



**ADVANCING SUSTAINABILITY GOALS THROUGH TRADE RULES TO  
LEVEL THE PLAYING FIELD**

DRAFT MINISTERIAL DECISION

The following communication, dated 17 December 2020, is being circulated at the request of the United States to address the imbalance in the existence and enforcement of fundamental environmental protection standards among Members.

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The Ministerial Conference,

*Convinced* that global environmental challenges pose an increasing threat to the health and well-being of citizens of every country in the world;

*Having regard to* Article XX (b) of the General Agreement on Trade and Tariffs;

*Believing* that no Member should gain a comparative advantage in trade due to insufficient or unenforced environmental laws, regulations, and standards;

*Noting* that one of the objectives of the Marrakesh Agreement establishing the World Trade Organization is the optimal use of the world's resources in accordance with the objective of sustainable development;

*Acknowledging* that the goal of international trade rules is the promotion of free trade and market efficiency;

*Recognizing* that the value of a subsidy is not the cost of the subsidy to the granting government but the benefit received by an industrial entity;

*Realizing* that industries located in certain countries benefit from weak or unenforced environmental laws and regulations by not being required to incur, and properly internalize, the costs of preventing or remediating environmental damage resulting from their production processes;

*Recalling* that the Agreement on Subsidies and Countervailing Measures (ASCM) permits Members to impose a countervailing duty to offset a government subsidy benefit received by an exporter to ensure that domestic producers should only have to compete with those other firms that are subject to the same competitive market conditions;

*Accepting* that imposing countervailing measures on subsidies that take the form of weak or unenforced environmental standards would promote stronger environmental standards and enforcement, would encourage the proper internalization of environmental costs into the calculations of production costs, and would correct policies that create transaction-specific market inefficiencies which thereby distort trade;

*Decides* as follows:

1. The failure of a government to adopt, maintain, implement and effectively enforce laws and regulations that ensure environmental protections at or above a threshold of fundamental standards shall constitute an actionable subsidy under the ASCM.
  2. If an industry disproportionately benefits from pollution controls or other environmental measures set below a threshold of fundamental standards, a Member may impose a countervailing duty equal to the benefit received by the industry when the goods from such an industry enter the Member's customs territory.
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