsection 10 of the speaks to under what conditions goods from the CFZ can enter into the national customs territory. Further, paragraph (a) requires the approval of the ministry of Finance before a sale can be made to the national custom territory. If such approval is given by the Ministry, that sale to the national customs territory must not exceed 25% of imports of a CFZ business or 25% of the produced within the CFZ by the company. The percentage limitation intentionally limits the amount of goods can enter the national customs territory while invariably ensuring that there is

better available for exports. This numerical limitation is glaringly an export contingent that is in violation of the ASCM.

The benefits conferred in the EPZ programme, for the purpose of this research, is not in question. The conditions attached to those benefits form the basis of the inquiry. Section 7, subsection 3(a) of the EPZ act, which details that the certificate of compliance to operate an EPZ business should be granted to a firm only if such firm operates a business that engages in the production of good and/or services specifically for exports except waived by the Ministry with responsibility for EPZ as stated in section 8, subsection 3 of the EPZ act.

Even though the EPZ developer could lease property within the zone to a non-exporting firm, only if the firm's business is complementary to the activities of the exporting firms in the zone. This provision is according to subsection 5 of the EPZ act; even though, the part of the act allows for non-exporting firms' operation, such an allowance is still contingent on service supply to exporting firms thus making the act inconsistent with the ASCM.

The inconsistency of the provisions of the EPZ with Belize's obligation to the WTO is glaring; and haven undergone three trade policy review by the WTO, it was clear it was time to bring the incentive programs – a cornerstone of its fragmented industrial policy thrust - in-line with its international trade obligations. That other Member States have not brought a formal complaint against Belize, before the Dispute Settlement Body of the WTO, is not enough reason to maintain such law if Belize intended to continue to be a responsible member of the Multilateral Trading System (MTS).

Consequently, the government began working to reform the program, and in 2018 repealed the EPZ Act of 2000. The repealed act was replaced with what is known as the Designated Processing Areas Act of 2018. The DPA act contains largely the same benefits provided in the

repealed EPZ act, albeit with some adjustments. Part V, section 18 of the act speaks to the duration of conferred benefit. The duration of the benefit granted to a business with a DPA status does not exceed ten (10) years, which is a reduction from the 20 years provided for in the repealed EPZ act. More so, action to subsection 4 of section 18 of the DPA, should a firm for a renewal of a DPA status, such firm would be ineligible for all the benefits, and the duration of the renewed benefit shall not be up to the initial 10 years.

This streamlining of benefits can be said to be consistent with global best practices in relation to government industrial support, and the government counting the cost of the programme in the long term. The non-automatic renewal of benefit also infuses a graduation element into the new act, which minimises the culture of dependency among firms in Belize.

The consequential change that the DPA act brought to the EPZ act is the removal of the export contingency contained in the act. This was achieved through Part III, Section 8, which specifies process for obtaining a DPA status and what the act deems as approved activities in the DPA. The said section grants DPA status benefit to approved firms who operate in sectors the minister with responsibility for DPA (Minister with responsibility for Investment Trade and Commerce) declares a national priority sector. This declaration should be in accordance with a national development plan or any other government policy. As such, a firm with a DPA status firm need not be in an export-oriented business; such firm only need to be operating a national priority sector.

In addition, Section 9, subsection 6(a) of the DPA act, empowers the DPA Committee (DPAC) to refuse the application of a DPA status should the activities of that firm be determined to distort market competition thus leading to unfair trade. This section infuses an element of

competition law into the incentive program – this is noteworthy since Belize does not currently have a legal framework to address antitrust issues.

With the DPA act, Belize has been able to bring one of its three-incentive program, in particular, the EPZ programme, to be consistent with the ASCM. While, the remaining two continue to be inconsistent with the provisions of the ASCM as there have not been any amendment to the FI act, and the CFZ act to that effect as at the end of this study. The continuous existence of the FI and CFZ act as is, is in fact, contrary to the spirit of Belize 2018 Notification under Article 27, paragraph 4 of the ASCM in 2018., especially since these export subsidies should have ceased to exist in its current form since 2015 per the General Councils' 2007 decision.

As we opined in section 2, the array of industrial policies that were available to now-industrialized countries such as South Korea, in the 70s and 80s are no longer available to developing countries such as Belize. The international disciplines surrounding industrial promotion have evolved to one that is deemed to be fairer in that, there is next to no market distortion in its effect. As we have clearly seen from our analysis of the ASCM, the use of subsidies that are contingent on export performance are prohibited thus limiting the targeting abilities of industrial policymakers in developing countries. And with limited fiscal wiggle room, the bluntness of targeting by the new rules of subsidies makes developing countries' efforts at developing industry less effective.

The General Council's 2007 decision on the phase-out of all export contingent subsidies by December 2015 removed the flexibility of countries like Belize had enjoyed in its industrial promotion efforts. Though, as we have indicated earlier, two of the three investment incentive acts Belize operates are still inconsistent with the ASCM. Despite this, the new DPA act is demonstrative of the inherent flexibility in the ASCM. The export contingency that existed in the



repealed EPZ act haven been removed, yet, the benefits as we mentioned earlier have largely remained the same. If the export conditionality of the two remaining inconsistent legislation can also be addressed, then all three programs would be consistent with the ASCM. However, the consistency of all three acts with the ASCM would mean that there will be almost no difference between the programs as the benefits enjoyed by approved companies are similar. As such, maybe a consolidation of the three programs into one mega investment incentive program with the existing differences in the three programmes as sections in a comprehensive programme, could be a prudent action by the Government of Belize – it might even lead to a more efficient administration of the programmes.

The declaration of an economic sector as national priority by the Minister with responsibility for DPA allows Belize to remove the export conditionality of the benefits of the programme. We note that the minister could by his or her own analysis or consequent upon a national development plan, declare sector with rich export capability or potential as national priority, thereby according such sector, the benefits of the DPA programme. This approach somewhat allows Belize to continue to meet its industrial development aspirations through an effective investment incentive program and fulfil its international trade obligations as well.

Further, while the DPA is consistent with the ASCM, we note that there is a possibility of it being subject to challenge by member States of the WTO if its effect on other member States is adverse according to Article 5 and 6 of the ASCM, which speak to subsidies not being detrimental to the interest of other Members of the WTO. However, we are cognizant of the small size of Belize's economy and its inherent supply capacity constraints even with its market access to developed markets such as the European Union, the US, and Canada. As such, we do not think the

effect of the DPA, or the eventual reform of the FI and CFZ programmes will be detrimental to the interest of another member State within the meaning of Articles 5 and 6 of the ASCM.

We note the provisions of Article 8 of the ASCM, and the possibility of non-actionable subsidies that Belize could use in furthering its industrial development. However, in practice, Article 31 of the ASCM states that the provisions of Article 6, paragraph 1, and entirety of the provisions of Articles 8 and 9 of the ASCM would apply for a period no later than five (5) of the entry into force of the agreement establishing the WTO. As such, the flexibility inherent in Article 8 is non-existent due to the expiry of the provision.

## **Section 6: Conclusion and Recommendation**

The research sought to conduct a legal analysis of Belize's industrial policies in the context of its WTO commitments, in particular, those policies against the provisions of the ASCM. In doing so, the following research questions was used to guide the examination: (a) what are Belize's industrial policies? (b) what is Belize's commitment to the WTO vis-à-vis its current industrial strategies? (c) what were the inherent flexibilities or the lack thereof. We thus aimed to describe and assess Belize's primary industrial policies, which we identified to be: (a) Fiscal Incentive program (b) Commercial Free Zone Program (c) Export Processing Zone program (d) Designated Processing Area program. In doing so, we observed that the investment incentives programmes are the framework of Belize's industrial policy. More so, that Belize's industrial policy stems from the community industrial policy found in the RTC.

In answering the second research question, we examined the provisions of the legislation backing the three-investment incentive program of Belize, and sought to identify the inconsistency that exist therein with the ASCM. For the three programmes, upon analysis, we observed that the basis of inconsistency with the ASCM, lies in the export contingency contained in sections of those legislations. We defined export contingency as when the access to said subsidy is conditional on the export performance of the firm. We note that the EPZ's nomenclature and provisions were overtly contingent on export performance as only businesses engaged in export activities could operate in an EPZ, and where non-export business were present, those businesses must be engaged in export complementary services in the zone. This requirement outrightly makes the program illegal according to article 3 of the ASCM, where subsidies dependent on export performance is prohibited for all members of the WTO, whether developing or developed.

We examined government's effort to make the EPZ program consistent with its international trade commitment and observed the repeal of the government act of the EPZ and the enactment of the new DPA act in 2018. Section 8 of the new legislation removed the export contingency requirement and replaced it with businesses operating in national priority sectors as ordered by the Minister with responsibility for DPA. The national priority sector need not be an export-oriented sector. The scope of the benefit in the new act remained largely the same with minor amendments such as, the reduction of overall duration of benefit to 10 years from the previous 20 years as was in the EPZ act. The renewal of benefits was equally subject to conditions where, even if benefits were renewed, the entirety of initial benefits may not be renewed. Consequently, we note that while the provisions of the ASCM blunts the efficacy of Belize's industrial policy efforts, notwithstanding the inherent fiscal constraints Belize faces, through the DPA act, Belize sought to balance its domestic interest with its international commitments.

We note that no changes regarding export contingency has been made to the CFZ and FI acts. Consequently, as of the period of our inquiry, those programmes are still inconsistent with the ASCM. Belize, while having taken steps to bring its investment incentive program in conformity with its commitment under the ASCM, and its consistent assurance to the General Council of the WTO of its desire to abide by the 2007 decision, is has still not complied. We therefore note the illegality of two of Belize's three investment incentive programmes as per its ASCM commitment.

In addressing the third research question regarding the inherent flexibilities of Belize's ASCM commitment, we recognized the flexibility inherent in the ASCM through Article 27 of the agreement. Article 27 makes provision for special and differential treatment for developing and least developing countries, even though the allowance granted by this provision no longer applied

to Belize. We also took note of Article 8 of the ASCM, which makes provision for the allowance of non-actionable subsidies, even though Article 31 of the ASCM renders the flexibility inherent in Article 8 of the ASCM irrelevant and it states the expiry of its provisions.

We note that for Belize, there is no overt flexibility for its commitment as the provisions of the ASCM stands. However, the removal of the export contingency in the new DPA offers a glimpse into how Belize could further its industrial promotion objectives with the existing benefits it provides under its programmes. The declaration of an economic sector as a national champion or priority by Belize, as one of the qualifying conditions to confer subsidy to firms. The sector need not be a non-exporting sector, in fact, the declared sector could be an exporting one, and the program would not be in violation of the ASCM provisions. Of course, another member States can challenge the DPA program still according to Article 5 and 6 of the ASCM. We believe such legal challenge is less likely for Belize given its limited supply capacity and tight fiscal wiggle room to scale such benefit to the extent that can cause an injury to another country's economic interest.

Belize's desires of increased economic growth are promising, and it can be achieved with appropriate industrial strategies to support sectors with the most potential to anchor the economy. The size of Belize's economy and population mandates that the country look less towards what more it can consume from the world, but how much more it can sell to the global economy leveraging its market access to the EU and the United States.

As such, Belize must continue to expand its supply capacity to meet the demands of the global economy through continuous support to its industries. Notwithstanding the difficulties of actively supporting industrial development, measures to enhance the overall competitiveness of industries should explored by Belize. A deliberate expansion of education investment could ensure that, industries labour demands are being met at a fair price; such educational investment would

not be deemed an actionable subsidy as it would not be specific nor contingent on export performance. Rather, it improves the human capital of the country. A concerted investment in trade-enhancing infrastructure, such as a more efficient logistics system would reduce the overall business cost for businesses, whether or not they are exporters. While our suggested efforts are non-targeted, and some might suggest its lack of potency, ultimately, we believe truly competitive firms would see enhanced efficiency in their operations as a result of our recommended investments.

Finally, since the tide of non-reciprocity at the multilateral level is coming to an end, Belize must begin preparing its economy for possible competition on its domestic market with more efficient international producers. We note that the heightened fear of domestic industry decline by import sensitive local industries. Belize being a very small market, it is unlikely to attract much attention for take-over from multinational corporations. On the other hand, Belize's extensive market access via its trade agreements makes it attractive to export-oriented businesses looking for a relatively stable country with proximity to large markets to invest.

## Section 7: References

- ambergriscaye.com. (n.d.). *Belize investment guide*. Retrieved from ambergriscaye.com:  
<https://ambergriscaye.com/economics/schemes.html>
- Ansu, Y., Booth, D., Kelsall, T., & Willem te Velde, D. (2016). Public and private sector collaboration for economic transformation. *African Transformation Forum* (pp. 1-20). Kigali: African Center for Economic Transformation.
- Belize Trade and Investment Development Service (BELTRAIDE). (n.d.). *Investment Incentives*. Retrieved March 2020, from <https://www.belizeinvest.org.bz/investment-incentives.html>
- Brazil — Export Financing Programme for Aircraft, DS46 (WTO Appellate Body August 20, 1999).
- Calabrese, L., Papadavid, P., & Tyson, J. (2017). *Rwanda: financing for manufacturing*. London: Overseas Development Institute (ODI).
- Canada - certain measures affecting the automotive industry, DS139 (WTO Appellate Body May 31, 2000).
- Canada - export credits and loan guarantees for regional aircraft, DS222 (WTO Dispute Settlement Panel January 28, 2002).
- CARICOM Secretariat. (2020, September). *Who where are*. Retrieved from CARICOM:  
<https://caricom.org/about-caricom/who-we-are>
- Central Bank of Belize. (2020, September). *Economic indicators*. Retrieved from Central Bank of Belize: <https://www.centralbank.org.bz/rates-statistics/economic-indicators>
- Dadush, U. (2016, January). Industrial policy: a guide for the perplexed. *Policy Brief: Policy Centre for the New South*. Rabat, Morocco: OCP Policy Centre.
- Development Centre. (2012). *Industrial Policy and Territorial Development*. Paris: Organisation for Economic Co-operation and Development.
- Economic Commission for Latin America and the Caribbean (ECLAC). (2001, June). The efficacy of Caribbean industrial policy in the new era of globalization. *ECLAC Issue Brief*. Port of Spain, Trinidad and Tobago: ECLAC.
- European Communities and certain member States - measures affecting trade in large civil aircraft, DS316 (WTO Appellate Body May 18, 2011).
- European Union. (2020, June 16). *Cotonou agreement*. Retrieved from Council of the European Union: <https://www.consilium.europa.eu/en/policies/cotonou-agreement/>
- Gebreeyesus, M., & Lizuka, M. (2010, September). *Experimentation and coordination as industrial policy: examples from Ethiopia and Chile*. Retrieved from WIDERAngle (Blogs): <https://www.wider.unu.edu/publication/experimentation-and-co-ordination-industrial-policy>

- Government of Belize. (2019). *The national trade policy 2019 - 2030*. Belmopan: Ministry of economic development, petroleum, investment, trade and commerce .
- Hendrickson, M., Lugay, B., Caldentey, E. P., Mulder, N., & Alvarez, M. (2012). *Creative industries in the Caribbean: a new road for diversification and export growth*. Santiago: UN ECLAC.
- Lim , W. (2014). Korea's export-oriented industrialization: trade and industrial policy . *G-20 Global Leadership Program for Middle Managers* (p. 63). Sejong: Korea Development Institute .
- Llewellyn, R. O. (2012, March). *Belize enacts moratorium on rosewood*. Retrieved from Mongobay: <https://news.mongabay.com/2012/03/belize-enacts-moratorium-on-rosewood/>
- Mitchell, D. (2005). *Sugar in the Caribbean: adjusting to eroding preferences* . Washington DC: World Bank Group .
- Moreno, L. A. (2015, January 24). *How to get industrial policy right*. Retrieved from World Economic Forum: <https://www.weforum.org/agenda/2015/01/how-to-get-industrial-policy-right/>
- Obiols, M. (2018, April 13). *What countries do the best job attracting foreign direct investment and how do they get it?* Retrieved from Global Finance: <https://www.gfmag.com/magazine/april-2018/alchemy-fdi>
- Ornelas, E., & Puccio, L. (2019, October 7). Reopening pandora's box in search of a WTO-compatible industrial policy? The Brazil-Taxation dispute. *Discussion Paper Series* . London, United Kingdom: Centre for Economic Policy Research .
- Revised Treaty of Chaguaramas. (2001, July). Part 1: Industrial Policy. *Chapter 4: Policies for Sectoral Development*. Chaguaramas, Trinidad and Tobago.
- Rhiney, K. (2016). From plantation to services: a historical and theoretical assessment of the transition from agrarian to service-based industries in the caribbean. In C. Beckford, & K. Rhiney, *Globalization, agriculture and food in the Caribbean* (pp. 23-50). London: Palgrave Macmillian.
- Saggi, K., & Pack, H. (2016). Is there a case for industrial policy? A critical survey. *The World Bank Research Observer*, 21(2), 267 - 297.  
doi:file:///C:/Users/Olabanji%20Ogunjobi/Downloads/Is\_There\_a\_Case\_for\_Industrial\_Policy\_A\_Critical\_S.pdf
- Saleman , Y., & Jordan, L. (2013). *The implementation of industrial parks: some lessons learned in India* . Washington DC: World Bank Group .
- Shadikhodjaev, S. (2018). *Industrial Policy and the World Trade Organization: Between legal constraints and flexibilities*. New York: Cambridge University Press.



- Smith, F. (2013). *A history of enterprise in Belize*. Belmopan: InterLogic Publishers.
- United Nations Conference on Trade and Development (UNCTAD). (2016). Industrial policy: a theoretical and practical framework to analyse and apply industrial policy. In V. Institute, *Structural Transformation and Industrial Policy* (pp. 68-132). New York and Geneva: UNCTAD.
- United States - Anti-dumping and countervailing measures on large residential washers from Korea, DS464 (WTO Appellate Body September 7, 2016). Retrieved September 25, 2020, from [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds464\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds464_e.htm)
- United States - Countervailing duty measures on certain products from China, DS437 (Panel Report March 21, 2018).
- United States — Final countervailing duty determination with respect to certain Softwood Lumber from Canada, DS257 (WTO Appellate Body January 19, 2004).
- United States - tax treatment for "foreign sales corporation", DS108 (WTO Appellate Body February 24, 2000).
- US Department of State. (2019). *2019 investment climate statement: Belize*. Washington DC: US Department of State.
- Weiss, J. (2013). *Strategic industrial policy and business environment reform*. New York: Donor Committee on Enterprise Development.
- World Bank. (1993). *The East Asian miracle: economic growth and public policy*. New York: Oxford University Press.
- World Bank. (2018). *GDP Growth (annual %) - Latin America & Caribbean*. Retrieved from The World Bank| data: <https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?end=2018&locations=ZJ&start=2008>
- World Trade Organization . (2012, November). *European Communities - regime for the importation, sale and distribution of bananas*. Retrieved from World Trade Organization : [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds27\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm)
- World Trade Organization . (2017). *Third Trade Policy Review of Belize*. Geneva: WTO Secretariat.
- World Trade Organization: Committee on Subsidies and Countervailing Measures. (2018, February 26). New and full notification pursuant to article XVI: 1 of the GATT 1994 and article 25 of the Agreement on Subsidies and Countervailing Measures. Geneva.
- WTO General Council . (2007, July ). Decision of 27 July 2007. *Article 27.4 of the agreement of subsidies and countervailing measures*. Geneva, Switzerland : World Trade Organization .

Zeng, D. (2015). *Global experiences with special economic zones* . Washington: World Bank Group .